



Administrator Elanor Starmer  
Agricultural Marketing Service  
U.S. Department of Agriculture  
1400 Independence Ave. SW  
Washington, DC 20250

May 3, 2016

Dear Administrator Starmer:

On behalf of the Organic Trade Association (OTA) and the GRO Organic Steering Committee, I am writing today to formally amend our proposal for an organic research and promotion program. OTA is the leading voice for the organic trade in the United States, with a mission to promote and protect ORGANIC with a unifying voice that serves and engages its diverse members from farm to marketplace.

As you know, we have spent the last four-plus years seeking stakeholder feedback on the idea of an organic checkoff – in particular, organic farmer feedback – and have incorporated that good feedback into many draft proposals. We held six webinars, 20 town hall meetings, three panel debates, and over twenty-five other listening sessions or panel discussions with organic stakeholders as we shaped the proposal. We incorporated the good learning we received at each of those events into draft proposals, each of which was posted on our website. The draft that was submitted to the Department was mailed to all certified organic operations. All of this outreach demonstrates our commitment to full transparency and continued stakeholder engagement. During the nearly eleven months that have passed since we submitted our proposal, we have continued to engage stakeholders and incorporate good ideas.

The enclosed documents reflect changes that have come from continued outreach, and the good ideas from the responses to our proposal which you posted on the USDA.gov website last month. The enclosed documents also include technical edits from AMS feedback. We look forward to your posting of this letter and our revised proposal.

In particular, we wanted to note a few key changes we made in response to stakeholder feedback:

- Revision of research definition
  - In response to good feedback, particularly from the Northeast Organic Dairy Producers Alliance (NODPA) and the National Farmers Union (NFU), we revised the definition of “research” in our proposal. In particular, we specified that research would include both agricultural and other research; and outlined a broad spectrum of types of research that would fall in each category. We have heard from organic farmers their desire to ensure that the research funded under an organic research and promotion order would include agronomic and other agricultural research – and revising the definition makes it explicit that agricultural research is included and is a priority.
- Revision of allocation of expenditures
  - As noted above, stakeholders, particularly organic farmers, want to be sure that their agricultural research needs are funded by any organic research and promotion order. Therefore, we also revised the allocation of expenditures to ensure, among other things, that a majority of all funds allocated to research must be allocated to agricultural research; and a majority of all funds allocated to information must be allocated to producer information. Moreover, our revisions ensure that regional organic producer Board members establish the priorities, including regional considerations, for investments in agricultural research.
- Technical edits
  - Our revised proposal includes a number of technical revisions which ensure that the proposal is fully aligned with the law, as well as the realities of how research and promotion programs are administered. For example, we incorporated the good idea brought forth by the Western Organic Dairy Producers Alliance (WODPA) that, should no nominees come forward for the voluntarily assessed Board seat, the Secretary shall appoint one of the nominees from among those received for the other Board positions. We also incorporated another good idea brought forth by WODPA regarding specific staggering of Board terms.

Our full revised proposal is enclosed. We hear from our members that the delay in USDA publishing a proposed rule is based in part on waiting for these revisions, and we are glad to hear you are so far along in your drafting of the proposed rule. With this submission, you should have nearly all that you need to move to publication, and we look forward to that happening quickly.

We are eager to see the Department move speedily to publication of a proposed rule, so this organic checkoff proposal – which was authorized in the 2014 Farm Bill, and submitted to you nearly a year ago, can move through the standard USDA research and promotion program approval process.

We look forward to continuing to work with you and your team on implementation of an organic research and promotion order, and other organic priorities, in the coming months. We thank you for your continued leadership.

Sincerely,



Laura Batcha  
CEO/Executive Director  
Organic Trade Association

Cc: Dana Coale  
Betsy Rakola  
Heather Pichelman  
Melissa Bailey  
Stacy Jones-King

Enclosures: R&P Program Application Industry Overview  
Draft Regulations

## R&P Program Application Industry Overview

The Organic Trade Association and GRO Organic Core Committee hereby submit this proposal for the Generic Research and Promotion Order for Organic (“GRO Organic”) pursuant to the Commodity Promotion, Research and Information Act of 1996.<sup>1</sup>

### **I. Industry Analysis**

#### **a. History**

Organic agriculture began being defined and gaining support in the United States in the early 1970s. Organic standards were originally initiated through trade associations or private organizations, and were voluntary.<sup>2</sup> Some of the first voluntary organic certifications were created by the Rodale Press in California in 1972, which led to the creation of the California Certified Organic Farmers association in 1973,<sup>3</sup> and the Northeast Organic Farming Association in 1977.<sup>4</sup> States also started adopting organic certification standards in the late 1970s and early 1980s.<sup>5</sup> The certification standards were designed to support growing consumer demand for organic products and prevent fraud. The various organic certification standards, however, were not unified in defining what qualified as organic agriculture. The lack of a uniform definition resulted in consumer confusion as a result of labeling, and complications with trade in foreign markets. The need for a national standard to unify the industry and ensure that foods labeled as organic adhered to one set of strict guidelines resulted in Congress passing the Organic Foods and Production Act (OFPA) in 1990.

The OFPA authorized the U.S. Department of Agriculture (USDA) to develop national standards for the production and handling of organic products. In 1992 the first National Organic Standards Board (NOSB) was appointed and the National Organic Program (NOP) was established within the USDA. The first proposed rule implementing the OFPA was published in 1997. The rule did not completely follow the NOSB recommendation and drew considerable opposition – receiving more than 280,000 comments, more comments than the USDA had received in any previous proceeding.<sup>6</sup> This resulted in a revised rule addressing several of the controversial issues becoming final and going into effect in 2002.<sup>7</sup> The regulation required all

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<sup>1</sup> 7 U.S.C. § 7411-7425.

<sup>2</sup> Carolyn Dimitri and Catherine Greene, *Recent Growth Patterns in the U.S. Organic Foods Market*, Economic Research Service, USDA (September 2002), p. 8, available at, [http://www.ers.usda.gov/media/249063/aib777\\_1.pdf](http://www.ers.usda.gov/media/249063/aib777_1.pdf).

<sup>3</sup> Brain Baker, *Brief History of Organic Farming and the National Organic Program*, Organic Materials Review Institute (2005), p 1, available at <http://www.sarep.ucdavis.edu/sfr/organic/files-images/intro2.pdf>.

<sup>4</sup> Grace Gershuny, *Conflicts over Organic Standards – Part 1, History of organic standard-setting and controversies*, Chelsea Green Publishing (September 23, 2010), available at <http://chelseagreen.com/blogs/gracegershuny/2010/09/23/conflicts-over-organic-standards%E2%80%93part-i-history-of-organic-standard-setting-and-controversies/>.

<sup>5</sup> Brain Baker, *Brief History of Organic Farming and the National Organic Program*, Organic Materials Review Institute (2005), p 1, available at <http://www.sarep.ucdavis.edu/sfr/organic/files-images/intro2.pdf>.

<sup>6</sup> Certified California Organic Farming, *Our History*, (last accessed February 11, 2015), available at <http://www.ccof.org/ccof/history>.

<sup>7</sup> Ibid.

1 organic growers and handlers to be certified by state or private agencies/organizations to the new  
2 standard developed by USDA.<sup>8</sup>

3  
4 b. Domestic Market

5  
6 The organic sector has experienced significant growth over the last 20 years. Organically  
7 produced foods and non-food items started out as a niche market primarily sold in direct-to-  
8 consumer markets. Organic products, however, have moved from direct-to-consumer markets to  
9 conventional supermarkets due to double-digit growth in consumer demand every year since the  
10 1990s.<sup>9</sup> Organic sales, both food and non-food, increased from \$3.6 billion in 1997 to \$39.1  
11 billion in 2014. The growth from 2003 to 2013 is illustrated in Graph 1 below.<sup>10</sup>

12  
13 The organic food segment makes up the overwhelming majority of organic sales – \$36  
14 billion in 2014, or 92 percent of total organic sales.<sup>11</sup> Organic food sales saw a 11 percent  
15 increase from 2012 to 2013 and an 11 percent increase from 2013 to 2014.<sup>12</sup> Fruits and  
16 vegetables continue to be the largest segment of organic food sales, comprising 36 percent of  
17 total organic food sales; followed by dairy at 15.2 percent; packaged and prepared foods at 14.7  
18 percent; beverages at 12.3 percent; breads and grains at 11.7 percent; snack foods at 5.4 percent;  
19 condiments at 2.6 percent; and meat, poultry, and fish at 2.1 percent.<sup>13</sup>

20  
21 The organic non-food segment grew 14 percent in 2014 to reach \$3.1 billion in total  
22 sales.<sup>14</sup> Organic non-food sales, which represent 8% of all organic product sales, and show faster  
23 growth in recent years than the organic food segment.<sup>15</sup> The market for organic products, both  
24 food and non-food, is expected to continue to expand at similar rates for the foreseeable future.

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<sup>8</sup> Catherine Greene, Carolyn Dimitri, Biing-Hwan Lin, William McBride, Lydia Oberholtzer, and Travis Smith, *Emerging Issues in the U.S. Organic Industry*, Economic Research Service, USDA (June 2009), p. 2, available at [http://www.ers.usda.gov/media/155923/eib55\\_1\\_.pdf](http://www.ers.usda.gov/media/155923/eib55_1_.pdf).

<sup>9</sup> Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture.aspx>.

<sup>10</sup> Organic Trade Association, *2015 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

<sup>11</sup> Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

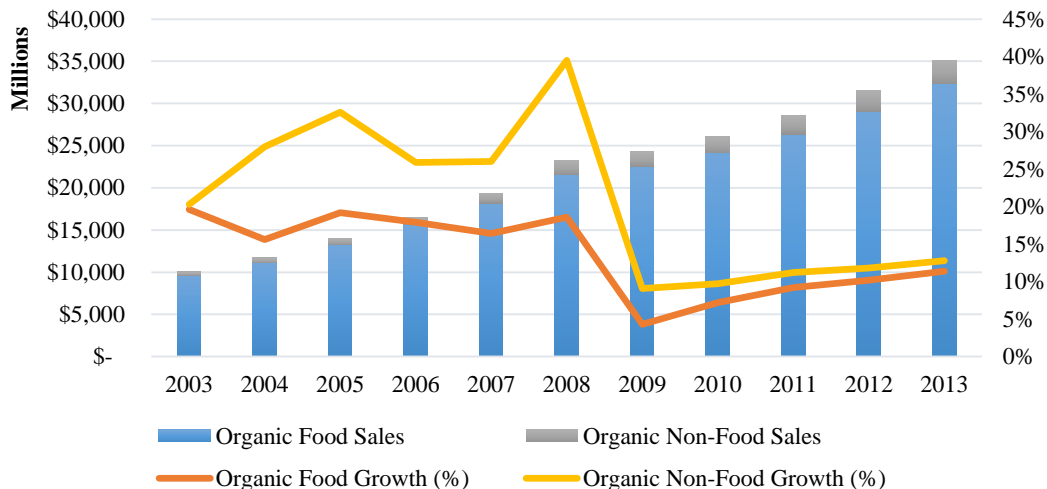
<sup>12</sup> Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

<sup>13</sup> Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 38.

<sup>14</sup> Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

<sup>15</sup> Organic Trade Association, *2014 Organic Industry Survey* (conducted 2/10/2015 – 4/3/2015), see p. 10.

**Graph 1: Total U.S. Organic Sales and Growth, 2003-2013**



Source: Organic Trade Association's 2014 Organic Industry Survey conducted 1/27/2014 – 4/5/2014.

Organic foods continue to receive a price premium over their conventional counterparts, though the price premium fluctuates significantly depending upon the commodity. Organic produce and milk receive some of the highest price premiums over their conventional counterparts. These categories are also the top organic food sales categories.<sup>16</sup> For the majority of organic produce, the price premium represents less than a 30 percent price differential. Milk, on the other hand, has been documented receiving a price premium anywhere from 60 to 109 percent.<sup>17</sup>

Studies show that the vast majority of American consumers purchase organic food products, with a Consumer Reports survey showing that 84 percent of American consumers purchase organic food. The frequency at which they purchase organic food products, however, varies significantly. Of those surveyed, 18 percent purchase organic food every week. Another 18 percent purchase organic food two to three times a month, while nine percent said they purchase organic food once a month. Thirty-nine percent said they purchased organic food rarely and 15 percent said they never purchase organic food. One percent said they didn't know or were unsure. Almost half of the 84 percent who buy organic foods, do so rarely.<sup>18</sup>

<sup>16</sup> Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Organic Market Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview.aspx>.

<sup>17</sup> Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Organic Market Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview.aspx>.

<sup>18</sup> National Research Center, *Organic Food Labels Survey*, Consumer Reports (March 2014), p. 3, available at <http://www.greenerchoices.org/pdf/CR2014OrganicFoodLabelsSurvey.pdf>.

1                   c. Domestic Production

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3                   Organic production has also experienced double-digit growth since the 1990s.<sup>19</sup> The U.S.  
4 had under a million acres of certified organic farmland in 1990. This number doubled between  
5 1990 and 2002, and doubled again between 2002 and 2005. Between 2005 and 2011, the amount  
6 of organic pasture and rangeland fluctuated, but certified organic cropland expanded by close to  
7 80 percent. Organic livestock experienced even faster growth during the same time period. In  
8 2011, there were roughly 5.4 million acres of certified organic farmland – with 3.1 million acres  
9 of cropland and 2.3 million acres of rangeland/pasture.<sup>20</sup> Despite the growth in certified organic  
10 farmland, certified organic farmland remains below one percent of the total farmland acreage in  
11 the U.S.

12  
13                   Organic production has grown not only when measured in terms of acreage, but also  
14 when measured by the number of certified organic operations. When the USDA first started  
15 certifying organic operations under the NOP, there were just over 7,000 certified organic  
16 operations. Data released by USDA in April 2015 showed that the number of U.S. certified  
17 organic operations increased by more than five percent from 2013 through 2014, to reach 19,474  
18 businesses. The farmgate value of all organic product sales in 2011 was approximately \$3.5  
19 billion.<sup>21</sup>

20  
21                   Organic production costs vary by commodity and location. U.S. organic farms on  
22 average have higher sales, higher production expenses, and higher operating profits than the  
23 average for all U.S. farms.<sup>22</sup>

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25                   d. Geographic Distribution

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27                   As of 2015 there were certified organic operations in every state. As of February 2016,  
28 there were a total of 15,507 producers in the United States holding organic certificates. An  
29 attempt to create geographic regions that represent comparable numbers of certified organic  
30 producers results in the following: California (18 percent); Central states (17 percent); Great  
31 Lakes region (16 percent); Southern/Midatlantic states (18 percent); Northeastern states (15  
32 percent); Western states (15 percent). The proposed geographic distribution of the producer  
33 seats on the Board reflects this geographic distribution of certified organic operations.

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<sup>19</sup> Catherine Greene, Carolyn Dimitri, Biing-Hwan Lin, William McBride, Lydia Oberholtzer, and Travis Smith, *Emerging Issues in the U.S. Organic Industry*, Economic Research Service, USDA (June 2009), p. 3, available at [http://www.ers.usda.gov/media/155923/eib55\\_1\\_.pdf](http://www.ers.usda.gov/media/155923/eib55_1_.pdf).

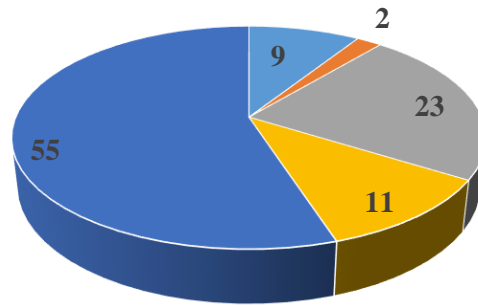
<sup>20</sup> Catherine Greene, *Organic Production*, Economic Research Service, USDA (last modified September 27, 2013), see Documentation, available at <http://ers.usda.gov/data-products/organic-production/documentation.aspx>.

<sup>21</sup> National Agricultural Statistics Service, *2011 Certified Organic Production Survey*, U.S. Department of Agriculture (October 2012), p. 7, available at <http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-10-04-2012.pdf>.

<sup>22</sup> National Agricultural Statistics Service, *The 2008 Organic Production Survey*, U.S. Department of Agriculture (2008), p.83, available at [http://www.agcensus.usda.gov/Publications/2007/Online\\_Highlights/Organics/organics\\_1\\_12.pdf](http://www.agcensus.usda.gov/Publications/2007/Online_Highlights/Organics/organics_1_12.pdf).



**Graph 2: Certified Organic Farmland by Region, 2011  
(in percentage)**



■ Northeast ■ Southeast ■ Midwest ■ Southwest ■ West

Source: USDA, Economic Research Service, based on information from USDA-accredited State and private organic certifiers.

The year 2000 was a milestone for the organic industry – for the first time, more organic food was purchased in conventional supermarkets than in any other venue.<sup>23</sup> Today, 93 percent of organic sales take place in conventional and natural food supermarkets and chains.<sup>24</sup> Organic foods are currently available in three out of four traditional grocery stores and about 20,000 natural food stores across the U.S.<sup>25</sup> The remaining seven percent of organic food sales occur in farmers’ markets, foodservice, and marketing channels other than retail stores. The dramatic increase in conventional store participation in organic sales is not due to any decrease of direct-to-consumer markets. Farmers’ markets, to the contrary, have grown steadily from 1,755 markets in 1994 to 8,144 in 2013.<sup>26</sup> According to a USDA survey, demand for organic products was strong or moderate in most of the farmers’ markets surveyed. In addition, the market managers believed that more organic farmers were needed to meet consumer demand.<sup>27</sup>

#### e. International Trade

As global demand for organic products increases, USDA-certified organic products are satisfying export opportunities around the world. Canada, the European Union, Japan, and Korea lead global demand for organic products outside of the United States. Industry-supported organic equivalency arrangements are in place for each of these regions, making increased international trade more feasible and cost-efficient for U.S. organic producers. In fact, global demand for USDA-certified organic products is currently not met in most international markets;

<sup>23</sup> Carolyn Dimitri and Catherine Greene, *Recent Growth Patterns in the U.S. Organic Foods Market*, Economic Research Service, USDA (September 2002), p. 1, available at, [http://www.ers.usda.gov/media/249063/aib777\\_1\\_.pdf](http://www.ers.usda.gov/media/249063/aib777_1_.pdf).

<sup>24</sup> Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Organic Market Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/organic-market-overview.aspx>.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.



1 often a result of domestic supply constraints, rather than consumer unwillingness to pay for high  
2 quality imported U.S. goods. Export numbers to these regions and other countries around the  
3 world indicate that USDA organic products are trending across the globe.  
4

5 According to surveys performed by the Organic Trade Association, U.S. organic exports  
6 for 2014 are estimated at \$2.2 billion, up nearly half a billion dollars from 2009.<sup>28</sup> Strong growth  
7 in U.S. organic exports has continued to increase year after year since data were first reported in  
8 2006.<sup>29</sup> As such, organic products sales growth continues to outpace comparable conventional  
9 food items. For example in 2012, organic products sales grew at about 10 percent while  
10 conventional counterparts only grew 4 percent. Consumers, especially in Canada, Europe, East  
11 Asia, and the Middle East, are demanding more and more products bearing the USDA organic  
12 seal. With consistent demand from the world's top economies, international sales opportunities  
13 for U.S. organic exports are trending, and extremely likely to increase.  
14

15 The international market, however, bears similarities to the U.S. industry before the  
16 establishment of a national standard. This is because of a lack of an international standard for  
17 organic foods. In order to help promote international trade in organic foods without having to  
18 develop an international standard, governments negotiate organic equivalency arrangements.  
19 Organic equivalency arrangements allow for two or more countries to accept what the other  
20 certifies as organic without having to merge the two standards. The U.S. currently has organic  
21 equivalence arrangements with Canada, the European Union, Japan, the Republic of Korea, and  
22 Taiwan.<sup>30</sup> The arrangement with Taiwan only allows U.S. organic foods to be marketed in  
23 Taiwan but does not allow Taiwanese organic products to be marketed in the U.S. The goal of  
24 organic equivalence arrangements is to reduce trade barriers by eliminating a redundant  
25 certification process for exports that have already been certified as organic in the originating  
26 country.  
27

28 Until 2011, it was not possible to track imports and exports of organic products using  
29 HTS codes. Organic products did not have unique HTS codes that separately coded organic  
30 products, distinct from their conventional counterparts. The U.S. International Trade  
31 Commission (ITC) released the first HTS codes for organic products in 2011. Since then, the  
32 Organic Trade Association has been working with ITC, and the other agencies involved with  
33 issuing HTS codes, to increase the number of unique HTS codes for organic products. To date,  
34 there are 76 unique import and export codes for organic products. Since new HTS codes are  
35 constantly being added, it can be difficult to compare trade data from year to year using the HTS  
36 codes.<sup>31</sup> Until there are HTS codes for all organic products, monitoring trade statistics by their  
37 HTS codes gives only a partial view of the volume of organic products imported and exported.  
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<sup>28</sup> Organic Trade Association Unified Export Strategy Survey 2015.

<sup>29</sup> Organic Trade Association 2005-2013 Industry Survey

<sup>30</sup> National Organic Program, *Information for International Trade Partners*, USDA (Last Modified June 30, 2014),  
available at

<http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateJ&navID=InternationalTradePartnersNOPACAs&rightNav1=InternationalTradePartnersNOPACAs&topNav=&leftNav=NationalOrganicProgram&page=NOPInternationalAgreements&resultType=&acct=nopgeninfo>.

<sup>31</sup> Organic Trade Association, *Trade Data*, (last updated February 5, 2015), available at <http://ota.com/what-ota-does/global-market-opportunities/trade-data>.

1           Despite the limitations in monitoring organic trade by HTS codes, it is worth noting what  
2 is currently being tracked via HTS codes. For the products tracked, U.S. organic exports  
3 measured approximately \$553 million, and organic imports measured just under \$1.3 billion in  
4 2014.<sup>32</sup> The top organic imports in 2014 in value were coffee, soybeans, bananas, olive oil,  
5 wine, honey, almonds, avocados, corn, and apples.. Organic imports arrived from nearly 100  
6 countries in 2014, with Mexico (\$132.2 million), Italy (\$128 million), Peru (\$99.5 million), India  
7 (\$88.1 million), Spain (\$77.3 million), Brazil (\$72.2 million), China (\$64.9 million), Canada  
8 (\$53.8 million), Argentina (\$51.7 million), and Indonesia (\$50.8 million) topping the list. The  
9 top ten countries accounted for approximately 65 percent of the value of organic imports in 2014.  
10 The U.S. exported organic products to over 80 countries. The overwhelming majority of U.S.  
11 exports go to its NAFTA partners, Canada and Mexico (78 percent). The primary export  
12 markets for U.S. organic products in 2013 were Canada (\$264 million), Mexico (\$167 million),  
13 Japan (\$27 million), Taiwan (\$16 million), Australia (\$12 million), United Kingdom (\$9.5  
14 million), Hong Kong (\$7.7 million), United Arab Emirates (\$7.7 million), South Korea (\$4.7  
15 million), and Singapore (\$3.6 million). The top organic exports were apples, lettuce, grapes,  
16 spinach, strawberries, carrots, cauliflower, coffee, tomato sauce, and pears.<sup>33</sup>

#### 17 18           f. Global Market

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20           According to the latest data on organic farming and sales released in February at  
21 BioFach, the global organic market in 2013 reached \$72 billion, led by the U.S. market with  
22 sales of \$35.1 billion. Germany was next, with \$8.6 billion, followed by France, with \$5 billion.  
23 China, who reported official market statistics for the first time, logged in with \$2.73 billion in  
24 sales.<sup>34</sup>

25  
26           Two million organic producers—a new high—were reported worldwide in 2013. The  
27 countries with the largest numbers of producers were India, Uganda, and Mexico. Meanwhile, a  
28 total of 106.5 million acres were organic at the end of 2013, up almost 14.8 million acres  
29 compared to the previous year. In Oceania, organic land increased by 42 percent, mainly due to  
30 rangeland areas shifting to organic production in Australia. Australia has the largest organic  
31 agricultural area (42.5 million acres, with 97 percent used as grazing), followed by Argentina  
32 (7.9 million acres) and the U.S. (5.4 million acres).<sup>35</sup>

## 33 34           **II. Program Justification**

### 35 36           a. What research and marketing problems exist?

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<sup>32</sup> Department of Commerce, U.S. Census Bureau; Foreign Trade Statistics; USDA-FAS Trade Database, <http://apps.fas.usda.gov/gats/default.aspx>.

<sup>33</sup> Department of Commerce, U.S. Census Bureau; Foreign Trade Statistics; USDA-FAS Trade Database, <http://apps.fas.usda.gov/gats/default.aspx>.

<sup>34</sup> Helga Willer and Julia Lernoud (Eds.), *The World of Organic Agriculture: Statistics and Emerging Trends 2015*, FiBL-IFOAM Report. Research Institute of Organic Agriculture (FiBL), Frick, and IFOAM – Organic International, Bonn, see p. 24 – Summary, available at <https://www.fibl.org/fileadmin/documents/shop/1663-organic-world-2015.pdf>.

<sup>35</sup> Ibid.

1 The American organic industry is relatively young, with a national standard set forth by  
2 the U.S. Department of Agriculture (USDA) in 2002. Despite the newness of the industry, it has  
3 experienced rapid growth with organic sales increasing by double digits annually in recent years.  
4 U.S. organic sales exceeded \$39 billion in 2014.<sup>36</sup> The rapid growth of the U.S. organic industry  
5 has given rise to unique challenges that need to be addressed in order for the industry to sustain  
6 and continue its current growth. The GRO Organic Program would help to address such  
7 challenges as domestic supply shortages, viable pest management options, and market confusion.

8  
9 (i) Supply shortages

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11 Supply shortages in the U.S. organic industry is one of the greatest challenges facing the  
12 industry today. Despite the continued growth in organic production, organic handlers are not  
13 able to keep up with demand, which has grown at an even faster rate than production. According  
14 to a 2004 USDA Economic Research Service (ERS) report, “44 percent of organic handlers  
15 reported short supplies of needed ingredients or products” and “13 percent were unable to meet  
16 market demand for at least one of their organic products that year.”<sup>37</sup> In addition, 52 percent of  
17 organic companies said that “a lack of dependable supply of organic raw materials has restricted  
18 their company from generating more sales of organic products.” Organic food sales currently  
19 make up four percent of total food sales, while acreage devoted to organic agriculture is less than  
20 one percent of total U.S. cropland (see Graph 3).

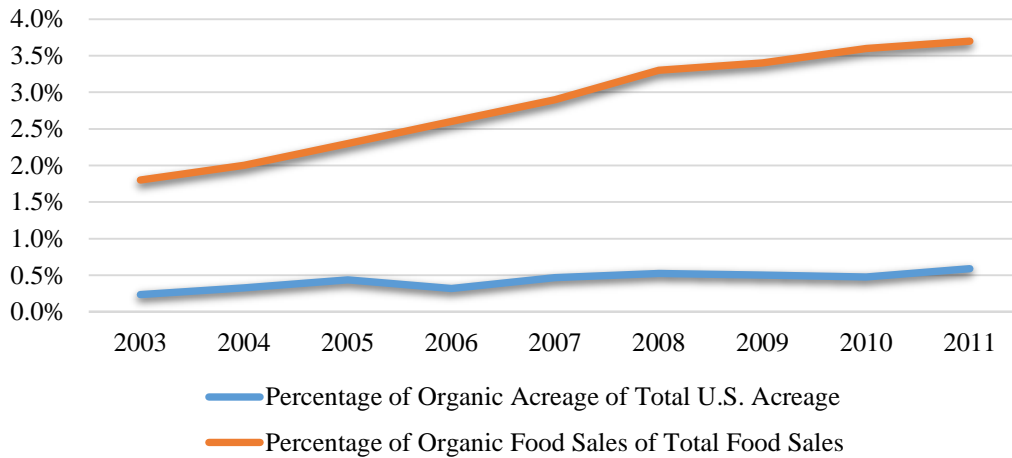
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<sup>36</sup> Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see  
*Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture.aspx>. See  
also OTA’s 2015 Organic Industry Survey.

<sup>37</sup> Catherine Greene, Carolyn Dimitri, Biing-Hwan Lin, William McBride, Lydia Oberholtzer, and Travis Smith,  
*Emerging Issues in the U.S. Organic Industry*, Economic Research Service, USDA (June 2009), p. iii, available at  
[http://www.ers.usda.gov/media/155923/eib55\\_1\\_.pdf](http://www.ers.usda.gov/media/155923/eib55_1_.pdf).

**Graph 3: Organic Acreage vs Sales**



Note: 2009 organic acreage was calculated from the average of 2008 and 2010.

Source: USDA, Economic Research Service, based on information from USDA-accredited State and private organic certifiers and Organic Trade Association's 2014 Organic Industry Survey conducted 1/27/2014 – 4/5/2014.

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There is a three year transition period to convert conventional farmland into organic farmland. During the transition period, the farm must adhere to all organic practices, but it is not allowed to use the organic seal on products grown on that land during transition. The transition period can be challenging, because the farm internalizes the increased production cost of an organic farm without receiving the price premium and, depending of the size and existing practices of the farm, may need to make dramatic changes to farming techniques. There are several USDA programs (e.g. Environmental Quality Incentives Program (EQIP), National Institute of Food and Agriculture (NIFA), and Natural Resources Conservation Service (NRCS)) that are designed to assist farms in the transition process, but offer only limited support. In order to increase organic production to keep up with demand, more is needed to assist farmers as they transition to organic agriculture. Programs educating farmers on the certification process, the organic label, and organic farming techniques will help encourage farmers to transition to organic and help them during the transitional period.

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27  
There has been increasing news coverage of the organic supply shortage. *Bloomberg* recently wrote about the lack of organic farmers and low supplies of organic feed grain that is restraining organic dairy production across the U.S. and causing “severe shortages in the organic dairy aisle.”<sup>38</sup> The lack of domestic organic barley farmers, in addition to weather problems, is forcing brewers to increase prices and import more expensive foreign organic barley as reported in *USA Today*.<sup>39</sup> *Maine’s Public Broadcast News* reported that one of the reasons behind the supply shortage was the lack of farmers willing to transition to organic due to the cost to

<sup>38</sup> Lydia Mulvany, *Grocery Stores Are Running Out of Organic Milk*, Bloomberg Business (February 9, 2015), available at <http://www.bloomberg.com/news/articles/2015-02-10/not-only-hipsters-cry-when-u-s-grocers-run-out-of-organic-milk>.

<sup>39</sup> Tony Kiss, *Barley Shortages has Craft Beer Makers Foaming*, USA Today (February 3, 2015), available at <http://www.usatoday.com/story/money/business/2015/02/03/beer-barley-shortage/22792533/>.

1 transition and other factors.<sup>40</sup> *Agri-Pulse* also reported the struggle to meet demand that food  
2 manufacturers are facing because not enough farmers are transitioning to organic due to “various  
3 financial and regulatory hurdles.”<sup>41</sup> Demand for organic eggs is up, but there are not enough  
4 U.S. farmers growing organic soybeans and organic corn to feed the organic chickens making  
5 organic egg producers cut back on production or buy expensive foreign organic feed as reported  
6 by *NPR*.<sup>42</sup>

7  
8 The organic industry has identified a growing need to close the gap between U.S. organic  
9 production and the demand for organic products. The lack of farmers willing and able to  
10 transition to organic has led organic processors and handlers to look abroad to fulfill their orders.  
11 Organic milk producers must turn to imports to source enough organic feed for their cattle.<sup>43</sup>  
12 The amount of foreign-grown organic products imported into the U.S. demonstrates a need for  
13 growth in U.S. organic – which would be supported by a USDA-sanctioned organic research and  
14 promotion board.

15  
16 (ii) Viable pest management

17  
18 Conventional and organic farmers face similar challenges in finding the right  
19 combination of tools to help protect their products from pests. Just as in conventional farming,  
20 organic farming faces very real and imminent threats from invasive species and other types of  
21 pests. There was a supply shortage of organic apples across the U.S. in April 2014 due to insect  
22 problems and some acreage reduction.<sup>44</sup> Organic farmers, however, face an even harder battle in  
23 developing an effective program of pest management. Not only do organic farmers have to find  
24 the right combinations of techniques and substances, the pool of available substances is limited.  
25 Organic farmers are limited to the substances that are approved in the National List of Allowed  
26 and Prohibited Substances (National List), which includes limited approved pest management  
27 strategies.

28  
29 The National Organic Standards Board (NOSB) maintains the National List. The NOSB  
30 reviews every substance on the list every five years. The NOSB also reviews petitions from  
31 individuals and organizations to add, remove, or change a listed substance and makes  
32 recommendations based on those petitions to the USDA twice a year.<sup>45</sup> The list has been fine-  
33 tuned several times since its creation in 2002. Several substances that were once allowed are  
34 now prohibited in an effort to improve the list and limit the number of synthetic substances

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<sup>40</sup> Jennifer Mitchell, *Organic Milk Scarce on Maine Store Shelves as Demand Outstrips Supply*, MPBN News (January 15, 2015), available at <http://news.mpbn.net/post/organic-milk-scarce-maine-store-shelves-demand-outstrips-supply>.

<sup>41</sup> Aarian Marshall, *Organic Farmers Struggle with Recruiting – and Supply*, *Agri-Pulse* (June 4, 2014), available at <http://www.agri-pulse.com/Organic-farmers-struggle-with-recruiting-and-supply-06042014.asp>.

<sup>42</sup> Dan Charles, *Chickens That Lay Organic Eggs Eat Imported Food, And It's Pricey*, *NPR* (February 27, 2014), available at <http://www.npr.org/blogs/thesalt/2014/02/26/283112526/chickens-laying-organic-eggs-eat-imported-food-and-its-pricey>.

<sup>43</sup> Mark Peters, *A Gap in Organic Food Chain*, *The Wall Street Journal* (July 14, 2013), available at <http://www.wsj.com/articles/SB10001424127887324867904578594171667940126>.

<sup>44</sup> Dan Wheat, *Organic Apples May Run Out Sooner Than Usual*, *Capital Press* (April 8, 2014), available at <http://www.capitalpress.com/Organic/20140408/organic-apples-may-run-out-sooner-than-usual>.

<sup>45</sup> National Organic Program, *About the National List*, Agricultural Marketing Service, USDA (last modified on February 24, 2015), available at <http://www.ams.usda.gov/AMSV1.0/NOPPpetitionedSubstancesDatabase>.

1 allowed in organic production. With the removal of certain substances, organic farmers must  
2 reevaluate how to manage particular pests with what remains available to them.  
3

4 The transition of organic apples and pears from antibiotic to non-antibiotic fire blight  
5 management tools is one example of changing pest management strategies that the GRO Organic  
6 Program could help organic producers develop. Antibiotic fire blight management tools were  
7 phased out of organic production in late 2014. There is research being done on non-antibiotic  
8 fire blight management tools with approved substances, but the final results have not been  
9 released. Once the final results are released, it will be some time until they can be translated into  
10 actual farming practices.<sup>46</sup> This gap can leave organic farmers unprotected against some very  
11 serious pests. Additional funding for research (via a research and promotion board) could help  
12 farmers during these gaps, and could anticipate changes to the list so that alternative farming  
13 techniques can already be in place when a substance is phased out.  
14

15 Most current funding for organic research is devoted to researching prohibited  
16 substances. There is a lack of funding for research devoted to helping organic farmers develop  
17 practices for current and possible future pest management issues, such as citrus greening. There  
18 is no strategy, either conventional or organic, that has proven to be 100 percent effective at  
19 treating or preventing the spread of citrus greening. Application of synthetic pesticides,  
20 however, has been mandated as an eradication method in California without any organic  
21 alternative, leaving organic growers in a predicament.<sup>47</sup> Organic citrus growers need viable  
22 alternatives to the synthetic pesticides used in the conventional treatment of citrus greening and  
23 other pest issues. The Organic Agriculture Research and Extension Initiative (OREI), which is  
24 administered by the National Institute of Food and Agriculture, helps organic farmers develop  
25 pest management strategies, but the funding is limited, not exclusive to pest management, and  
26 requires recipients to contribute matching funds or in-kind support.<sup>48</sup> More funding is needed to  
27 research better and more effective pest management techniques and applications for organic  
28 agriculture – and that could be accomplished through GRO Organic.  
29

30 Moreover, it is important to note that many federal research grant dollars are only  
31 available to projects that can promise matching funds – and GRO Organic could serve as a  
32 source of such funds, increasing access to federal dollars and increasing the reach of every dollar  
33 allocated to research.  
34

### 35 (iii) Market confusion 36

37 According to Consumer Reports, 84 percent of U.S. consumers buy organic foods  
38 sometimes, and 45% buy them at least once a month, but there's a disparity between what the

---

<sup>46</sup> Harold Ostenson and David Granatstein, *Critical Issue Report: Fire Blight Control Programs in Organic Fruit*, The Organic Center (November 2013), see page 4.

<sup>47</sup> The Organic Center, *Organic Solutions for Citrus Greening* (last modified June 24, 2014), available at <http://organic-center.org/citrus-research/savecitrus/>.

<sup>48</sup> National Institute of Food and Agriculture, *Organic Agriculture Research and Extension Initiative: 2014 Request for Applications*, see p. 14, available at [http://www.nifa.usda.gov/funding/rfas/pdfs/14\\_OREI.pdf](http://www.nifa.usda.gov/funding/rfas/pdfs/14_OREI.pdf).



1 seal means and what consumers think it means.<sup>49</sup> The Natural Marketing Institute issued a report  
2 stating that most consumers “don’t know what the characteristics or regulations of organics are,  
3 they are unclear about the benefits, or they easily confuse it with natural.”<sup>50</sup> The number of  
4 labels in the market today contributes to consumer confusion. Much like how the market was  
5 prior to a federal standard, there is confusion among the varying labels. One of the driving  
6 forces to developing a federal standard was the problem that the conflicting standards pose to  
7 consumers. Today, there is an ever increasing number of labels that may be used on packaging  
8 (e.g. Natural, Local, non-GMO, etc.).  
9

10 A number of articles from major news agencies emphasize the problem of consumer  
11 confusion facing the market today. *ABC News* released an article on how several labels in the  
12 market, including “natural,” mislead consumers about what is actually in their products.<sup>51</sup>  
13 *Forbes* covered a report showing the organic label to be one of the most confusing labels in the  
14 market due to the rapid growth in organic demand and not enough public education on the  
15 label.<sup>52</sup> *The New York Times* showed that more choices on food labels has increased the  
16 confusion about what all of the labels mean.<sup>53</sup>  
17

18 The vast majority of surveyed shoppers expect standards for “natural” to be comparable  
19 to “organic.” And yet, “natural” foods fall significantly short of consumer expectations, and  
20 unlike “organic,” “natural” isn’t required to be verified. For example, to be labeled “natural”  
21 meat, the only requirement is that nothing artificial was added to the cut of meat. For other foods,  
22 the claim is essentially meaningless.  
23

24 In addition, researchers surveyed consumers across the U.S. and Canada and discovered  
25 that 17 percent of the people they spoke with incorrectly believed that foods labelled “organic”  
26 were also grown locally. Another 23% falsely believe that local produce is grown organically.<sup>54</sup>  
27 Consumers also do not understand that organic products are produced without genetically  
28 modified organisms (GMOs). This creates a unique labeling question as to whether a handler  
29 should include both the organic seal and a non-GMO label to communicate to consumers that the  
30 product is non-GMO, even though the organic seal alone would be sufficient.<sup>55</sup>  
31

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<sup>49</sup> National Research Center, *Organic Food Labels Survey*, Consumer Reports (March 2014), p. 3, available at <http://www.greenerchoices.org/pdf/CR2014OrganicFoodLabelsSurvey.pdf>.

<sup>50</sup> Natural Marketing Institute, *2015 Growing the Organic Industry, Strategies for Brand Success* (February 2015), available at <http://www.nmisolutions.com/index.php/research-reports/health-a-wellness-reports/2015-growing-the-organic-industry-strategies-for-brand-success>.

<sup>51</sup> David Kerley, ‘Natural’ vs ‘Organic’: How Food Labels Deceive, *ABC News* (February 17, 2014), available at <http://abcnews.go.com/blogs/lifestyle/2014/02/natural-vs-organic-how-food-labels-deceive/>.

<sup>52</sup> Beth Hoffman, ‘Organic’ One of the Most Confusing Labels, *Report Says*, *Forbes* (July 17, 2014), available at <http://www.forbes.com/sites/bethhoffman/2013/07/17/organic-causes-confusion/>.

<sup>53</sup> Kim Severson, *More Choice, and More Confusion, in a Quest for Healthy Eating*, *The New York Times* (September 8, 2012), available at <http://www.nytimes.com/2012/09/09/us/would-be-healthy-eaters-face-confusion-of-choices.html?pagewanted=all>.

<sup>54</sup> For more information see: Hannah Goldberg, *People Still Don’t Know the Difference Between “Organic” and “Local”*, *Time* (July 11, 2014), available at <http://time.com/2970505/organic-misconception-local/>.

<sup>55</sup> For more information see: Stephanie Strom, *Many G.M.O.-Free Labels, Little Clarity Over Rules*, *The New York Times* (January 30, 2015), available at [http://www.nytimes.com/2015/01/31/business/gmo-labels-for-food-are-in-high-demand-but-provide-little-certainty.html?ref=topics&\\_r=0](http://www.nytimes.com/2015/01/31/business/gmo-labels-for-food-are-in-high-demand-but-provide-little-certainty.html?ref=topics&_r=0).



1 The only standard with a clear definition is the USDA organic label. The USDA organic  
2 label on foods is meaningful and meets consumer expectations – as long as it is explained to  
3 consumers. It is backed by federal regulations which encourage sustainable farming practices  
4 and restrict the use of synthetic substances in farming and processing - GMOs, synthetic  
5 fertilizers and sewage sludge are prohibited. The label is verified through annual third-party  
6 inspections by USDA-accredited certifying agencies.  
7

8 New organic families - those who only began purchasing organic products in the past two  
9 years - consistently account for between thirty and forty percent of American families. In 2014,  
10 34 percent fell into this category.<sup>56</sup> This means that for organic to succeed in the long term, the  
11 industry must continually invest in educating consumers who are new to organic on what the  
12 label means. Through a research and promotion program, the organic industry will educate those  
13 who are unaware of the benefits of organic products, as well as clear up confusion among  
14 consumers regarding what it means for food to be “organic” – as compared to unregulated  
15 “natural” products and other eco-claims in the marketplace. These other non-organic claims  
16 confuse the everyday consumer and there is a strong need for a clear, unified message across the  
17 entire industry to relay the organic message. The NOP does a great job at ensuring the organic  
18 standard maintains its level of integrity. It has emerged as a strict regulator and enforcement arm  
19 for the organic industry – but it will never fill the role of educator, marketer, or promoter.  
20

21 The GRO Organic Program proposes an assessment rate of one-tenth of one percent of  
22 net organic sales. (“Net Organic Sales” is defined as total gross sales of organic products minus  
23 the cost of certified organic ingredients, feed, and inputs used in the production of organic  
24 products.)<sup>57</sup> The assessment is anticipated to generate over \$35 million for the GRO Organic  
25 Board.<sup>58</sup> This assessment is vital to the long-term success of the industry so that the resources of  
26 the diverse organic community can be pooled together to solve the problems faced at the  
27 farmgate, in the research labs and test fields, and in the minds of the consumers.  
28

29 It is important to note that promotion and education can increase consumer appreciation  
30 of products in the marketplace, in addition to the traditional role of increasing demand.  
31 Increased consumer understanding of the benefits of organic will lead to increased appreciation  
32 for the value of organic products, even among those who are already organic consumers.  
33

34 b. What alternatives were considered and why were they rejected?  
35

36 The Organic Trade Association and the GRO Organic Core Committee considered  
37 several possible options in lieu of a research and promotion program including the following: a  
38 voluntary trade association promotion program; a federal marketing order or agreement  
39 (pursuant to the Agricultural Marketing Agreement Act of 1937, as amended)<sup>59</sup>; and encouraging

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<sup>56</sup> The Organic Trade Association, *2014 U.S. Families’ Organic Attitudes and Beliefs Study* (April 2014), available at <https://ota.com/what-ota-does/market-analysis/consumer-attitudes-and-beliefs-study>.

<sup>57</sup> United for More Organic, *Organic Check-off Preamble (Version 3.0)*, Organic Trade Association (Last accessed February 4, 2015), available at <http://www.unitedformoreorganic.com/research-promotion-program/organic-research-and-promotion-program-preamble/>.

<sup>58</sup> This is based upon data from the 2012 U.S. Census of Agriculture, Characteristics of All Farms and Farms with Organic Sales (NASS, USDA), Issued September 2014.

<sup>59</sup> 7 U.S.C. § 600.

1 each individual organic crop to have its own research and promotion program. An organic  
2 research and promotion program is the only option that meets the needs of the organic industry in  
3 an administratively efficient manner with all benefiting parties paying their fair share.  
4

5 The Organic Trade Association and the GRO Organic Core Committee considered a  
6 voluntary generic research and promotion program that would be implemented through the trade  
7 association itself. This would have been to provide invasive pests and weed control research,  
8 educate consumers, research the benefits of organic products, assist in crisis management, and  
9 promote and market certified organic products. However, the financial cost of such a program  
10 would be prohibitive without the full and strong support of all certified organic product handlers.  
11 In addition, imported organic products could receive a disproportionate benefit from a voluntary  
12 research and promotion program.<sup>60</sup>  
13

14 A federal marketing order or agreement was also considered. Unfortunately, unlike  
15 research and promotion orders, the law governing federal marketing orders limits the program's  
16 benefits to a particular commodity, rather than a set of production practices. A further  
17 impediment of a federal marketing order is the requirement that limits the assessment to the  
18 handler in the production area. Any organic product leaving the geographic production area  
19 would not be assessed at the next step in the value chain. Another restriction is the inability to  
20 assess imports under a federal marketing order.  
21

22 Another alternative considered was to encourage each organic crop to have its own  
23 research and promotion program; however this could lead to thousands of organic research and  
24 promotion programs. To have a research and promotion program for each organic food entity  
25 would be a never-ending task. Furthermore, the waste in duplication among the thousands of  
26 food items would be enormous. The Perishable Agricultural Commodities Act list provides an  
27 excellent example of the sheer volume of commodities that this would encompass. The  
28 Agricultural Marketing Service has a 50-page list of fruits and vegetables, and this does not  
29 include tree nuts.<sup>61</sup> Moreover, a national organic research and promotion program will benefit  
30 all organic products and consumers. Every state in the nation participates in the full value-chain  
31 of the organic industry, both food and non-food, including production, packaging, processing,  
32 shipping, and distribution. Despite the differences among products, all organic products share  
33 similar needs due to their connection through the USDA organic label.  
34

35 The Organic Trade Association and the GRO Organic Core Committee received a  
36 suggestion to use the Sustainable Agriculture Research and Education Program (SARE) to house  
37 a research and promotion program. However, SARE is a federally-funded program and therefore  
38 is not a vehicle that can legally be used for pooling of private sector (industry) dollars.  
39

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<sup>60</sup> Should imports free-ride or help pay—decisions about generic promotion programs for agricultural commodities  
<http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0CEUQFjAF&url=http%3A%2F%2Fpageconsearch.umn.edu%2Fbitstream%2F34277%2F1%2F03020227.pdf&ei=WufQVK-SHIudNvb4g4AH&usg=AFQjCNFcNznHsnnOncZjStN9m-zYWOKIsg&sig2=Sbadq6afmawOOSDIPxXI8g&bvm=bv.85076809.d.eXY>

<sup>61</sup> PACA Commodities List <http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5082566>

1 The Organic Trade Association and the GRO Organic Core Committee also considered  
2 numerous alternative ideas within the context of a research and promotion program. The  
3 following ideas from agricultural commodity groups were considered, but not included in the  
4 proposal, because they either were not supported by organic stakeholders, or they were not  
5 allowed under the Generic Act:  
6

- 7 • Mandatory assessment of all covered certified organic producers. Some state  
8 chapters of National Farmers Union (NFU) in particular have called for removal  
9 of the \$250,000 threshold for mandatory assessment, and assessment of all.  
10 (Those chapters include New England Farmers Union, Wisconsin Farmers Union,  
11 Pennsylvania Farmers Union, Kansas Farmers Union, and California Farmers  
12 Union.) In response to those chapters' input, the Organic Trade Association and  
13 the GRO Organic Core Committee reached out to 2,000 organic producers who  
14 indicated that they fall under the \$250,000 threshold, to get feedback on potential  
15 assessment models and their governance implications. The Organic Trade  
16 Association and the GRO Organic Core Committee received responses from over  
17 1,200 of those "small" producers through phone surveys and postcards. Only  
18 thirteen percent of the 1,200 respondents favored the removal of the \$250,000  
19 threshold; as such, the proposal was rejected. The application does not assess  
20 covered producers whose Gross Organic Revenue is below \$250,000, but it does  
21 offer them the opportunity to participate voluntarily at the same one-tenth of one  
22 percent of Net Organic Sales assessment rate, and receiving all voting and  
23 governance rights.  
24
- 25 • Apportionment of producer Board seats by category of production, rather than  
26 region. Western Growers Association in particular has called for apportionment  
27 of producer Board seats by category – produce, dairy, livestock, etc. – rather than  
28 by geographic region. However, the Generic Act requires that the composition of  
29 the Board reflect the geographic distribution of organic production in the United  
30 States (see 7 U.S.C. 7415(b)(2)(D)). Given that statutory requirement, the GRO  
31 Organic Core Committee determined that regional apportionment was the best  
32 approach. However, the proposal does take this idea into account, and encourages  
33 the Secretary to consider sector diversity in his appointment of Board members.  
34
- 35 • More Board seats dedicated to producers. Some state chapters of National  
36 Farmers Union (NFU) in particular have called for the Board to be composed of  
37 100% producers. (Those chapters include New England Farmers Union,  
38 Wisconsin Farmers Union, Pennsylvania Farmers Union, Kansas Farmers Union,  
39 and California Farmers Union.) However, this is not in line with the full value  
40 chain research and promotion order proposal submitted. The GRO Organic  
41 proposal assesses along the entire value chain – unlike other research and  
42 promotion orders – and therefore Board membership must represent all entities  
43 assessed. However, it remains important to the GRO Organic Core Committee  
44 that producers have a strong voice. Therefore, despite the fact that analysis  
45 indicates that producers are likely to pay in approximately 20% of the total  
46 assessments – the proposal makes them eligible for over 50% of the Board seats.

1  
2 The following ideas from regional organic agriculture groups were considered, but not  
3 included in the proposal, because they either were not supported by a majority of organic  
4 stakeholders, or they were not allowed under the Generic Act:  
5

- 6 • Voting by entities not assessed. Northeast Organic Dairy Producers Association  
7 (NODPA) and the Ohio Ecological Food and Farming Association (OEFFA) have  
8 suggested that all certified organic entities, regardless of whether they are  
9 assessed, should be allowed to vote. However, this would not be allowed under  
10 the Generic Act – section 7418 of that law indicates that only assessed entities  
11 may be granted voting rights. To ensure as broad participation in governance as  
12 possible, we have redrafted the approach to small operations to be a voluntary  
13 assessment – so any small operation that chose to be assessed would be granted  
14 all voting and governance rights. Moreover, fairness dictates that all those – and  
15 only those – who are assessed control the use of the funds.  
16

- 17 c. How much income could the program expect to generate at the optimum  
18 assessment rate?  
19

20 The GRO Organic Board could expect to generate approximately \$30 million in income  
21 from U.S. organic operations at the optimum assessment rate. The proposed assessment rate is  
22 one-tenth of one percent of Net Organic Sales (defined as total gross sales in certified products  
23 minus the cost of certified organic ingredients feed and inputs used in the production of certified  
24 products and the cost of any non-organic agricultural ingredients used in the production of  
25 certified products). This will apply to all assessed organic producers, handlers, and importers of  
26 organic products. Small farms, with gross organic revenue of less than \$250,000 annually,  
27 would be covered but not assessed, and would have the option of not paying in, or paying a  
28 voluntary assessment of the same one-tenth of one percent of Net Organic Sales.  
29

30 Using the most current information available from the USDA Organic Producers Survey  
31 and Census of Agriculture, we estimate that approximately 86% of that income would be  
32 generated from handler assessments; 5% would be generated from importer assessments; and 9%  
33 would be generated from producer assessments.  
34

35 In order to administer the program, all mandatory organic certificate holders throughout  
36 the supply chain, including producers, handlers, brand manufacturers, co-packers, and importers,  
37 with Gross Organic Revenue in excess of \$250,000 per year, would be subject to a mandatory  
38 organic check-off assessment. This level under which entities could voluntarily participate was  
39 chosen based on its common usage throughout USDA and FDA programs (including the Food  
40 Safety Modernization Act) as the definition of a “small farm”. For example, USDA Economic  
41 Research Service defines “small family farms” as those with gross sales less than \$250,000. A  
42 study by the United States National Commission on Small Farms defined “small farms” as those  
43 with less than \$250,000 in gross receipts annually. Operations that fall within that definition  
44 would be able to voluntarily choose whether or not to participate in the GRO Organic program.  
45 This would allow full participation (including voting rights and Board representation) by those  
46 small entities who wanted to be a part of the GRO Organic program, but not mandate their

1 participation. It also addresses USDA's concerns that mandating the smallest operations to  
2 participate would result in costs of compliance (collecting assessments) that are higher than the  
3 actual amount of the assessment.  
4

5 Because of the complexity and diversity of the organic value chain, the Organic Trade  
6 Association and the GRO Organic Core Committee determined that the assessment rate would be  
7 a value-added model that would assess one-tenth of one percent of Net Organic Sales. For  
8 example, there would be a \$300 assessment at \$300,000 Net Organic Sales and a \$3,000  
9 assessment at \$3,000,000 Net Organic Sales. The graphics below provide a good depiction of  
10 how the assessments will be determined.  
11  
12  
13

**ORGANIC PROCESSORS** would pay **one-tenth of one percent of Net Organic Sales.**

The assessment would be based on the total gross sales minus the cost of certified organic goods. For processors this would be the cost of certified organic ingredients. For example, an apple juice manufacturer would be assessed on total juice sales less the cost of organic apples.



Net Organic Sales  $\times$   $1/10^{\text{th}}$  of 1%  $=$  Value Added Assessment

**ORGANIC PRODUCERS** would pay **one-tenth of one percent of Net Organic Sales.**

The assessment would be based on the total gross sales minus the cost of certified organic goods. For producers, this would be items such as organic feed, seed and planting stock. For example, a milk producer would be assessed on total bulk milk sales less the cost of feed corn and hay.



Net Organic Sales  $\times$   $1/10^{\text{th}}$  of 1%  $=$  Value Added Assessment



**ORGANIC IMPORTERS** would pay **one-tenth of one percent of Net Organic Sales**.

The assessment would happen at the time the importer took custody of the certified organic goods. For example, a coffee importer would be assessed on the purchase value of the organic coffee beans when they take possession of them in the United States, minus costs such as freight charges.



Net Organic Sales  $\times$   $1/10^{\text{th}}$  of 1%  $=$  Value Added Assessment

If an **ORGANIC IMPORTER/HANDLER** then put the organic coffee beans into a finished product, the cost of goods would be backed out of the assessment on the finished product. For example, the importer/handler would be assessed once on the purchase value of the organic coffee beans when they take possession of them in the United States (see above) and then **one-tenth of one percent of Net Organic Sales** from the roasted packaged coffee pods (see below) which would exclude the cost of the imported organic coffee beans and any other certified organic ingredients.



Net Organic Sales  $\times$   $1/10^{\text{th}}$  of 1%  $=$  Value Added Assessment



- 1  
2 d. How much would it cost to administer the program, including Government  
3 reimbursements (user fees)?  
4

5 The GRO Organic Program has set a cap of 15 percent on administrative expenses.  
6 During the first 3 years, administrative costs would not exceed that limit.  
7

8 This cap would also apply to any organization (e.g. a research university) that receives  
9 funding from the GRO Organic Program. Government reimbursements are not expected to  
10 exceed \$350,000 annually.  
11

- 12 e. After program administration costs are paid, how much funding would remain to  
13 finance the program?  
14

15 It is estimated that the funds remaining after program administration costs are paid would  
16 be \$25.5 million.  
17

- 18 f. Could an effective research and promotion program be conducted with the  
19 remaining funds?  
20

21 The 2014 Farm Bill allocated \$167.5 million for organic programs over five years, which  
22 amounts to roughly \$33.5 million per year.<sup>62</sup> This money includes funding for certification  
23 assistance (\$11.5 million per year), economic data research and database upgrade (\$2 million per  
24 year), and organic agriculture research and extension funding (\$20 million per year).<sup>63</sup> The GRO  
25 Organic Board will have comparable funds to these Farm Bill programs. The Organic Trade  
26 Association and the GRO Organic Core Committee are confident that an effective research and  
27 program could be conducted with the remaining funds.  
28

### 29 **III. Program Objectives**

30

31 The assessed funds would be dedicated to promoting organic goods and researching  
32 solutions to problems facing the organic industry. Initial goals of the program are to educate  
33 consumers about what organic is and its benefits, distinguish organic from other claims and  
34 unregulated seals like “natural”, confirm the science behind the environmental and public health  
35 benefits of organic, undertake research to solve problems such as invasive pests and weed  
36 control, and bring new farmers into organic production through information and technical  
37 assistance.  
38

39 For a more detailed account of the program objectives addressed by the GRO Organic  
40 Program see Section II(a).  
41  
42

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<sup>62</sup> Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Farm Act-Organic Provisions*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/farm-act%E2%80%9494organic-provisions.aspx>.

<sup>63</sup> *Ibid.*

1           **IV.     Impact on Small Business**

2  
3           The GRO Organic Program will impose minimal compliance requirements on small  
4 businesses. Organic producers, handlers, and importers with Gross Organic Revenue of less than  
5 \$250,000 in the last fiscal year will not be assessed. They will have the option to participate in  
6 the program as a voluntarily assessed entity by remitting an assessment of one-tenth of one  
7 percent of their Net Organic Sales, which will allow them to request a ballot to vote in any  
8 program referendums. Instructions on dates, places, method of voting, eligibility requirements,  
9 and other pertinent information will be made available to organic producers, handlers, and  
10 importers who wish to voluntarily contribute through media and public information sources. By  
11 casting a vote, they agree to voluntarily pay into the program for seven years.

12  
13           The Regulatory Flexibility Act (“RFA”) requires federal agencies to consider and analyze  
14 the impact of regulatory proposals on small businesses. In determining the threshold for a “small  
15 business” the RFA uses the definition set forth by the Small Business Administration (“SBA”),  
16 which defines as a small agricultural producer as those having annual receipts less than \$750,000  
17 and small agricultural service firms (handlers and importers) as those having annual receipts of  
18 no more than \$7 million.<sup>64</sup> The Organic Trade Association and the GRO Organic Core  
19 Committee estimate that there are XX number of organic producers, handlers, and importers that  
20 meet the regulatory threshold as set forth by the SBA and are subject to assessment. The  
21 reporting requirements of for all entities, including small businesses, will be the quarterly  
22 assessment reports. Voluntarily assessed entities will have an additional form when they opt-in  
23 to the program. All of the reporting requirements can be completed by any employee with basic  
24 bookkeeping experience.

25  
26           It is anticipated that many of these entities maintain their records electronically and have  
27 a person on staff to operate and manage their computer system. The only costs that would be  
28 incurred by these entities in complying with the requests under the GRO Organic Program would  
29 be the labor hours required to retrieve the pertinent information from the computer system and  
30 transmit it electronically to the Board. We estimate the time required to complete these tasks to  
31 be one hour per respondent at a cost of \$20 per hour.

32  
33           For those entities that rely on an outside contractor to manage their computer system,  
34 there may be a one-time fee incurred for having the contractor retrieve the necessary information  
35 from the system and transmit it electronically to the Board. We estimate the time required to  
36 complete this task to be two hours per respondent at a cost of \$50 per hour. For those entities  
37 that do not maintain their records electronically, it is anticipated that such entities would review  
38 their paper records, compile the necessary information, and submit it to the Board via facsimile  
39 or mail. We estimate the time required to complete this task to be four hours per respondent at a  
40 cost of \$20 per hour.

41  
42           The Organic Trade Association and the GRO Organic Core Committee are not aware of  
43 any federal rules that duplicate, overlap, or conflict with the proposed program.

44           **V.     Industry Support**

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64 13 CFR § 121.201

1  
2 The Organic Trade Association and the GRO Organic Core Committee facilitated  
3 preliminary discussions in the organic sector to determine whether there is a need for an organic  
4 promotion and research order. The Organic Trade Association and the GRO Organic Core  
5 Committee facilitated six webinars, three panel debates, and twenty town hall meetings in 2012  
6 and 2013. Locations of these town halls included Vermont, the District of Columbia, Florida,  
7 Ohio, Wisconsin, California, Oregon, Montana, Washington, Minnesota, Rhode Island, and New  
8 Mexico; 540 individuals participated in these events. Additionally three panel debates were held  
9 in Vermont, Washington, and Wisconsin.<sup>65</sup> In 2014 and 2015, members of the Organic Trade  
10 Association staff and the GRO Organic Core Committee continued to capture as much input as  
11 possible from the organic community. They traveled across the country staffing booths,  
12 participating in panels, and holding listening sessions at a number of organic gatherings  
13 including Natural Products Expo East (Maryland), Western Organic Dairy Producers Alliance  
14 Conference (California), Tilth Producers of Washington Conference (Washington), Washington  
15 State Horticulture Association Annual Meeting (Washington), Montana Organic Association  
16 Conference (Montana), Pennsylvania Farmers Union Annual Convention (Pennsylvania), New  
17 England Farmers Union Annual Convention (Maine), Minnesota Department of Agriculture  
18 Organic Conference (Minnesota), GS Long's Organic Growers Meeting (Washington), EcoFarm  
19 (California), Organicology (Oregon), CCOF Annual Meeting (California), Midwest Organic &  
20 Sustainable Education Service Conference (Wisconsin), Natural Products Expo West  
21 (California), CROPP Cooperative Annual Meeting (Wisconsin), Juice Product Association  
22 (Virginia), and OTA events in Vermont, Colorado and Washington, DC.

23  
24 Two rounds of quantitative assessment have been completed. In late spring and summer  
25 of 2014, the Organic Trade Association and the GRO Organic Core Committee engaged in direct  
26 outreach to ALL organic certificate holders across the United States. The outreach utilized the  
27 USDA list of certified operations and was NOT limited to members of the Organic Trade  
28 Association.

29  
30 In late May and June, 17,500 organic operations (producers and handlers) received a  
31 direct mail brochure and postcards with information on the emerging framework for an organic  
32 research and promotion order. A total of 1,004 responded to a phone survey. In August 2014,  
33 based on feedback from the first survey, the Organic Trade Association and the GRO Organic  
34 Core Committee completed an updated informational direct mailing to 11,000 organic operations  
35 with a follow-up survey. An additional 2,706 phone surveys were completed.

36  
37 Of those responding, twice as many certified operators supported the establishment of an  
38 organic research and promotion order as opposed the establishment of an organic research and  
39 promotion order. The completed surveys constitute a statistically representative sample with  
40 11.3% of crop certificate holders, 12.6% of livestock certificate holders, and 8.2% of handling  
41 certificate holders completing the survey. These discussions and feedback demonstrate general  
42 consensus of a need and desire for the GRO Organic Program.

43  

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<sup>65</sup> United for More Organic, *Organic Check-off Preamble (Version 3.0)*, Organic Trade Association (Last accessed February 4, 2015), available at <http://www.unitedformoreorganic.com/research-promotion-program/organic-research-and-promotion-program-preamble/>.

1           There were two organizations that formally opposed the order via direct written  
2 communication with OTA outlining a formal organizational position in opposition: the Northeast  
3 Dairy Producers Association and Organic Farmer Agency for Relationship Marketing.<sup>66</sup> Full  
4 consideration of the alternative ideas put forward can be found in the “alternatives considered”  
5 section beginning on page 13 above.  
6

7           There was some discussion as to whether a USDA research and promotion order was the  
8 best possible choice for funding this program, or whether a voluntary option would be better.  
9 Additional discussion raised the Sustainable Agriculture Research and Education Program as an  
10 alternative. However, the funding mechanism of SARE is not compatible with the goals of the  
11 organic industry. Because of the diversity of the organic value chain, many commenters at the  
12 town hall meetings indicated that they did not see a good alternative to a research and promotion  
13 order that would encompass the many aspects of the organic industry equitably.  
14

15           As noted above, one issue that has attracted significant attention is whether all covered  
16 certified organic produces should be assessed, or only those whose Gross Organic Revenue  
17 exceeds \$250,000. In response to this, the Organic Trade Association and the GRO Organic  
18 Core Committee reached out to 2,000 organic producers who indicated that they fall under the  
19 \$250,000 threshold, to get feedback on potential assessment models and their governance  
20 implications. The Organic Trade Association and the GRO Organic Core Committee received  
21 responses from over 1,200 of those “small” producers through phone surveys and postcards.  
22 Only thirteen percent of the 1,200 respondents favored the removal of the \$250,000 threshold; as  
23 such, the proposal was rejected. The application does not assess covered producers whose Gross  
24 Organic Revenue is below \$250,000, but it does offer them the opportunity to participate  
25 voluntarily at the same one-tenth of one percent of Net Organic Sales assessment rate, and  
26 receiving all voting and governance rights.  
27

28           The Organic Trade Association and the GRO Organic Core Committee continue to seek  
29 input from industry stakeholders and interested parties through online surveys, personal phone  
30 calls with GRO Organic Core Committee members and various large and small meetings.<sup>67</sup>  
31

## 32       **VI. Text of the Proposal**

33           **[Proposed Regulations are in a separate file.]**  
34  
35

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<sup>66</sup> Ibid.

<sup>67</sup> United for More Organic, *Weigh-In*, Organic Trade Association (Last accessed February 4, 2015), available at <http://www.unitedformoreorganic.com/weigh-in/>.

1 **PART 12XX— Generic Research and Promotion Order for Organic**

2  
3 **Subpart A— Generic Research and Promotion Order for Organic**

4  
5 **DEFINITIONS**

- 6  
7 §12XX.1 Act.  
8 §12XX.2 Assessed entity.  
9 §12XX.3 Board.  
10 §12XX.4 Certificate of exemption.  
11 §12XX.5 Conflict of interest.  
12 §12XX.6 Covered entity.  
13 §12XX.7 Customs or CBP.  
14 §12XX.8 Department.  
15 §12XX.9 Dual-covered commodity.  
16 §12XX.10 Fiscal year and marketing year.  
17 §12XX.11 Gross organic revenue.  
18 §12XX.12 Information.  
19 §12XX.13 Net organic sales.  
20 §12XX.14 Order.  
21 §12XX.15 Organic certificate holder.  
22 §12XX.16 Organic handler.  
23 §12XX.17 Organic importer.  
24 §12XX.18 Organic producer.  
25 §12XX.19 Organic product processor.  
26 §12XX.20 Organic products.  
27 §12XX.21 Part and subpart.  
28 §12XX.22 Person.  
29 §12XX.24 Programs, plans and projects.  
30 §12XX.25 Promotion.  
31 §12XX.26 Qualified State Commodity Board.  
32 §12XX.27 Research.  
33 §12XX.28 Secretary.  
34 §12XX.29 State.  
35 §12XX.30 Suspend.  
36 §12XX.31 Terminate.  
37 §12XX.32 United States.  
38 §12XX.33 Voluntarily assessed entity.

39  
40 **GENERIC RESEARCH AND PROMOTION ORDER FOR ORGANIC PROGRAM BOARD**

- 41  
42 §12XX.40 Establishment and membership.  
43 §12XX.41 Nominations and appointments.  
44 §12XX.42 Term of office.  
45 §12XX.43 Removal and vacancies.  
46 §12XX.44 Procedure.  
47 §12XX.45 Reimbursement and attendance.

1 §12XX.46 Powers and duties.  
2 §12XX.47 Prohibited activities.

3  
4 **EXPENSES AND ASSESSMENTS**

5  
6 §12XX.50 Budget and expenses.  
7 §12XX.51 Financial statements.  
8 §12XX.52 Assessments.  
9 §12XX.53 Exemption from assessment.  
10 §12XX.54 Assessment offset.

11  
12 **PROMOTION, RESEARCH AND INFORMATION**

13  
14 §12XX.60 Programs, plans and projects.  
15 §12XX.61 Independent evaluation.  
16 §12XX.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.

17  
18 **REPORTS, BOOKS, AND RECORDS**

19  
20 §12XX.70 Reports.  
21 §12XX.71 Books and records.  
22 §12XX.72 Confidential treatment.

23  
24 **MISCELLANEOUS**

25  
26 §12XX.80 Right of the Secretary.  
27 §12XX.81 Referenda.  
28 §12XX.82 Suspension or termination.  
29 §12XX.83 Proceedings after termination.  
30 §12XX.84 Effect of termination or amendment.  
31 §12XX.85 Personal liability.  
32 §12XX.86 Separability.  
33 §12XX.87 Amendments.  
34 §12XX.88 OMB control numbers.

35  
36 **Subpart B—Referendum Procedures**

37  
38 §12XX.100 General.  
39 §12XX.101 Definitions.  
40 §12XX.102 Voting.  
41 §12XX.103 Instructions.  
42 §12XX.104 Subagents.  
43 §12XX.105 Ballots.  
44 §12XX.106 Referendum report.  
45 §12XX.107 Confidential information.

46  
47 **Subpart A— Generic Research and Promotion Order for Organic**

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**DEFINITIONS**

**§12XX.1 Act.**

*Act* means the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411-7425), and any amendments thereto.

**12XX.x Agricultural inputs.**

*Agricultural inputs* means all substances or materials used in the production or handling of organic agricultural products.

**§12XX.2 Assessed entity.**

*Assessed entity* means any producer who holds an organic certificate, handler, who holds an organic certificate or importer and has gross organic revenue in excess of \$250,000 per marketing year, and any voluntarily assessed entity. Any person that holds multiple organic certificates (i.e. for both production and handling) will be treated as a separate assessed entity for each organic certificate.

**§12XX.3 Board.**

*Board* means Generic Research and Promotion Order for Organic Board established pursuant to §12XX.XX, or such other name as recommended by the Board and approved by the Department.

**§12XX.4 Certificate of exemption.**

*Certificate of exemption* means a certificate issued by the Board, pursuant to §12XX.53(b), to an organic producer, organic handler or organic importer that produces, handles or imports dual covered commodities.

**§12XX.5 Conflict of interest.**

*Conflict of interest* means a situation in which a member or employee of the Board has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Board for anything of economic value.

**§12XX.6 Covered entity.**

*Covered entity* means any mandatory organic certificate holder, organic producer, organic handler, or organic importer.

**§12XX.7 Customs or CBP.**

*Customs or CBP* means the U.S. Customs and Border Protection, an agency of the U.S. Department of Homeland Security.



1 **§12XX.8 Department.**

2  
3 *Department* means the U.S. Department of Agriculture, or any officer or employee of the  
4 Department to whom authority has heretofore been delegated, or to whom authority may hereafter be  
5 delegated, to act in the Secretary's stead.  
6

7 **§12XX.9 Dual-covered commodity.**

8  
9 *A dual-covered commodity* means an agricultural commodity that (i) is produced on a certified  
10 organic farm; and (ii) is covered under both -- (I) this Part; and (II) any other agricultural commodity  
11 promotion order issued under a commodity promotion law.  
12

13 **§12XX.10 Fiscal year and marketing year.**

14  
15 *Fiscal year and marketing year* means the 12-month period ending on December 31 or such  
16 other period as recommended by the Board and approved by the Secretary.  
17

18 **§12XX.11 Gross organic revenue.**

19  
20 *Gross organic revenue* means total gross sales in organic products.  
21

22 **§12XX.12 Information.**

23  
24 *Information* means information and programs for consumers, the organic industry, and  
25 producers. This includes educational activities; and information and programs designed to enhance and  
26 broaden the understanding of the use and attributes of organic products, increase organic production,  
27 support the transition of acres and farms to organic production in the United States, provide technical  
28 assistance, maintain and expand existing markets, engage in crisis management, and develop new  
29 markets and marketing strategies. These include:  
30

- 31 (a) Consumer education, advertising and information, which means any effort taken to provide  
32 information to, and broaden the understanding of, the general public regarding organic  
33 products; and  
34  
35 (b) Industry information, which means information and programs that would enhance the image  
36 of the organic industry, maintain and expand existing markets, engage in crisis management, and  
37 develop new markets and marketing strategies; and  
38  
39 (c) Producer information, which means information related to agronomic and animal husbandry  
40 practices and certification requirements, and information supporting the sustainable transition  
41 of acres, farms and ranches to organic production in the United States, long-term system  
42 management, increasing organic production, direct and local marketing opportunities, export  
43 opportunities, and organic research.  
44

45 **12XX.XX National Organic Program.**

1           “*National Organic Program*” means the program authorized by the Organic Foods Production  
2 Act of 1990 for the purpose of implementing its provisions.

3  
4       **§12XX.13 Net organic sales.**

5  
6           *Net organic sales* means total gross sales in certified products minus (a) the cost of certified  
7 organic ingredients, feed, and agricultural inputs used in the production of certified products and (b) the  
8 cost of any non-organic agricultural ingredients used in the production of certified products.

9  
10       **§12XX.14 Order.**

11  
12           *Order* means an order issued by the Secretary under section 514 of the Act that provides for a  
13 program of generic promotion, research, education and information regarding organic products  
14 authorized under the Act.

15  
16       **§12XX.15 Organic certificate holder.**

17  
18           *Organic certificate holder* means a person who must be certified pursuant to 7 CFR 205.100 and  
19 who holds a valid organic certificate pursuant to 7 CFR 205.400 through 7 CFR 205.406.

20  
21       **§12XX.16 Organic handler.**

22  
23           *Organic handler* means a person who handles certified organic products in accordance with the  
24 definition specified in 7 CFR 205.100, the requirements specified in 7 CFR 205.270 through 7 CFR  
25 205.272, and all other applicable requirements of this part 205 and receives, sells, consigns, delivers, or  
26 transports certified organic products into the current of commerce in the United States, the District  
27 of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

28  
29       **§12XX.17 Organic importer.**

30  
31           *Organic importer* means any person who imports certified organic products from outside the  
32 United States for sale in the United States as a principal or as an agent, broker, or consignee of any  
33 person who produces organic products outside the United States for sale in the United States, and who is  
34 listed in the import records as the importer of record for such organic products. Organic importers can  
35 be identified through organic certificates, import certificates, HTS codes, or any other demonstration  
36 that they meet the definition above.

37  
38       **§12XX.18 Organic producer.**

39  
40           *Organic producer* means a person who produces certified organic products in accordance with  
41 the definition specific in 7 CFR 205.100, the requirements specified in 7 CFR 205.202 through 7 CFR  
42 205.207 or 7 CFR 205.236 through 7 CFR 205.240, and all other applicable requirements of part 205.

43  
44       **§12XX.19 Organic product processor.**

45  
46           *Organic product processor* means a person who cooks, bakes, heats, dries, mixes, grinds, churns,  
47 separates, extracts, cuts, ferments, eviscerates, preserves, dehydrates, freezes, or otherwise manufactures

1 organic products, and includes the packaging, canning, jarring, or otherwise enclosing organic food in a  
2 container.

3  
4 **§12XX.20 Organic products.**

5  
6 *Organic products* means products produced under the authority of the Organic Foods Production  
7 Act of 1990 (7 U.S.C. 6501-6522), and any amendments thereto.

8  
9 **§12XX.21 Part and subpart.**

10  
11 *Part* means the Generic Research and Promotion Order for Organic and all rules, regulations,  
12 and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such  
13 part.

14  
15 **§12XX.22 Person.**

16  
17 *Person* means any individual, group of individuals, partnership, corporation, association,  
18 cooperative, or any other legal entity.

19  
20  
21 **§12XX.24 Programs, plans and projects.**

22  
23 *Programs, plans and projects* means those research, promotion, and information programs, plans  
24 or projects established pursuant to the Order.

25  
26 **§12XX.25 Promotion.**

27  
28 *Promotion* means any action, including paid advertising and the dissemination of information,  
29 utilizing public relations or other means, to enhance and broaden the understanding of the use and  
30 attributes of organic products for the purpose of maintaining and expanding markets for the organic  
31 industry.

32  
33 **§12XX.26 Qualified State Commodity Board.**

34  
35 The term *Qualified State Commodity Board* means, for purposes of section 12XX.54 governing  
36 assessment offsets, an existing or future producer or handler governed entity—

- 37  
38 (a) That is authorized by State law or a State government agency;  
39  
40 (b) That is organized and operating within a State;  
41  
42 (c) That is not federally administered; and  
43  
44 (d) That receives mandatory contributions and conducts promotion, research, and/or information.

45  
46 **§12XX.27 Research.**

1 *Research* includes both agricultural and other research.

2  
3 (a) Agricultural research includes any type of investigation, study, evaluation or analysis  
4 (including related education, extension, and outreach activities) designed to improve organic  
5 farm production systems and practices, increase farm profitability and productivity, expand  
6 organic farming opportunities, and enhance sustainability for farms, farm families and their  
7 communities; enhance plant and animal breeding and varietal development for organic  
8 systems and improve the availability of other production inputs; optimize natural resource  
9 conservation, biodiversity, ecosystem services, and other environmental outcomes of organic  
10 agriculture, and advance organic farm and food safety objectives.

11  
12 (b) Other research includes any type of investigation, study, evaluation or analysis (including  
13 related education, extension, and outreach activities) designed to enhance or increase the consumption,  
14 image, desirability, use, marketability, or production of organic products; or to do studies on nutrition,  
15 market data, processing, environmental and human health benefits, quality of organic products,  
16 including research directed to organic product characteristics and product development, including new  
17 uses of existing organic products, new organic products or improved technology in the production,  
18 processing and packaging of organic products.

19  
20 **§12XX.28 Secretary.**

21  
22 *Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee  
23 of the Department to whom authority has been delegated, or to whom authority may hereafter be delegated,  
24 to act in the Secretary's stead.

25  
26 **§12XX.29 State.**

27  
28 *State* means any of the 50 States of the United States, the District of Columbia, the  
29 Commonwealth of Puerto Rico, or any territory or possession of the United States.

30  
31 **§12XX.30 Suspend.**

32  
33 *Suspend* means to issue a rule under 5 U.S.C. 553 to temporarily prevent the operation of an  
34 order or part thereof during a particular period of time specified in the rule.

35  
36 **§12XX.31 Terminate.**

37  
38 *Terminate* means to issue a rule under 5 U.S.C. 553 to cancel permanently the operation of an  
39 order or part thereof beginning on a date certain specified in the rule.

40  
41 **§12XX.32 United States.**

42  
43 *United States* means collectively the 50 States, the District of Columbia, the Commonwealth of  
44 Puerto Rico and the territories and possessions of the United States.

45  
46 **§12XX.33 Voluntarily assessed entity.**

1           *Voluntarily assessed entity* means any covered entity with gross organic revenue up to and  
2 including \$250,000 or less per marketing year that elects to participate in the Order by remitting an  
3 assessment pursuant to §12XX.53(a)(1).  
4

5           **GENERIC RESEARCH AND PROMOTION ORDER FOR ORGANIC BOARD**  
6

7           **§12XX.40 Establishment and membership.**  
8

9           (a)       *Establishment of the Board.* There is hereby established a Generic Research and  
10 Promotion Program for Organic Board to administer the terms and provisions of this Order. Seats on  
11 the Board shall be apportioned as set forth in paragraph (b) of this section. There shall be no alternate  
12 Board members.  
13

14           (b) The Board shall be composed of 16 members and shall be established as follows:  
15

16           (1) One member shall be an organic producer (assessed mandatorily or voluntarily) from the West  
17 which consists of the states of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico,  
18 Nevada, Oregon, Utah, Washington, and Wyoming (Region 1);  
19

20           (2) One member shall be an organic producer from California (assessed mandatorily or  
21 voluntarily) (Region 2);  
22

23           (3) One member shall be an organic producer from the Great Lakes (assessed mandatorily or  
24 voluntarily), which consists of the states of Illinois, Michigan, Wisconsin and Indiana (Region 3);  
25

26           (4) One member shall be an organic producer from the Central (assessed mandatorily or  
27 voluntarily), which consists of the states of Louisiana, Arkansas, Oklahoma, Iowa, Kansas, Minnesota,  
28 Missouri, Nebraska, North Dakota, South Dakota and Texas (Region 4);  
29

30           (5) One member shall be an organic producer from the South and Midatlantic (assessed  
31 mandatorily or voluntarily), which consists of the states of Alabama, Delaware, District of Columbia,  
32 Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, New Jersey, Ohio, Pennsylvania,  
33 South Carolina, Tennessee, Virginia, West Virginia, as well as the territories of Puerto Rico, and the  
34 U.S. Virgin Islands, and all other parts of the United States not listed in paragraphs (b)(1), (b)(2), (b)(3),  
35 (b)(4), and (b)(6) of this section (Region 5); and  
36

37           (6) One member shall be an organic producer from the Northeast (assessed mandatorily or  
38 voluntarily), which consists of the states of Connecticut, Maine, Massachusetts, New Hampshire, New  
39 York, Rhode Island and Vermont (Region 6);  
40

41           (7) One member shall be a voluntarily assessed entity, who shall have gross organic revenue of  
42 \$250,000 or less;  
43

44           (8) Five organic handlers at large (assessed mandatorily or voluntarily);  
45

46           (9) Two organic handlers/product processors (assessed mandatorily or voluntarily);  
47

1 (10) One organic handler/importer (assessed mandatorily or voluntarily); and,

2  
3 (11) One at-large public member, who shall be a non-voting member.

4  
5 (c) Insufficient nominees. Should there be no nominees for the voluntarily assessed entity Board  
6 position, the Secretary shall appoint one of the nominees from among those received for the other Board  
7 positions.

8  
9 (d) At least once in every five-year period, but not more frequently than once in every three-year  
10 period, the Board will review the participation rate of voluntarily assessed entities. The review will be  
11 conducted using the Board's annual assessment receipts. If warranted, the Board will recommend to the  
12 Secretary that the membership or size of the Board be adjusted to reflect changes in the number of  
13 participating voluntarily assessed entities. Any changes in Board composition shall be implemented by  
14 the Secretary through rulemaking.

15  
16 (e) At least once in every five-year period, but not more frequently than once in every three-year  
17 period, the Board will review the geographical distribution of certified organic operations in the United  
18 States with respect to the organic producer Board member seats. The review will be conducted using the  
19 NOP's list of certified organic operations and, if available, other reliable reports from the industry. If  
20 warranted, the Board will recommend to the Secretary that the membership or size of the Board be  
21 adjusted to reflect changes in geographical distribution of certified organic operations in the United  
22 States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

23  
24 **§12XX.41 Nominations and appointments.**

25  
26 (a) Nominees must be organic producers, organic handlers, or organic importers who are  
27 mandatorily or voluntarily assessed, except for the voluntarily assessed entity (who must be a voluntarily  
28 assessed organic producer) and the non-voting at-large public members.

29  
30 (b) Nominations for the initial Board shall be submitted to the Secretary. Before considering any  
31 nominations, the Secretary shall publicize the nomination process, using trade press or other means  
32 deemed appropriate, and shall conduct outreach to all known organic producers, organic handlers,  
33 organic product processors and organic importers with gross organic revenue in excess of \$250,000 in a  
34 marketing year and all voluntarily assessed entities who have opted into the program to generate  
35 nominees that reflect the range of operations within the organic industry. Voluntarily assessed  
36 producers may seek nomination to the Board for the voluntarily assessed seat or for the seat for which  
37 they are geographically qualified. The Department may use local, state, or regional entities, mail or  
38 other methods to elicit potential nominees. The Secretary shall select the initial members of the Board  
39 from the nominations submitted.

40  
41 (c) For subsequent nominations, the Board shall conduct outreach to all known organic  
42 producers, organic handlers, organic product processors and organic importers with gross organic  
43 revenue in excess of \$250,000 in a marketing year and all voluntarily assessed entities who have opted  
44 into the program.

45  
46 (d) Subsequent producer nominations (for all geographic regions and the seat designated for a  
47 voluntarily assessed entity) shall be conducted as follows:

1  
2 (1) All organic producers (mandatorily and voluntarily assessed) may submit nominations to the  
3 Secretary. Organic handlers, organic product processors organic importers, and non-voting at large  
4 candidates may submit nominations to the Secretary;

5  
6 (2) All organic producer nominees (mandatorily and voluntarily assessed) shall provide the  
7 Secretary with a short background statement outlining their qualifications to serve on the Board.

8  
9 (3) Voluntarily assessed producers may seek nomination to the Board for the voluntarily  
10 assessed seat or for the seat for which they are geographically qualified.

11  
12 (4) For the Board seats allocated by geographic region, organic producers must be domiciled in  
13 the region for which they seek nomination. Nominees must specify for which region they are seeking  
14 nomination. The names of nominees shall be placed on a ballot by region. The ballots along with the  
15 background statements shall be mailed to all organic producers who are domiciled in that particular  
16 region with gross organic revenue in excess of \$250,000 per marketing year, and any organic producer in  
17 that region that has remitted a voluntary assessment pursuant to §12XX.52(b) for the previous marketing  
18 year. Organic producers may vote in each region in which they produce organic products. The votes  
19 shall be tabulated for each region and the nominees shall be listed in descending order by number of  
20 votes received. The top two candidates for each position shall be submitted to the Secretary at least six  
21 months before the new Board term begins;

22  
23 (5) For the Board seat allocated to voluntarily assessed entities, the names of nominees shall be  
24 placed on a ballot. The ballot along with the background statements shall be mailed to all voluntarily  
25 assessed entities. The votes shall be tabulated and the nominees shall be listed in descending order by  
26 number of votes received. The top two candidates for this position shall be submitted to the Secretary at  
27 least six months before the new Board term begins;

28  
29 (e) Subsequent organic handler, organic importer, organic product processor, and non-voting at  
30 large nominations shall be conducted as follows:

31  
32 (1) Organic handler, organic importer, organic product processor, and non-voting at large  
33 nominees shall provide the Secretary with a short background statement outlining their qualifications to  
34 serve on the Board;

35  
36 (2) Organic handler, organic importer, organic product processor, and non-voting at large  
37 nominees may submit applications directly to the Secretary.

38  
39 (f) Nominees that hold multiple organic certificates (for production, handling, and/or importing)  
40 may seek nomination to the Board for any seat for which they are qualified

41  
42 (g) Any person nominated to serve on the Board shall file with the Secretary at the time of the  
43 nomination a background questionnaire;

44  
45 (h) From the nominations made pursuant to this section, the Secretary shall appoint the members  
46 of the Board on the basis of representation provided in §12XX.40;



1 (i) No two members of the Board shall be employed by a single corporation, company,  
2 partnership or any other legal entity;

3  
4 (j) The Board shall recommend to the Secretary nominees for the at-large public member, and  
5 the Secretary shall appoint from those recommendations;

6  
7 (k) The Board may recommend to the Secretary modifications to its nomination procedures as it  
8 deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary;  
9 and,

10  
11 (l) The Board shall strive for diversity in its membership. This includes diversity among organic  
12 products based on the proportions of assessments paid, diversity among crop type, diversity among  
13 geographic regions, diversity among the segments represented in the supply chain, diversity in the size  
14 of operations, diversity in marketing expertise, and diversity in research experience.

15  
16 **§12XX.42 Term of office.**

17  
18 (a) With the exception of the initial Board, each Board member shall serve for a term of three  
19 years or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and  
20 end on December 31. No member may serve more than two full consecutive three-year terms, except as  
21 provided in paragraph (b) of this section.

22  
23 (b) For the initial Board, the terms of the Board members shall be staggered for two, three and  
24 four years as follows, so that the terms of approximately one-third of the Board members expire in any  
25 given year:

26 (i) 2-year term – Region #2, Region #6, 1 voluntarily assessed entity, 1 organic handler,  
27 and 1 organic product-processor.

28  
29 (ii) 3-year term – Region #4, Region #1, 1 at-large public member, 2 organic handlers, and  
30 1 organic product-processor.

31  
32 (iii) 4-year term – Region #3, Region #5, 1 importer, and 2 organic handlers.

33  
34 All subsequent terms shall be three-year terms.

35  
36 (c) No single corporation, company, partnership or any other legal entity can be represented on the  
37 Board by an employee or owner for more than two consecutive terms.

38  
39 **§12XX.43 Removal and vacancies.**

40  
41 (a) The Board may recommend to the Secretary that a member be removed from office if the  
42 member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or  
43 willful misconduct. If the Secretary determines that any person appointed under this subpart consistently  
44 fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful  
45 misconduct, the Secretary may remove the person from office. If a person loses or surrenders his or her  
46 valid organic certificate, the Secretary may remove the person from office. A person appointed under

1 this subpart may be removed by the Secretary if the Secretary determines that the person's continued  
2 service would be detrimental to the purposes of the Act.

3  
4 (b) If a member resigns, is removed from office, or dies, or if any member of the Board ceases to  
5 work for or be affiliated with an organic producer, organic handler or organic importer, or if an organic  
6 producer representing regional producers in the Pacific Northwest, California, Southwest, North Central,  
7 South or Northeast ceases to do business in the region he or she represents, or if a voluntarily assessed  
8 entity no longer chooses to be assessed, such position shall become vacant.

9  
10 (c) If a position becomes vacant, nominations to fill the vacancy will be conducted using the  
11 nominations process set forth in this Order or the Board may recommend to the Secretary that he or she  
12 appoint a successor from the most recent list of nominations for the position.

13  
14 (d) A vacancy will not be required to be filled if the unexpired term is less than six months.

15  
16 **§12XX.44 Procedure.**

17  
18 (a) A majority of the voting Board members shall constitute a quorum.

19  
20 (b) Each voting member of the Board shall be entitled to one vote on any matter put to the Board  
21 and the motion will carry only if supported by a majority of Board members, except for  
22 recommendations to change the assessment rate or to adopt a budget, both of which require affirmation  
23 by two-thirds of the total number of voting Board members.

24  
25 (c) At an assembled meeting, all votes shall be cast in person, or as otherwise determined by the  
26 Board in bylaws.

27  
28 (d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the  
29 Board such action is considered necessary, the Board may take action only if supported by a majority of  
30 members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile,  
31 or any other means of communication. In that event, all members must be notified and provided the  
32 opportunity to vote. Any action so taken shall have the same force and effect as though such action had  
33 been taken at an assembled meeting. All votes shall be recorded in Board minutes.

34  
35 (e) There shall be no proxy voting.

36  
37 (f) The Board must give members and the Secretary timely notice of all Board, executive and  
38 committee meetings.

39  
40 **§12XX.45 Reimbursement and attendance.**

41  
42 Board members shall serve without compensation, but shall be reimbursed for reasonable travel  
43 expenses, as approved by the Board, which they incur when performing Board business.

44  
45 **§12XX.46 Powers and duties.**

46  
47 The Board shall have the following powers and duties:

1  
2 (a) To administer this subpart in accordance with its terms and conditions and to collect  
3 assessments;

4  
5 (b) To develop and recommend to the Secretary for approval such bylaws as may be necessary  
6 for the functioning of the Board, and such rules and regulations as may be necessary to administer the  
7 Order, including activities authorized to be carried out under the Order;

8  
9 (c) To meet not less than annually, organize, and select from among the members of the Board a  
10 chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as  
11 the Board determines appropriate.;

12  
13 (d) To employ or contract with persons, other than the Board members, as the Board considers  
14 necessary to assist the Board in carrying out its duties, and to determine the compensation and specify  
15 the duties of the persons;

16  
17 (e) To notify all Board meetings through a press release or other means and to give the Secretary  
18 the same notice of meetings of the Board (including committee, subcommittee, and the like) as is given  
19 to members so that the Secretary's representative(s) may attend such meetings, and to keep and report  
20 minutes of each meeting of the Board to the Secretary;

21  
22 (f) To develop and submit programs, plans and projects to the Secretary for the Secretary's  
23 approval, and enter into contracts or agreements related to such programs, plans and projects, which  
24 must be approved by the Secretary before becoming effective, for the development and carrying out of  
25 programs, plans or projects of promotion, research, and information. The payment of costs for such  
26 activities shall be from funds collected pursuant to this Order. Each contract or agreement shall provide  
27 that:

28  
29 (1) The contractor or agreeing party shall develop and submit to the Board a program, plan or  
30 project together with a budget or budgets that shall show the estimated cost to be incurred for such  
31 program, plan or project;

32  
33 (2) The contractor or agreeing party shall keep accurate records of all its transactions and make  
34 periodic reports to the Board of activities conducted, submit accounting for funds received and expended,  
35 and make such other reports as the Secretary or the Board may require;

36  
37 (3) The Secretary may audit the records of the contracting or agreeing party periodically; and

38  
39 (4) Any subcontractor who enters into a contract with a Board contractor and who receives or  
40 otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.

41  
42 (g) To prepare and submit for the approval of the Secretary fiscal year budgets in accordance  
43 with §12XX.XX;

44  
45 (h) To borrow funds necessary for startup expenses of the Order during the first year of operation  
46 by the Board;

47

1 (i) To invest assessments collected and other funds received pursuant to the Order and use  
2 earnings from invested assessments to pay for activities carried out pursuant to the Order;

3  
4 (j) To recommend changes to the assessment rates as provided in this part;

5  
6 (k) To cause its books to be audited by an independent auditor at the end of each fiscal year and  
7 at such other times as the Secretary may request, and to submit a report of the audit directly to the  
8 Secretary;

9  
10 (l) To periodically prepare and make public reports of program activities and, at least once each  
11 fiscal year, to make public an accounting of funds received and expended;

12  
13 (m) To maintain such minutes, books and records and prepare and submit such reports and  
14 records from time to time to the Secretary as the Secretary may prescribe; to make appropriate  
15 accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records  
16 that accurately reflect the actions and transactions of the Board;

17  
18 (n) To act as an intermediary between the Secretary and any organic industry participant;

19  
20 (o) To receive, investigate, and report to the Secretary complaints of violations of the Order;

21  
22 (p) To recommend to the Secretary such amendments to the Order as the Board considers  
23 appropriate; and

24  
25 (q) To work to achieve an effective, continuous, and coordinated program of promotion,  
26 research, and information and to carry out programs, plans, and projects designed to provide maximum  
27 benefits to the organic industry.

28  
29 (r) When researching priorities for each marketing year the Board will provide public notice  
30 using local, state, or regional entities, mail and/or other methods to solicit public input from all covered  
31 entities and will have at least one meeting or conference call to determine the priorities for each  
32 marketing year.

33  
34 **§12XX.47 Prohibited activities.**

35  
36 The Board may not engage in, and shall prohibit the employees and agents of the Board from  
37 engaging in:

38  
39 (a) Any action that would be a conflict of interest;

40  
41 (b) Using funds collected by the Board under the Order to undertake any action for the purpose  
42 of influencing legislation or governmental action or policy, by local, state, national, and foreign  
43 governments or subdivision thereof (including the National Organic Standards Board, see 7 U.S.C.  
44 6518), other than recommending to the Secretary amendments to the Order; and

45  
46 (c) Any promotion that is false, misleading or disparaging to another agricultural commodity.

1     **EXPENSES AND ASSESSMENTS**

2  
3     **§12XX.50 Budget and expenses.**

4  
5           (a) At least 60 calendar days prior to the beginning of each fiscal year, and as may be necessary  
6 thereafter, the Board shall prepare and submit to the Department a budget for the fiscal year covering its  
7 anticipated expenses and disbursements in administering this part. The budget for research, promotion or  
8 information may not be implemented prior to approval by the Secretary. Each such budget shall include:

9  
10           (1) A statement of objectives and strategy for each program, plan or project;

11  
12           (2) A summary of anticipated revenue, with comparative data for at least one preceding fiscal  
13 year, which shall not include the initial budget;

14  
15           (3) A summary of proposed expenditures for each program, plan or project. This shall include  
16 the following allocation of expenditures, clearly designated within the following buckets:

- 17  
18           (i)     The funds shall be allocated as follows: no less than 25 percent of the funds shall  
19                   be allocated to research; 25 percent of the funds shall be allocated to information;  
20                   25 percent of the funds shall be allocated to promotion; and 25 percent of the  
21                   funds shall remain discretionary; and  
22           (ii)    Of the funds allocated to research, a majority shall be allocated to agricultural  
23                   research; and  
24           (iii)   Of the funds allocated to information, a majority shall be allocated to producer  
25                   information; and  
26           (iv)   Regional organic producer Board members shall establish priorities, including  
27                   regional considerations, for investments in agricultural research; and  
28           (v)    Any expenditures designated for the categories set forth in (i), (ii), and (iii) of this  
29                   section that are not spent in a fiscal year shall carry over for the same category for  
30                   the following fiscal year.

31  
32           (4) Staff and administrative expense breakdowns, with comparative data for at least one  
33 preceding fiscal year, except for the initial budget.

34  
35           (a) Each budget shall provide adequate funds to defray its proposed expenditures and to provide  
36 for a reserve as set forth in this Order.

37  
38           (b) Subject to this section, any amendment or addition to an approved budget must be approved  
39 by the Department, including shifting funds from one program, plan or project to another. Shifts of funds  
40 that do not result in an increase in the Board's approved budget and are consistent with governing bylaws  
41 need not have prior approval by the Department.

42  
43           (c) The Board is authorized to incur such expenses, including provision for a reserve, as the  
44 Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning,  
45 and to enable it to exercise its powers and perform its duties in accordance with the provisions of this  
46 subpart. Such expenses shall be paid from funds received by the Board.

1 (d) With approval of the Department, the Board may borrow money for the payment of startup  
2 expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds  
3 borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of  
4 operation by the Board.

5  
6 (e) The Board may accept voluntary contributions. Such contributions shall be free from any  
7 encumbrance by the donor and the Board shall retain complete control of their use. The Board may  
8 receive funds from outside sources with approval of the Secretary for specific authorized projects.

9  
10 (f) The Board may also receive other funds provided through the Department or from other  
11 sources, with the approval of the Secretary, for authorized activities.

12  
13 (g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the  
14 implementation, administration, enforcement and supervision of the Order, including all referendum  
15 costs in connection with the Order.

16  
17 (h) For fiscal years beginning three years after the date of the establishment of the Board, the  
18 Board may not expend for administration, maintenance, and the functioning of the Board an amount that  
19 is greater than 15 percent of the assessment and other income received by and available to the Board for  
20 the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered  
21 administrative costs.

22  
23 (i) Any program, plan or project receiving funds under this section shall not expend for  
24 administration an amount that is greater than 15 percent of the total funds allocated to the program, plan  
25 or project.

26  
27 (j) The Board may establish an operating monetary reserve and may carry over to subsequent  
28 fiscal years excess funds in any reserve so established: *Provided*, that, the funds in the reserve do not  
29 exceed one fiscal year's budget of expenses. Subject to approval by the Secretary, such reserve funds  
30 may be used to defray any expenses authorized under this subpart.

31  
32 (k) Pending disbursement of assessments and all other revenue under a budget approved by the  
33 Secretary, the Board may invest assessments and all other revenues collected under this part in:

34 (1) Obligations of the United States or any agency of the United States;

35  
36 (2) General obligations of any State or any political subdivision of a State;

37  
38 (3) Interest bearing accounts or certificates of deposit of financial institutions that are members  
39 of the Federal Reserve System;

40  
41 (4) Obligations fully guaranteed as to principal interest by the United States; or

42  
43 (5) Other investments as authorized by the Secretary.

44  
45  
46 **§12XX.51 Financial statements.**

1 (a) The Board shall prepare and submit financial statements to the Department on a quarterly  
2 basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but  
3 not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show  
4 expenditures during the time period covered by the report, year-to-date expenditures, and the  
5 unexpended budget.

6  
7 (b) Each financial statement shall be submitted to the Department within 30 calendar days after  
8 the end of the time period to which it applies.

9  
10 (c) The Board shall submit to the Department an annual financial statement within 90 calendar  
11 days after the end of the fiscal year to which it applies.

12  
13 **§12XX.52 Assessments.**

14  
15 (a) The Board's programs and expenses shall be paid by assessments on assessed entities, other  
16 income of the Board, and other funds available to the Board.

17  
18 (b) Subject to the offset specified in §12XX.54 each organic certificate holder with gross organic  
19 revenue of greater than \$250,000 shall pay the following assessments to the Board:

20  
21 (1) Organic producers, handlers, and importers (whether mandatorily or voluntarily assessed)  
22 shall pay one-tenth of one percent of net organic sales.

23  
24 (2) Organic importers (whether mandatorily or voluntarily assessed) shall pay an assessment to  
25 the Board through Customs on organic products imported for marketing in the United States. Organic  
26 importers shall pay an assessment of one-tenth of one percent of net organic sales. If Customs does not  
27 collect an assessment for the organic product from an organic importer, the organic importer is  
28 responsible for paying the assessment directly to the Board within 90 calendar days after the end of the  
29 quarter in which the organic products were imported.

30  
31 **OR (note two options for importers, subject to determination in consultation with**  
32 **Customs)**

33  
34 (2) Each importer of organic products (whether mandatorily or voluntarily assessed) shall pay  
35 through Customs to the Board an assessment of one-tenth of one percent of net organic sales on the  
36 organic product imported into the United States identified in the Harmonized Tariff Schedule of the  
37 United States (HTS) numbers listed in the table below, which is current as of the date of the publication  
38 of the regulation. The HTS is updated biannually and any updates published by the U.S. International  
39 Trade Commission will be considered effective immediately upon publication without formal  
40 amendment of this section. The assessment on imported organic products shall be paid by the organic  
41 importer to Customs at the time of entry into the United States and shall be remitted by Customs to the  
42 Board. Importation occurs when organic products originating outside the United States are released  
43 from custody of Customs and introduced into the stream of commerce within the United States.  
44 Organic importers include persons who hold title to foreign organic products immediately upon release  
45 by Customs, as well as any persons who act on behalf of others, as agents, brokers, or consignees, to  
46 secure the release of organic product from Customs and the introduction of the released organic  
47 products into the current of commerce. If Customs does not collect an assessment from an organic

1 importer, the organic importer is responsible for paying the assessment directly to the Board within 90  
 2 calendar days after the end of the quarter in which the organic products were imported.  
 3  
 4

<b>ORGANIC COMMODITIES BY HTS</b>		
<b>HTS No.</b>	<b>Description</b>	<b>Effective Year</b>
0409.00.0005	NATURAL HONEY, CERTIFIED ORGANIC	2012
0701.90.0070	POTATOES, CERTIFIED ORGANIC, FRESH OR CHILLED, EXCEPT SEED, NOT IN IMMEDIATE CONTAINERS OF NOT OVER 1200 KG NET WEIGHT – KG	2011
0702.00.0015	CHERRY TOMATOES, CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0702.00.0025	ROMA (PLUM TYPE) TOMATOES, CERTIFIED ORGANIC, FRESH OR CHILLED – KG	2011
0702.00.0035	TOMATOES, CERTIFIED ORGANIC, FRESH OR CHILLED, EXCLUDING CHERRY OR ROMA (PLUM TYPE) - KG	2011
0703.10.0010	ONION SETS, CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0703.20.0005	CERTIFIED ORGANIC GARLIC, FRESH WHOLE BULBS	2013
0704.10.0010	CAULIFLOWER AND HEADED BROCCOLI (BRASSICA OLERACEA VAR. BOTRYTIS), CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0704.90.4025	BROCCOLI, INCLUDING SPROUTING BROCCOLI (BRASSICA OLERACEA VAR. ITALICA), CERTIFIED ORGANIC, FRESH OR CHILLED, EXCLUDING HEADED BROCCOLI - KG	2011
0705.11.0010	HEAD LETTUCE (CABBAGE LETTUCE), CERTIFIED ORGANIC, FRESH OR CHILLED – KG	2011
0705.19.0010	LETTUCE (LACTUCA SATIVA), CERTIFIED ORGANIC, FRESH OR CHILLED, EXCLUDING HEAD LETTUCE - KG	2011
0706.10.3010	CARROTS, CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0707.00.0010	CUCUMBERS AND GHERKINS, CERTIFIED ORGANIC, FRESH OR CHILLED	2012
0709.40.0010	CELERY, CERTIFIED ORGANIC, FRESH OR CHILLED, EXCLUDING CELERIAC – KG	2011
0709.60.0010	FRUITS OF THE GENUS CAPSICUM (PEPPERS) OR OF THE GENUS PIMENTA (E.G., ALLSPICE), CERTIFIED ORGANIC, FRESH OR CHILLED – KG	2011
0709.60.4015	PEPPERS, SWEET BELL-TYPE (CAPSICUM ANNUM), GREENHOUSE, CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0709.60.4065	PEPPERS, SWEET BELL-TYPE (CAPSICUM ANNUM), CERTIFIED ORGANIC, FRESH OR CHILLED, OTHER THAN GREENHOUSE - KG	2011
0709.70.0010	SPINACH, NEW ZEALAND SPINACH AND ORACHE SPINACH (GARDEN SPINACH), CERTIFIED ORGANIC, FRESH OR CHILLED - KG	2011
0802.12.0005	CERTIFIED ORGANIC ALMONDS, FRESH OR DRIED, SHELLED	2013
0803.90.0025	CERTIFIED ORGANIC BANANAS, FRESH OR DRIED	2013
0804.40.0020	HASS AVOCADOS AND AVOCADOS DETERMINED BY THE SECRETARY OF AGRICULTURE TO BE HASS-LIKE, CERTIFIED ORGANIC, FRESH OR DRIED-KG	2011
0804.50.4045	CERTIFIED ORGANIC MANGOES, FRESH, IF ENTERED DURING THE PERIOD FROM SEPTEMBER 1, IN ANY YEAR, TO THE FOLLOWING MAY 31, INCLUSIVE	2013



0804.50.6045	CERTIFIED ORGANIC MANGOES FRESH, IF ENTERED DURING THE PERIOD FROM JUNE 1 TO AUGUST 31, OF THE FOLLOWING YEAR, INCLUSIVE	2013
0805.10.0045	ORANGES, CERTIFIED ORGANIC, FRESH OR DRIED, EXCLUDING TEMPLE ORANGES – KG	2011
0805.40.0010	CABBAGE, CERTIFIED ORGANIC, FRESH OR CHILLED	2012
0805.40.0010	GRAPEFRUIT INCLUDING POMELOS, CERTIFIED ORGANIC, FRESH OR DRIED	2012
0805.50.2010	LEMONS (CITRUS LIMON, CITRUS LIMONUM), CERTIFIED ORGANIC, FRESH OR DRIED - KG	2011
0806.10.0010	GRAPES, CERTIFIED ORGANIC, FRESH - KG	2011
0808.10.0010	APPLES, CERTIFIED ORGANIC, FRESH - KG	2011
0808.10.0045	APPLES, CERTIFIED ORGANIC, VALUED OVER 22 CENTS PER KILOGRAM, FRESH – KG	2011
0808.20.0010	PEARS AND QUINCES, CERTIFIED ORGANIC, FRESH - KG	2011
0808.20.2015	PEARS AND QUINCES, CERTIFIED ORGANIC, ENTERED DURING THE PERIOD FROM APRIL 1 TO JUNE 30, INCLUSIVE, IN ANY YEAR, FRESH - KG	2011
0808.20.4015	PEARS AND QUINCES, CERTIFIED ORGANIC, ENTERED DURING THE PERIOD FROM JULY 1 OF ANY YEAR TO MARCH 31 OF THE FOLLOWING YEAR, FRESH – KG	2011
0808.30.0010	PEARS, CERTIFIED ORGANIC, FRESH ( <i>Replacing 0808200010 PEARS AND QUINCES, CERTIFIED ORGANIC, FRESH – KG</i> )	2012
0808.40.2015	QUINCES, CERTIFIED ORGANIC, ENTERED DURING THE PERIOD FROM APRIL 1 TO JUNE 30, INCLUSIVE, IN ANY YEAR, FRESH	2012
0808.40.4015	QUINCES, CERTIFIED ORGANIC, ENTERED DURING THE PERIOD FROM JULY 1 OF ANY YEAR TO MARCH 31 OF THE FOLLOWING YEAR, FRESH	2012
0809.20.0010	CHERRIES, CERTIFIED ORGANIC, FRESH - KG	2011
0810.10.0010	STRAWBERRIES, CERTIFIED ORGANIC, FRESH - KG	2011
0810.40.0026	BLUEBERRIES, CULTIVATED, CERTIFIED ORGANIC, FRESH - KG	2011
0901.11.0015	COFFEE, CERTIFIED ORGANIC, ARABICA, NOT DECAFFEINATED, NOT ROASTED – KG	2011
0901.11.0045	COFFEE, CERTIFIED ORGANIC, NOT ARABICA, NOT DECAFFEINATED, NOT ROASTED – KG	2011
0901.12.0015	COFFEE, CERTIFIED ORGANIC, DECAFFEINATED, NOT ROASTED - KG	2011
0901.21.0010	COFFEE, ROASTED, NOT DECAFFEINATED, CERTIFIED ORGANIC - KG	2011
0901.21.0035	COFFEE, CERTIFIED ORGANIC, IN RETAIL CONTAINERS WEIGHING 2 KG OR LESS, ROASTED, NOT DECAFFEINATED - KG	2011
0901.21.0055	COFFEE, CERTIFIED ORGANIC, ROASTED, NOT IN RETAIL CONTAINERS WEIGHING 2 KG OR LESS, NOT DECAFFEINATED - KG	2011
0901.22.0035	COFFEE, CERTIFIED ORGANIC, IN RETAIL CONTAINERS WEIGHING 2 KG OR LESS, DECAFFEINATED, ROASTED - KG	2011
0902.10.1015	GREEN TEA (NOT FERMENTED), CERTIFIED ORGANIC, FLAVORED, IN IMMEDIATE PACKINGS OF A CONTENT NOT EXCEEDING 3 KG - KG	2011
0902.10.9015	GREEN TEA (NOT FERMENTED), CERTIFIED ORGANIC, IN IMMEDIATE PACKINGS OF A CONTENT NOT EXCEEDING 3KG, NOT FLAVORED - KG	2011
0902.20.9015	GREEN TEA (NOT FERMENTED), CERTIFIED ORGANIC, NOT FLAVORED, NOT IN IMMEDIATE PACKINGS OF A CONTENT NOT EXCEEDING 3 KG – KG	2011

0902.30.0015	BLACK TEA (FERMENTED) AND PARTLY FERMENTED TEA, CERTIFIED ORGANIC, IN TEA BAGS, IN IMMEDIATE PACKINGS OF A CONTENT NOT EXCEEDING 3 KG - KG	2011
0910.11.0010	CERTIFIED ORGANIC GINGER, NOT GROUND	2013
1001.10.0025	DURUM WHEAT, CERTIFIED ORGANIC, EXCEPT SEED - KG	2011
1005.90.2015	CERTIFIED ORGANIC YELLOW DENT CORN (MAIZE), EXCEPT SEED 1509102030 CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, LABELED AS EXTRA VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER UNDER 18KG	2013
1006.30.9015	RICE, CERTIFIED ORGANIC, SEMI-MILLED OR WHOLLY MILLED, WHETHER OR NOT POLISHED OR GLAZED, OTHER THAN PARBOILED – KG	2011
1201.00.0045	SOYBEANS, CERTIFIED ORGANIC, WHETHER OR NOT BROKEN, EXCEPT SEEDS OF A KIND USED FOR SOWING OR USED AS OIL STOCK - KG	2011
1204.00.0025	CERTIFIED ORGANIC FLAXSEED (LINSEED) FOR USE AS OIL STOCK, WHETHER OR NOT BROKEN	2013
1509.10.2015	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER UNDER 18KG	2013
1509.10.2040	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER UNDER 18KG	2013
1509.10.4015	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER 18 KG OR OVER	2013
1509.10.4030	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, LABELED AS EXTRA VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER 18 KG OR OVER	2013
1509.10.4040	CERTIFIED ORGANIC OLIVE OIL AND ITS FRACTIONS, VIRGIN, NOT CHEMICALLY MODIFIED, WEIGHING WITH THE IMMEDIATE CONTAINER 18 KG OR OVER	2013
2103.20.4010	TOMATO SAUCES, CERTIFIED ORGANIC, EXCLUDING TOMATO KETCHUP – KG	2011
2204.10.0065	CERTIFIED ORGANIC SPARKLING WINE OF FRESH GRAPES VALUED OVER \$1.59/LITER	2013
2204.21.5035	CERT ORGANIC RED WINE OF FRESH GRAPES OF ALCOHOLIC STRENGTH BY VOLUME NOT OVER 14% VOL, IN CONTNERS HOLDN 2 LITRS OR LESS, VALUE OVR \$1.05/LITR, NESOI	2013
2204.21.5050	CERT ORGANIC WHITE WINE, EXCEPT ICEWINE, OF ALCOHOLC STRENGTH BY VOL NT OVR 14% VOL, IN CONTNERS HOLDNG 2 LITERS OR LESS, VALUED OVER \$1.05/LITR,NESOI	2013

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(c) Each organic producer and organic handler shall remit to the Board the amount due no later than 90 days following the end of the year in which the organic product was produced or handled. Quarterly payments may be accepted.

(d) Any organic producer, organic handler or organic importer with gross organic revenue of \$250,000 or less shall have the option of participating in the Order as a voluntarily assessed entity pursuant to §12XX.53(a). Voluntarily assessed entities pay the same assessment as any other entity.

1  
2 (e) At least 24 months after the Order becomes effective and periodically thereafter, the Board  
3 shall review and may recommend to the Secretary, upon an affirmative vote of at least two-thirds of the  
4 voting members of the Board, a change in the assessment rate. A change in the assessment rate is  
5 subject to referendum.  
6

7 (f) When an organic producer, organic handler or organic importer fails to pay the assessment  
8 within 90 calendar days of the date it is due, the Board may impose a late payment charge and interest.  
9 The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary.  
10 All late assessments shall be subject to the specified late payment charge and interest. Persons failing to  
11 remit total assessments due in a timely manner may also be subject to actions under federal debt  
12 collection procedures.  
13

14 (g) The Board may accept advance payment of assessments from any organic producer, organic  
15 handler, or organic importer that will be credited toward any amount for which that person may become  
16 liable. The Board may not pay interest on any advance payment.  
17

18 (h) If the Board is not in place by the date the first assessments are to be collected, the Secretary  
19 shall receive assessments and shall pay such assessments and any interest earned to the Board when it is  
20 formed.  
21

22 **§12XX.53 Voluntarily assessed entities.**  
23

24 (a) *Voluntary assessment.*  
25

26 (1) Organic producers, handlers, and importers with gross organic revenue of \$250,000 or less in  
27 the prior marketing year may elect to participate in the Order as a voluntarily assessed entity by remitting  
28 an assessment of one-tenth of one percent of net organic sales. This is the same as the assessment for all  
29 other organic certificate holders.  
30

31 (2) Organic handlers with gross organic revenue of \$250,000 or less in the prior marketing year  
32 may elect to participate in the Order as a voluntarily assessed entity by remitting an assessment of one-  
33 tenth of one percent of net organic sales. This is the same as the assessment for all other organic  
34 certificate holders. Each of these payments must be made prior to the start of the marketing year.  
35

36 (3) (a) Organic importers with gross organic revenue of \$250,000 or less in the prior marketing  
37 year may elect to participate in the Order as a voluntarily assessed entity by remitting an assessment of  
38 one-tenth of one percent of net organic sales prior to the start of the marketing year.  
39

40 (b) Organic importers with gross organic revenue of greater than \$250,000 of organic products  
41 during the prior marketing year, and that had \$250,000 or less of gross organic revenue during the  
42 marketing year shall automatically receive a refund from the Board for the applicable assessments. The  
43 Board shall refund such organic importers their assessments as collected by Customs no later than 90  
44 calendar days after receipt of such assessments by the Board. The Board will stop the refunding of  
45 assessments to such organic importers who during the marketing year had gross organic revenue of more  
46 than \$250,000 organic products. These organic importers will be notified accordingly. No interest shall  
47 be paid on the assessments collected by Customs or the Board. Any organic importer who receives a

1 refund pursuant to this subsection may elect to participate in the Order as a voluntarily assessed entity  
2 by remitting an assessment of one-tenth of one percent of net organic sales.

3  
4 (4) If an entity is a combination of an organic producer, organic handler and/or an organic  
5 importer, such entity's combined gross organic revenue during a marketing year shall count towards the  
6 over \$250,000 gross organic revenue threshold.

7  
8 (5) Organic producers, organic handlers and organic importers that had gross organic revenue of  
9 greater than \$250,000 during the marketing year shall pay the Board the applicable assessments owed  
10 within 30 calendar days after the end of the marketing year and submit any necessary reports to the  
11 Board pursuant to §12XX.XX.

12  
13 (b) Dual-covered commodity exemption. Organic producers and organic handlers of dual-  
14 covered commodities may apply to the Board, on a form provided by the Board, for a certificate of  
15 exemption prior to the start of the marketing year. This is an annual exemption and organic producers  
16 and organic handlers must reapply each year. Such organic producers and organic handlers shall certify  
17 that they have remitted an assessment for the dual-covered commodity pursuant to a commodity  
18 promotion law. Upon receipt of an application for exemption, the Board shall determine whether an  
19 exemption may be granted. The Board may request documentation providing proof of the remittance of  
20 the assessment for the dual-covered commodity. The Board will issue, if deemed appropriate, a  
21 certificate of exemption to the eligible organic producer or organic handler. It is the responsibility of the  
22 organic producer or organic handler to retain a copy of the certificate of exemption.

#### 23 24 **§12XX.54 Assessment offset.**

25  
26 The Board may, with the approval of the Secretary, authorize a credit to an organic producer and  
27 organic handlers of up to 25 percent of the amount to be remitted to the Board pursuant to §12XX.52 of  
28 this subpart to offset collection and compliance costs relating to such assessments and for fees paid to  
29 Qualified State Commodity Boards required by State law. This offset is available only for those monies  
30 that go to research and promotion, and not for dues or quality specifications.

### 31 32 **PROMOTION, RESEARCH AND INFORMATION**

#### 33 34 **§12XX.60 Programs, plans and projects.**

35  
36 (a) The Board shall develop and submit to the Secretary for approval programs, plans and  
37 projects authorized by this subpart. Such programs, plans and projects shall provide for promotion,  
38 research, information and other activities including consumer and industry information and advertising.

39  
40 (b) No program, plan or project shall be implemented prior to its approval by the Secretary. Once  
41 a program, plan or project is so approved, the Board shall take appropriate steps to implement it.

42  
43 (c) The Board must evaluate each program, plan and project authorized under this subpart to  
44 ensure that it contributes to an effective and coordinated program of research, promotion, and  
45 information. The Board must submit the evaluations to the Secretary. If the Board finds that a program,  
46 plan or project does not contribute to an effective program of promotion, research, or information, then  
47 the Board shall terminate such program, plan or project.

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**§12XX.61 Independent evaluation.**

At least once every five years, the Board shall authorize and fund from funds otherwise available to the Board, an independent evaluation of the effectiveness of all generic promotion, research and information activities undertaken under the Order. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this section.

**§12XX.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.**

Any patents, copyrights, trademarks, inventions, product formulations, and publications developed through the use of funds received by the Board under this subpart shall become part of the public domain.

**REPORTS, BOOKS, AND RECORDS**

**§12XX.70 Reports.**

(a) Organic producers, organic handlers and organic importers will be required to provide periodically to the Board such information as the Board, with the approval of the Secretary, may require. Such information may include, but not be limited to:

(1) For organic producers and organic handlers:

- (i) The name, address and telephone number of the organic producer and/or organic handler and
- (ii) The value of net organic sales of the organic products.

(2) For organic importers:

- (i) The name, address and telephone number of the organic importer;
- (ii) The value of the net organic sales of the organic products imported by type; and
- (iii) The country/countries of export.

(b) For organic producers and organic handlers, such information shall be reported to the Board no later than 90 days following the end of the year or the end of the quarter in which the organic product was produced or handled and shall accompany the collected payment of assessments as specified in §12XX.XX. First quarter data (January-March) shall be reported to the Board no later than the 30th calendar day of May; second quarter data (April-June) shall be reported no later than the 30th calendar day of August; third quarter data (July-September) shall be reported no later than the 30th calendar day of November; and fourth quarter data (October-December) shall be reported no later than the 30th calendar day of February of the following marketing year.

1 (c) For organic importers who pay their assessments directly to the Board, such information shall  
2 accompany the payment of collected assessments within 90 calendar days after the end of the year or the  
3 end of the quarter in which the organic product was imported specified in §12XX.XX.

4  
5 **§12XX.71 Books and records.**

6  
7 Each organic producer, organic handler and organic importer shall maintain any books and  
8 records necessary to carry out the provisions of this subpart and regulations issued thereunder, including  
9 such records as are necessary to verify any required reports. Such books and records must be made  
10 available during normal business hours for inspection by the Board's or Secretary's employees or agents.  
11 Organic producers, organic handlers and organic importers must maintain the books and records for two  
12 years beyond the fiscal year to which they apply.

13  
14 **§12XX.72 Confidential treatment.**

15  
16 All information obtained from books, records, or reports under the Act, this subpart and the  
17 regulations issued thereunder shall be kept confidential by all persons, including all employees and  
18 former employees of the Board, all officers and employees and former officers and employees of  
19 contracting and subcontracting agencies or agreeing parties having access to such information. Such  
20 information shall not be available to Board members or organic producers, organic handlers and organic  
21 importers. Only those persons having a specific need for such information solely to effectively  
22 administer the provisions of this subpart shall have access to such information. Only such information so  
23 obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial  
24 proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to  
25 which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in  
26 this section shall be deemed to prohibit:

27  
28 (a) The issuance of general statements based upon the reports of the number of persons subject to  
29 this subpart or statistical data collected therefrom, which statements do not identify the information  
30 furnished by any person; and

31  
32 (b) The publication, by direction of the Secretary, of the name of any person who has been  
33 adjudged to have violated this part, together with a statement of the particular provisions of this part  
34 violated by such person.

35  
36 **MISCELLANEOUS**

37  
38 **§12XX.80 Right of the Secretary.**

39  
40 All fiscal matters, programs, plans or projects, contracts, rules or regulations, reports, or other  
41 substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

42  
43 **§12XX.81 Referenda.**

44  
45 (a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a  
46 majority of assessed entities voting in the referendum. A single assessed entity may cast one vote in the  
47 referendum for each organic certificate held. Each ballot request shall include an affidavit attesting to

1 (a) an importer’s participation in the organic industry. Each ballot request shall include an affidavit  
2 attesting to (a) an importer’s participation in the organic industry, and (b) a voluntarily assessed  
3 entity’s commitment to be assessed for the next seven years. try, and (b) a voluntarily assessed  
4 entity’s commitment to be assessed for the next seven years. Bloc voting shall be prohibited.

5  
6 (b) *Subsequent referenda.* Every seven years, the Department shall hold a referendum to  
7 determine whether assessed entities favor the continuation, suspension, or termination of the Order. The  
8 Order shall continue if it is favored by a majority of the assessed entities voting. The Department will  
9 also conduct a referendum if 10 percent or more of all assessed entities request the Department to hold a  
10 referendum. Each ballot request shall include an affidavit attesting to (a) an importer’s participation in  
11 the organic industry, and (b) a voluntarily assessed entity’s commitment to be assessed for the next  
12 seven years. Bloc voting shall be prohibited.

- 13  
14 (i) All assessed entities in good standing shall be eligible to vote in a subsequent  
15 referendum. To be in good standing:
- 16 a. A dual-covered entity must demonstrate that it has paid into the organic  
17 research and promotion program for a majority of the years since the most  
18 recent referendum; or
  - 19 b. A voluntarily-assessed entity must demonstrate that it has paid into the  
20 organic research and promotion program for a majority of the years since the  
21 most recent referendum; or
  - 22 c. An entity must demonstrate that it attained its organic certification since the  
23 most recent referendum; or
  - 24 d. An assessed entity that does not meet any of the above descriptions must  
25 demonstrate that it has paid into the organic research and promotion program  
26 every year since the most recent referendum.

27  
28 **§12XX.82 Suspension or termination.**

29  
30 (a) The Secretary shall suspend or terminate this part or subpart or a provision thereof, if the  
31 Secretary finds that this part or subpart or a provision thereof obstructs or does not tend to effectuate the  
32 purposes of the Act, or if the Secretary determines that this subpart or a provision thereof is not favored  
33 by persons voting in a referendum conducted pursuant to the Act.

34  
35 (b) The Secretary shall suspend or terminate this subpart at the end of the fiscal year whenever  
36 the Secretary determines that its suspension or termination is favored by a majority of assessed entities  
37 voting in the referendum.

38  
39 (c) If, as a result of a referendum the Secretary determines that this subpart is not approved, the  
40 Secretary shall:

41  
42 (1) Not later than one hundred and eighty (180) calendar days after making the determination,  
43 suspend or terminate, as the case may be, the collection of assessments under this subpart.

44  
45 (2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in  
46 an orderly manner.

1     **§12XX.83 Proceedings after termination.**

2  
3           (a) Upon termination of this subpart, the Board shall recommend to the Secretary up to five of its  
4 members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon  
5 designation by the Secretary, shall become trustees of all of the funds and property then in the  
6 possession or under control of the Board, including claims for any funds unpaid or property not  
7 delivered, or any other existing claim at the time of such termination.

8  
9           (b) The said trustees shall:

10           (1) Continue in such capacity until discharged by the Secretary;

11  
12           (2) Carry out the obligations of the Board under any contracts or agreements entered into  
13 pursuant to the Order;

14  
15           (3) From time to time account for all receipts and disbursements and deliver all property on hand,  
16 together with all books and records of the Board and trustees, to such person or persons as the Secretary  
17 directs; and

18  
19           (4) Upon request of the Secretary execute such assignments or other instruments necessary or  
20 appropriate to vest in such persons title and right to all of the funds, property, and claims vested in the  
21 Board or the trustees pursuant to the Order.

22  
23           (c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to  
24 the Order shall be subject to the same obligations imposed upon the Board and upon the trustees.

25  
26           (d) Any residual funds not required to defray the necessary expenses of liquidation shall be  
27 turned over to the Secretary to be disposed of, to the extent practical, to one or more organic  
28 organizations in the United States whose mission is generic organic promotion, research, and  
29 information programs.

30  
31  
32     **§12XX.84 Effect of termination or amendment.**

33  
34           Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any  
35 regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

36  
37           (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may  
38 thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

39  
40           (b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

41  
42           (c) Affect or impair any rights or remedies of the United States, or of the Secretary or of any  
43 other person, with respect to any such violation.

44  
45     **§12XX.85 Personal liability.**



1 No member or employee of the Board shall be held personally responsible, either individually or  
2 jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts,  
3 either of commission or omission, as such member or employee, except for acts of dishonesty or willful  
4 misconduct.

5  
6 **§12XX.86 Separability.**

7  
8 If any provision of this subpart is declared invalid or the applicability of it to any person or  
9 circumstances is held invalid, the validity of the remainder of this subpart, or the applicability thereof to  
10 other persons or circumstances shall not be affected thereby.

11  
12 **§12XX.87 Amendments.**

13  
14 Any changes to the assessment rate may be proposed by the Board and will be subject to a  
15 referendum. Any other amendments to this subpart may be made by the Board. A list of all  
16 amendments made since the last referendum will be sent to all assessed entities in advance of each  
17 subsequent referendum.

18  
19 **§12XX.88 OMB control numbers.**

20  
21 The control numbers assigned to the information collection requirements by the Office of  
22 Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are  
23 OMB control number XXXX-XX (Board nominee background statement) and OMB control number  
24 XXXX.XXXX.

25  
26 **Subpart B—Referendum Procedures**

27  
28 **§12XX.100 General.**

29  
30 Referenda to determine whether eligible organic producers, organic handlers and organic  
31 importers favor the issuance, continuance, amendment, suspension, or termination of the Generic  
32 Research and Promotion Order for Organic shall be conducted in accordance with this subpart.

33  
34 **§12XX.101 Definitions.**

35  
36 For the purposes of this subpart:

37  
38 (a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to  
39 delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been  
40 delegated or may hereafter be delegated to act in the Administrator's stead.

41  
42 (b) *Assessed entity* means any producer, handler, or importer who holds an organic certificate  
43 and has gross organic revenue in excess of \$250,000 per marketing year, and any voluntarily assessed  
44 entity. Any person that holds multiple organic certificates (i.e. for both production and handling) will be  
45 treated as a separate assessed entity for each organic certificate.

1 (c) *Customs or CBP* means the U.S. Customs and Border Protection, an agency of the U.S.  
2 Department of Homeland Security.

3  
4 (d) *Department* means the U.S. Department of Agriculture or any officer or employee of the  
5 Department to whom authority has heretofore been delegated, or to whom authority may hereafter be  
6 delegated, to act in the Secretary's stead.

7  
8 (e) *Order* means the Generic Research and Promotion Order for Organic.

9  
10 (f) *Organic product* means any product produced under the authority of the Organic Foods  
11 Production Act of 1990 (7 U.S.C. 6501-6522), and any amendments thereto.

12  
13 (g) *Person* means any individual, group of individuals, partnership, corporation, association,  
14 cooperative, or any other legal entity. For the purpose of this definition, the term “partnership” includes,  
15 but is not limited to:

16  
17 (1) A husband and a wife who have title to, or leasehold interest in organic production, organic  
18 handling or organic import entity as tenants in common, joint tenants, tenants by the entirety, or, under  
19 community property laws, as community property; and

20  
21 (2) So called “joint ventures” wherein one or more parties to an agreement, informal or  
22 otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any  
23 variation of such contributions by two or more parties, so that it results in the production, handling or  
24 importation of organic products and the authority to transfer title to the organic products.

25  
26 (h) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to  
27 conduct the referendum.

28  
29 (i) *Representative period* means the period designated by the Department.

30  
31 (j) *United States* means collectively the 50 states of the United States, the District of Columbia,  
32 the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

33  
34 **§12XX.102 Voting.**

35  
36 (a) Each assessed entity shall be entitled to request a ballot and may cast one ballot per organic  
37 certificate held in the referendum. Organic importers shall be entitled to **request** one ballot per business  
38 entity that meets the definition of organic importer.

39  
40 (b) Proxy voting is not authorized, but an officer or employee of an assessed entity, or an  
41 administrator, executor, or trustee of an assessed entity may cast a ballot on behalf of such entity. Any  
42 individual so voting in a referendum shall certify that such individual is an officer or employee of the  
43 assessed entity, or an administrator, executive, or trustee of an assessed entity and that such individual  
44 has the authority to take such action. Upon request of the referendum agent, the individual shall submit  
45 adequate evidence of such authority.

46  
47 (c) A single assessed entity may cast one vote per organic certificate held in the referendum.

1  
2 (d) If a voluntarily assessed entity requests a ballot, he or she must submit an attestation  
3 committing to paying his or her assessments for the 7 year period until the next referendum. This shall  
4 be enforced through a procedure to be created by the Board.  
5

6 (e) All ballots are to be cast by mail, in person at a local Farm Services Agency office, or by other  
7 means, as instructed by the Department.  
8

9 (f) All assessed entities in good standing shall be eligible to vote in a subsequent referendum. To be  
10 in good standing, an entity must carry a valid (not revoked) organic certificate and:

- 11 i. A dual-covered entity must demonstrate that it has paid into the organic  
12 research and promotion program for a majority of the years since the most  
13 recent referendum; or
- 14 ii. A voluntarily-assessed entity must demonstrate that it has paid into the  
15 organic research and promotion program for a majority of the years since  
16 the most recent referendum; or
- 17 iii. An entity must demonstrate that it attained its organic certification since  
18 the most recent referendum; or
- 19 iv. An assessed entity that does not meet any of the above descriptions must  
20 demonstrate that it has paid into the organic research and promotion  
21 program every year since the most recent referendum.  
22

### 23 **§12XX.103 Instructions.**

24  
25 The referendum agent shall conduct the referendum, in the manner provided in this subpart,  
26 under the supervision of the Administrator. The Administrator may prescribe additional instructions,  
27 consistent with the provisions of this subpart, to govern the procedure to be followed by the referendum  
28 agent. Such agent shall:

29  
30 (a) Determine the period during which ballots may be cast;

31  
32 (b) Provide ballots and related material to be used in the referendum. The ballot shall provide for  
33 recording essential information, including that needed for ascertaining whether the person voting, or on  
34 whose behalf the vote is cast, is an assessed entity;

35  
36 (c) Give reasonable public notice of the referendum:

37  
38 (1) By using available media or public information sources, without incurring advertising  
39 expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent  
40 information. Such sources of publicity may include, but are not limited to, print and radio; and  
41

42 (2) By such other means as the agent may deem advisable.  
43

44 (d) The Secretary must provide public notice of instructions on voting and a summary of the terms  
45 and conditions of the proposed Order. All assessed entities may request and receive by mail a ballot. No  
46 person who claims to be an assessed entity shall be refused a ballot;  
47

1 (e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the  
2 results in the presence of an agent of a third party authorized to monitor the referendum process;

3  
4 (f) Prepare a report on the referendum; and

5  
6 (g) Announce the results to the public.

7  
8 **§12XX.104 Subagents.**

9  
10 The referendum agent may appoint any individual or individuals necessary or desirable to assist  
11 the agent in performing such agent's functions of this subpart. Each individual so appointed may be  
12 authorized by the agent to perform any or all of the functions which, in the absence of such appointment,  
13 shall be performed by the agent.

14  
15 **§12XX.105 Ballots.**

16  
17 The referendum agent and subagents shall accept all ballots cast. However, if an agent or  
18 subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse  
19 above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom  
20 challenged, the reasons therefore, the results of any investigations made with respect thereto, and the  
21 disposition thereof. Ballots invalid under this subpart shall not be counted.

22  
23 **§12XX.106 Referendum report.**

24  
25 Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator  
26 a report on the results of the referendum, the manner in which it was conducted, the extent and kind of  
27 public notice given, and other information pertinent to the analysis of the referendum and its results.

28  
29 **§12XX.107 Confidential information.**

30  
31 The ballots and other information or reports that reveal, or tend to reveal, the vote of any person  
32 covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

33  
34 **§12XX.108 OMB control number.**

35  
36 The control number assigned to the information collection requirement in this subpart by the  
37 Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is  
38 OMB control number XXX.