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47

1 **Subpart A— Generic Research and Promotion Order for Organic**

2
3 **DEFINITIONS**

4
5 **§12XX.1 Act.**

6
7 *Act* means the Commodity Promotion, Research and Information Act of 1996 (7 U.S.C. 7411-
8 7425), and any amendments thereto.

9
10 **§12XX.2 Assessed entity.**

11
12 *Assessed entity* means any organic producer, organic handler, or organic importer with gross
13 organic revenue in excess of \$250,000 per marketing year, and any voluntarily assessed entity. Any
14 person that holds multiple organic certificates (i.e. for both production and handling) will be treated as a
15 separate assessed entity for each organic certificate.

16
17 **§12XX.3 Board.**

18
19 *Board* means Generic Research and Promotion Order for Organic Board established pursuant to
20 §12XX.XX, or such other name as recommended by the Board and approved by the Department.

21
22 **§12XX.4 Certificate of exemption.**

23
24 *Certificate of exemption* means a certificate issued by the Board, pursuant to §12XX.53(b), to an
25 organic producer, organic handler or organic importer that produces, handles or imports dual-covered
26 commodities.

27
28 **§12XX.5 Conflict of interest.**

29
30 *Conflict of interest* means a situation in which a member or employee of the Board has a direct or
31 indirect financial interest in a person who performs a service for, or enters into a contract with, the Board
32 for anything of economic value.

33
34 **§12XX.6 Covered entity.**

35
36 *Covered entity* means any mandatory organic certificate holder, organic producer, organic
37 handler, or organic importer.

38
39 **§12XX.7 Customs or CBP.**

40
41 *Customs or CBP* means the U.S. Customs and Border Protection, an agency of the U.S.
42 Department of Homeland Security.

43
44 **§12XX.8 Department.**

45

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

4
5 **§12XX.9 Dual-covered commodity.**

6
7 *A dual-covered commodity* means an agricultural commodity that (i) is produced on a certified
8 organic farm; and (ii) is covered under both -- (I) this Part; and (II) any other agricultural commodity
9 promotion order issued under a commodity promotion law.

10
11 **§12XX.10 Fiscal year and marketing year.**

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

15
16 **§12XX.11 Gross organic revenue.**

17 *Gross organic revenue* means total gross sales in organic products.

18
19
20 **§12XX.12 Information.**

21
22 *Information* means information and programs for consumers, customers and the organic industry,
23 including educational activities; and information and programs designed to enhance and broaden the
24 understanding of the use and attributes of organic products, increase organic production, support the
25 transition of acres to organic production in the United States, provide technical assistance, maintain and
26 expand existing markets, engage in crisis management, and develop new markets and marketing
27 strategies. These include:

28
29 (a) Consumer education, advertising and information, which means any effort taken to provide
30 information to, and broaden the understanding of, the general public regarding organic products; and

31
32 (b) Industry information, which means information and programs that would enhance the image
33 of the organic industry.

34
35 (c) Information for farmers and technical service providers, which means information related to
36 agronomic practices and certification requirements, and information supporting the transition of acres to
37 organic production in the United States, increasing organic production, direct and local marketing
38 opportunities, export opportunities, and organic research.

39
40 **§12XX.13 Net organic sales.**

41
42 *Net organic sales* means total gross sales in organic products minus the cost of certified organic
43 ingredients, feed, and inputs used in the production of organic products.

44
45 **§12XX.14 Order.**

1 *Order* means an order issued by the Secretary under section 514 of the Act that provides for a
2 program of generic promotion, research, education and information regarding organic products
3 authorized under the Act.
4

5 **§12XX.15 Organic certificate holder.**
6

7 *Organic certificate holder* means a person who is not exempt or excluded from certification
8 pursuant to 7 CFR 205.101 and who holds a valid organic certificate pursuant to 7 CFR 205.400 through
9 7 CFR 205.406.
10

11 **§12XX.16 Organic handler.**
12

13 *Organic handler* means a person who is handling certified organic products in accordance with
14 the requirements specified in 7 CFR 205.101 or 7 CFR 205.270 through 7 CFR 205.272 and all other
15 applicable requirements of this part 205 and receives, sell, consign, deliver, or transport certified organic
16 products into the current of commerce in the United States, the District of Columbia,
17 the Commonwealth of Puerto Rico, or any territory or possession of the United States.
18

19 **§12XX.17 Organic importer.**
20

21 *Organic importer* means any person who imports certified organic products from outside the
22 United States for sale in the United States as a principal or as an agent, broker, or consignee of any
23 person who produces organic products outside the United States for sale in the United States, and who is
24 listed in the import records as the importer of record for such organic products.
25

26 **§12XX.18 Organic producer.**
27

28 *Organic producer* means a person who has produced certified organic products in accordance
29 with the requirements specified in 7 CFR 205.101 or 7 CFR 205.202 through 7 CFR 205.207 or 7 CFR
30 205.236 through 7 CFR 205.240 and all other applicable requirements of part 205.
31

32 **§12XX.19 Organic product processor.**
33

34 *Organic product processor* means a person who has cooked, baked, heated, dried, mixed,
35 grinded, churned, separated, extracted, cut, fermented, eviscerated, preserved, dehydrated, frozen, or
36 otherwise manufactured organic products, and includes the packaging, canning, jarring, or otherwise
37 enclosing organic food in a container.
38

39 **§12XX.20 Organic products.**
40

41 *Organic products* means products produced under the authority of the Organic Foods Production
42 Act of 1990 (7 U.S.C. 6501-6522), and any amendments thereto.
43

44 **§12XX.21 Part and subpart.**
45

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

4
5 **§12XX.22 Person.**

6
7 *Person* means any individual, group of individuals, partnership, corporation, association,
8 cooperative, or any other legal entity.

9
10 **§12XX.23 Producer net profit.**

11
12 *Producer net profit* means organic producer income received from organic products less the
13 associated production expenses excluding fixed non-cash costs.

14
15 **§12XX.24 Programs, plans and projects.**

16
17 *Programs, plans and projects* means those research, promotion, and information programs, plans
18 or projects established pursuant to the Order.

19
20 **§12XX.25 Promotion.**

21
22 *Promotion* means any action, including paid advertising and the dissemination of information,
23 utilizing public relations or other means, to enhance and broaden the understanding of the use and
24 attributes of organic products for the purpose of maintaining and expanding markets for the organic
25 industry.

26
27 **§12XX.26 Qualified State Commodity Board.**

28
29 The term *Qualified State Commodity Board* means a means a producer or handler governed
30 entity—

31
32 (a) That is authorized by State law or a State government agency;

33
34 (b) That is organized and operating within a State;

35
36 (c) That is not federally administered;

37
38 (d) That receives mandatory contributions and conducts promotion, research, and/or information;
39 and,

40
41 (e) That meets the criteria, established by the Board and approved by the Secretary, relating to
42 the qualifications of such entity to perform its duties under this part as determined by the Board, and is
43 certified by the Board under §12XX.XX, with the approval of the Secretary.

44
45 **§12XX.27 Research.**

1 *Research* means any type of test, study, or analysis designed to enhance or increase the
2 consumption, image, desirability, use, marketability, or production of organic products; or to do studies
3 on nutrition, market data, processing, environmental and human health benefits, quality of organic
4 products, including research directed to organic product characteristics and product development,
5 including new uses of existing organic products, new organic products or improved technology in the
6 production, processing and packaging of organic products.

7
8 **§12XX.28 Secretary.**

9
10 *Secretary* means the Secretary of Agriculture of the United States, or any other officer or
11 employee of the Department to whom authority has been delegated, or to whom authority may hereafter
12 be delegated, to act in the Secretary's stead.

13
14 **§12XX.29 State.**

15
16 *State* means any of the 50 States of the United States, the District of Columbia, the
17 Commonwealth of Puerto Rico, or any territory or possession of the United States.

18
19 **§12XX.30 Suspend.**

20
21 *Suspend* means to issue a rule under 5 U.S.C. 553 to temporarily prevent the operation of an
22 order or part thereof during a particular period of time specified in the rule.

23
24 **§12XX.31 Terminate.**

25
26 *Terminate* means to issue a rule under 5 U.S.C. 553 to cancel permanently the operation of an
27 order or part thereof beginning on a date certain specified in the rule.

28
29 **§12XX.32 United States.**

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

33
34 **§12XX.33 Voluntarily assessed entity.**

35
36 *Voluntarily assessed entity* means any covered entity with gross organic revenue of less than
37 \$250,000 per marketing year that elects to participate in the Order by remitting an assessment pursuant
38 to §12XX.53(a)(1).

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

41
42 **§12XX.40 Establishment and membership.**

43
44 (a) *Establishment of the Board.* There is hereby established a Generic Research and
45 Promotion Program for Organic Board to administer the terms and provisions of this Order. Seats on
46 the Board shall be apportioned as set forth in paragraph (b) of this section. There shall be no alternate
47 Board members.

1
2 (b) The Board shall be composed of 17 members and shall be established as follows:
3

4 (1) One member shall be an organic producer from the Pacific Northwest which consists of the
5 states of Alaska, Hawaii, Washington, Oregon, Montana, and Idaho;
6

7 (2) One member shall be an organic producer from Northern California, which shall include the
8 counties of Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado,
9 Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Mono, Napa, Nevada, Placer, Plumas,
10 Sacramento, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou,
11 Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Yolo, and Yuba;
12

13 (3) One member shall be an organic producer from Southern California, which shall include the
14 counties of Fresno, Imperial, Inyo, Kern, Kings, Los Angeles, Madera, Mariposa, Merced, Monterey,
15 Orange, Riverside, San Benito, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare,
16 Tuolumne, and Ventura;
17

18 (4) One member shall be an organic producer from the Southwest, which consists of the states of
19 Arizona, Colorado, Utah, Nevada, New Mexico, Texas, and Wyoming;
20

21 (5) One member shall be an organic producer from the North Central which consists of the states
22 of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio,
23 South Dakota, and Wisconsin;
24

25 (6) One member shall be an organic producer from the South which consists of the states of
26 Alabama, Arkansas, Florida, Georgia, Kentucky, Oklahoma, Louisiana, Mississippi, North Carolina,
27 South Carolina, Tennessee, Virginia, as well as the territories of Puerto Rico, and the U.S. Virgin
28 Islands, and all other parts of the United States not listed in paragraphs (b)(1), (b)(2), (b)(3), (b)(4),
29 (b)(5), and (b)(7) of this section; and
30

31 (7) One member shall be an organic producer from the Northeast which consists of the states of
32 Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York,
33 Pennsylvania, Rhode Island, Vermont, West Virginia, and the District of Columbia;
34

35 (8) One member shall be a voluntarily assessed entity, who shall have gross organic revenue less
36 than \$250,000;
37

38 (9) Five organic handlers;
39

40 (10) Two organic product processor members;
41

42 (11) One organic importer member; and,
43

44 (12) One at-large public member, who shall be a non-voting member.
45

46 (c) At least once in every five-year period, but not more frequently than once in every three-year
47 period, the Board will review the participation rate of voluntarily assessed entities. The review will be

1 conducted using the Board's annual assessment receipts. If warranted, the Board will recommend to the
2 Secretary that the membership or size of the Board be adjusted to reflect changes in the number of
3 participating voluntarily assessed entities. Any changes in Board composition shall be implemented by
4 the Secretary through rulemaking.

5
6 (d) At least once in every five-year period, but not more frequently than once in every three-year
7 period, the Board will review the geographical distribution of certified organic operations in the United
8 States with respect to the organic producer Board member seats. The review will be conducted using the
9 NOP's list of certified organic operations and, if available, other reliable reports from the industry. If
10 warranted, the Board will recommend to the Secretary that the membership or size of the Board be
11 adjusted to reflect changes in geographical distribution of certified organic operations in the United
12 States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

13
14 **§12XX.41 Nominations and appointments.**

15
16 (a) Nominees must be organic producers, organic handlers, or organic importers with gross
17 organic revenue of at least \$250,000 who produce, handle or import in excess of \$250,000 of organic
18 products in a marketing year, except for the voluntarily assessed entity and the non-voting at-large public
19 members.

20
21 (b) Initial nominations shall be submitted to the Secretary. Before considering any nominations,
22 the Secretary shall publicize the nomination process, using trade press or other means deemed
23 appropriate, and shall conduct outreach to all known organic producers, organic handlers, organic
24 product processors organic importers, and the voluntarily assessed entities that have opted into the
25 program to generate nominees that reflect the range of operations within the organic industry. The
26 Department may use local, state, or regional entities, mail or other methods to elicit potential nominees.
27 The Department shall ensure that all eligible candidates are aware of the opportunity to serve on the
28 Board. The Secretary shall select the initial members of the Board from the nominations submitted.

29
30 (c) Subsequent nominations shall be conducted as follows:

31
32 (1) The Board shall conduct outreach to all known organic producers, organic handlers, organic
33 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. Organic producers
35 and voluntarily assessed entities who have opted into the program may submit nominations to the Board.
36 Organic handlers, organic product processors organic importers, and non-voting at large candidates may
37 submit nominations to the Secretary;

38
39 (2) Organic producers and voluntarily assessed entities who have opted into the program shall
40 provide the Board with a short background statement outlining their qualifications to serve on the Board.
41 Organic handler, organic importer, organic product processor, and non-voting at large nominees shall
42 provide the Secretary with a short background statement outlining their qualifications to serve on the
43 Board;

44
45 (3) Nominees that hold multiple organic certificates (for production, handling, and/or importing)
46 may seek nomination to the Board for any seat for which they are qualified;

1 (4) For the Board seats allocated by region or State, organic producers must be domiciled in the
2 region for which they seek nomination. Nominees must specify for which region they are seeking
3 nomination. The names of nominees shall be placed on a ballot by region. The ballots along with the
4 background statements shall be mailed to all organic producers in that particular region with gross
5 organic revenue in excess of \$250,000 per marketing year, and any organic producer in that region that
6 has remitted a voluntary assessment pursuant to §12XX.52(b) for the previous marketing year. Organic
7 producers may vote in each region in which they produce organic products. The votes shall be tabulated
8 for each region and the nominees receiving the highest number of votes shall be placed at the top of the
9 list in descending order by vote. The top two candidates for each position shall be submitted to the
10 Secretary at least six months before the new Board term begins;

11
12 (5) For the Board seat allocated to voluntarily assessed entities, the names of nominees shall be
13 placed on a ballot. The ballot along with the background statements shall be mailed to all voluntarily
14 assessed entities. The votes shall be tabulated and the nominees receiving the highest number of votes
15 shall be placed at the top of the list in descending order by vote. The top two candidates for this position
16 shall be submitted to the Secretary at least six months before the new Board term begins;

17
18 (6) For the Board seats allocated to organic handlers, organic product processors, the organic
19 importer, and the non-voting at-large nominees may submit applications directly to the Secretary;

20
21 (7) Any person nominated to serve on the Board shall file with the Secretary at the time of the
22 nomination a background questionnaire;

23
24 (8) From the nominations made pursuant to this section, the Secretary shall appoint the members
25 of the Board on the basis of representation provided in §12XX.40;

26
27 (9) No two members of the Board shall be employed by a single corporation, company,
28 partnership or any other legal entity;

29
30 (10) The Board may recommend to the Secretary modifications to its nomination procedures as it
31 deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary;
32 and,

33
34 (11) The Board shall strive for diversity in its membership. This includes diversity that meets
35 Equal Employment Opportunity requirements, as well as diversity among organic products based on the
36 proportions of assessments paid, diversity among crop type, diversity among geographic regions,
37 diversity among the segments represented in the supply chain, diversity in the size of operations,
38 diversity in marketing expertise, and diversity in research experience.

39
40 **§12XX.42 Term of office.**

41
42 (a) With the exception of the initial Board, each Board member shall serve for a term of three
43 years or until the Secretary selects his or her successor. Each term of office shall begin on January 1 and
44 end on December 31. No member may serve more than two full consecutive three-year terms, except as
45 provided in paragraph (b) of this section.
46

1 (b) For the initial Board, the terms of the Board members shall be staggered for two, three and
2 four years. Determination of which of the initial members shall serve a term of two, three or four years
3 shall be recommended to the Secretary by the Board.

4
5 (c) No single corporation, company, partnership or any other legal entity can be represented by an
6 employee or owner for more than two consecutive terms.

7
8 **§12XX.43 Removal and vacancies.**

9
10 (a) The Board may recommend to the Secretary that a member be removed from office if the
11 member consistently fails or refuses to perform his or her duties properly or engages in dishonest acts or
12 willful misconduct. If the Secretary determines that any person appointed under this subpart consistently
13 fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful
14 misconduct, the Secretary shall remove the person from office. A person appointed under this subpart or
15 any employee of the Board may be removed by the Secretary if the Secretary determines that the
16 person's continued service would be detrimental to the purposes of the Act.

17
18 (b) If a member resigns, is removed from office, or dies, or if any member of the Board ceases to
19 work for or be affiliated with an organic producer, organic handler or organic importer, or if an organic
20 producer representing regional producers in the Pacific Northwest, California, Southwest, North Central,
21 South or Northeast ceases to do business in the region he or she represents, such position shall become
22 vacant.

23
24 (c) If a position becomes vacant, nominations to fill the vacancy will be conducted using the
25 nominations process set forth in this Order or the Board may recommend to the Secretary that he or she
26 appoint a successor from the most recent list of nominations for the position.

27
28 (d) A vacancy will not be required to be filled if the unexpired term is less than six months.

29
30 **§12XX.44 Procedure.**

31
32 (a) A majority of the Board members shall constitute a quorum.

33
34 (b) Each voting member of the Board shall be entitled to one vote on any matter put to the Board
35 and the motion will carry only if supported by a majority of Board members, except for
36 recommendations to change the assessment rate or to adopt a budget, both of which require affirmation
37 by two-thirds of the total number of voting Board members.

38
39 (c) At an assembled meeting, all votes shall be cast in person.

40
41 (d) In lieu of voting at an assembled meeting and, when in the opinion of the chairperson of the
42 Board such action is considered necessary, the Board may take action only if supported by a majority of
43 members (unless two-thirds is required under the Order) by mail, telephone, electronic mail, facsimile,
44 or any other means of communication. In that event, all members must be notified and provided the
45 opportunity to vote. Any action so taken shall have the same force and effect as though such action had
46 been taken at an assembled meeting. All votes shall be recorded in Board minutes.

1 (e) There shall be no proxy voting.

2
3 **§12XX.45 Reimbursement and attendance.**

4
5 Board members shall serve without compensation, but shall be reimbursed for reasonable travel
6 expenses, as approved by the Board, which they incur when performing Board business.

7
8 **§12XX.46 Powers and duties.**

9
10 The Board shall have the following powers and duties:

11
12 (a) To meet, organize, and select from among the members of the Board a chairperson, other
13 officers, committees, and subcommittees, as the Board determines appropriate;

14
15 (b) To administer this subpart in accordance with its terms and conditions and to collect
16 assessments;

17
18 (c) To develop and recommend to the Secretary for approval such bylaws as may be necessary
19 for the functioning of the Board, and such rules and regulations as may be necessary to administer the
20 Order, including activities authorized to be carried out under the Order;

21
22 (d) To meet not less than annually, organize, and select from among the members of the Board a
23 chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as
24 the Board determines appropriate.;

25
26 (e) To employ or contract with persons, other than the Board members, as the Board considers
27 necessary to assist the Board in carrying out its duties, and to determine the compensation and specify
28 the duties of the persons;

29
30 (f) To notify all Board meetings through a press release or other means and to give the Secretary
31 the same notice of meetings of the Board (including committee, subcommittee, and the like) as is given
32 to members so that the Secretary's representative(s) may attend such meetings, and to keep and report
33 minutes of each meeting of the Board to the Secretary;

34
35 (g) To develop and submit programs, plans and projects to the Secretary for the Secretary's
36 approval, and enter into contracts or agreements related to such programs, plans and projects, which
37 must be approved by the Secretary before becoming effective, for the development and carrying out of
38 programs, plans or projects of promotion, research, and information. The payment of costs for such
39 activities shall be from funds collected pursuant to this Order. Each contract or agreement shall provide
40 that:

41
42 (1) The contractor or agreeing party shall develop and submit to the Board a program, plan or
43 project together with a budget or budgets that shall show the estimated cost to be incurred for such
44 program, plan or project;

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

4
5 (3) The Secretary may audit the records of the contracting or agreeing party periodically; and
6

7 (4) Any subcontractor who enters into a contract with a Board contractor and who receives or
8 otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.
9

10 (h) To prepare and submit for the approval of the Secretary fiscal year budgets in accordance
11 with §12XX.XX;

12
13 (i) To borrow funds necessary for startup expenses of the Order during the first year of operation
14 by the Board;

15
16 (j) To invest assessments collected and other funds received pursuant to the Order and use
17 earnings from invested assessments to pay for activities carried out pursuant to the Order;

18
19 (k) To recommend changes to the assessment rates as provided in this part;

20
21 (l) To cause its books to be audited by an independent auditor at the end of each fiscal year and at
22 such other times as the Secretary may request, and to submit a report of the audit directly to the
23 Secretary;

24
25 (m) To periodically prepare and make public reports of program activities and, at least once each
26 fiscal year, to make public an accounting of funds received and expended;

27
28 (n) To maintain such minutes, books and records and prepare and submit such reports and
29 records from time to time to the Secretary as the Secretary may prescribe; to make appropriate
30 accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records
31 that accurately reflect the actions and transactions of the Board;

32
33 (o) To act as an intermediary between the Secretary and any organic industry participant;

34
35 (p) To receive, investigate, and report to the Secretary complaints of violations of the Order;

36
37 (q) To recommend to the Secretary such amendments to the Order as the Board considers
38 appropriate; and

39
40 (r) To work to achieve an effective, continuous, and coordinated program of promotion, research,
41 and information and to carry out programs, plans, and projects designed to provide maximum benefits to
42 the organic industry.

43
44 (s) When researching priorities for each marketing year the Board will provide public notice
45 using local, state, or regional entities, mail and/or other methods to solicit public input from all covered
46 entities and will have at least one meeting or conference call to determine the priorities for each
47 marketing year.

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§12XX.47 Prohibited activities.

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

- (a) Any action that would be a conflict of interest;
- (b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivision thereof (including the National Organic Standards Board), other than recommending to the Secretary amendments to the Order; and
- (c) Any promotion that is false, misleading or disparaging to another agricultural commodity.

EXPENSES AND ASSESSMENTS

§12XX.50 Budget and expenses.

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

- (1) A statement of objectives and strategy for each program, plan or project;
- (2) A summary of anticipated revenue, with comparative data for at least one preceding fiscal year, which shall not include the initial budget;
- (3) A summary of proposed expenditures for each program, plan or project. This shall include the following allocation of expenditures:

- (i) The funds shall be allocated as follows: 25 percent for research, 25 percent for information, 25 percent for promotion, and 25 percent for discretionary funds; and
- (ii) Of the funds allocated to research, the producer assessments within that account shall go into an account for regional research, with proposals to be evaluated by a subcommittee of the Board made up of the regional organic producer members from the Pacific Northwest, California, Southwest, North Central, South or Northeast who will make a recommendation that shall be voted on by the Board; and
- (iii) Any expenditures designated for the categories set forth in (i) and (ii) of this section that are not spent in a fiscal year shall carry over for the same category for the following fiscal year.

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

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

3
4 (b) Subject to this section, any amendment or addition to an approved budget must be approved
5 by the Department, including shifting funds from one program, plan or project to another. Shifts of funds
6 that do not result in an increase in the Board's approved budget and are consistent with governing bylaws
7 need not have prior approval by the Department.

8
9 (c) The Board is authorized to incur such expenses, including provision for a reserve, as the
10 Secretary finds reasonable and likely to be incurred by the Board for its maintenance and functioning,
11 and to enable it to exercise its powers and perform its duties in accordance with the provisions of this
12 subpart. Such expenses shall be paid from funds received by the Board.

13
14 (d) With approval of the Department, the Board may borrow money for the payment of startup
15 expenses subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds
16 borrowed shall be expended only for startup costs and capital outlays and are limited to the first year of
17 operation by the Board.

18
19 (e) The Board may accept voluntary contributions. Such contributions shall be free from any
20 encumbrance by the donor and the Board shall retain complete control of their use. The Board may
21 receive funds from outside sources with approval of the Secretary for specific authorized projects.

22
23 (f) The Board may also receive other funds provided through the Department or from other
24 sources, with the approval of the Secretary, for authorized activities.

25
26 (g) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the
27 implementation, administration, enforcement and supervision of the Order, including all referendum
28 costs in connection with the Order.

29
30 (h) For fiscal years beginning three years after the date of the establishment of the Board, the
31 Board may not expend for administration, maintenance, and the functioning of the Board an amount that
32 is greater than 15 percent of the assessment and other income received by and available to the Board for
33 the fiscal year. For purposes of this limitation, reimbursements to the Secretary shall not be considered
34 administrative costs.

35
36 (i) Any program, plan or project receiving funds under this section shall not expend for
37 administration an amount that is greater than 15 percent of the total funds allocated to the program, plan
38 or project.

39
40 (j) The Board may establish an operating monetary reserve and may carry over to subsequent
41 fiscal years excess funds in any reserve so established: *Provided*, that, the funds in the reserve do not
42 exceed one fiscal year's budget of expenses. Subject to approval by the Secretary, such reserve funds
43 may be used to defray any expenses authorized under this subpart.

44
45 (k) Pending disbursement of assessments and all other revenue under a budget approved by the
46 Secretary, the Board may invest assessments and all other revenues collected under this part in:
47

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

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

4
5 (3) Interest bearing accounts or certificates of deposit of financial institutions that are members
6 of the Federal Reserve System;

7
8 (4) Obligations fully guaranteed as to principal interest by the United States; or

9
10 (5) Other investments as authorized by the Secretary.

11
12 **§12XX.51 Financial statements.**

13
14 (a) The Board shall prepare and submit financial statements to the Department on a quarterly
15 basis, or at any other time as requested by the Secretary. Each such financial statement shall include, but
16 not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show
17 expenditures during the time period covered by the report, year-to-date expenditures, and the
18 unexpended budget.

19
20 (b) Each financial statement shall be submitted to the Department within 30 calendar days after
21 the end of the time period to which it applies.

22
23 (c) The Board shall submit to the Department an annual financial statement within 90 calendar
24 days after the end of the fiscal year to which it applies.

25
26 **§12XX.52 Assessments.**

27
28 (a) The Board's programs and expenses shall be paid by assessments on assessed entities, other
29 income of the Board, and other funds available to the Board.

30
31 (b) Subject to the offset specified in §12XX.54 each organic producer, organic handler and
32 organic importer with gross organic revenue of greater than \$250,000 shall pay the following
33 assessments to the Board:

34
35 (1) Organic producers shall have the option of paying one-tenth of one percent of either (A) net
36 organic sales or (B) Producer Net Profit.

37
38 (2) Organic handlers shall pay an assessment of one-tenth of one percent of net organic sales of
39 products that are certified to the "100% organic" or "organic" standard pursuant to 7 CFR § 205.301(a)
40 and (b). Organic handlers shall pay an assessment of 70% of one-tenth of one percent of net organic sales
41 of products that are certified to the "made with organic" standard pursuant to 7 CFR § 205.301(c).

42
43 (3) Organic importers shall pay an assessment to the Board through Customs on organic products
44 imported for marketing in the United States. Organic importers shall pay an assessment of one-tenth of
45 one percent of net organic sales of products that are certified to the "100% organic" or "organic" standard
46 pursuant to 7 CFR § 205.301(a) and (b). Organic importers shall pay an assessment of 70% of one-tenth
47 of one percent of net organic sales of products that are certified to the "made with organic" standard

pursuant to 7 CFR § 205.301(c). If Customs does not collect an assessment for the organic product from an organic importer, the organic importer is responsible for paying the assessment directly to the Board within 90 calendar days after the end of the quarter in which the organic products were imported.

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

(3) Each importer of organic products shall pay through Customs to the Board an assessment of one-tenth of one percent of net organic sales on the organic product imported into the United States identified in the Harmonized Tariff Schedule of the United States (HTS) numbers listed in the table below, which is current as of the date of the publication of the regulation. The HTS is updated biannually and any updates published by the U.S. International Trade Commission will be considered effective immediately upon publication without formal amendment of this section. Organic importers shall pay an assessment of 70% of one-tenth of one percent of net organic sales of products that are certified to the “made with organic” standard pursuant to 7 CFR § 205.301(c). The assessment on imported organic products shall be paid by the organic importer to Customs at the time of entry into the United States and shall be remitted by Customs to the Board. Importation occurs when organic products originating outside the United States are released from custody of Customs and introduced into the stream of commerce within the United States. Organic importers include persons who hold title to foreign organic products immediately upon release by Customs, as well as any persons who act on behalf of others, as agents, brokers, or consignees, to secure the release of organic product from Customs and the introduction of the released organic products into the current of commerce. If Customs does not collect an assessment from an organic importer, the organic importer is responsible for paying the assessment directly to the Board within 90 calendar days after the end of the quarter in which the organic products were imported.

ORGANIC COMMODITIES BY HTS		
HTS No.	Description	Effective Year
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	CUCMBERS 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

1
2 (c) Each organic producer and organic handler shall remit to the Board the amount due no later
3 than 60 days following the end of the year in which the organic product was produced or handled.
4 Quarterly payments may be accepted.

5
6 (d) Any organic producer, organic handler or organic importer with gross organic revenue less
7 than \$250,000 shall have the option of participating in the Order as a voluntarily assessed entity pursuant
8 to §12XX.53(a).

9
10 (e) At least 24 months after the Order becomes effective and periodically thereafter, the Board
11 shall review and may recommend to the Secretary, upon an affirmative vote of at least two-thirds of the
12 voting members of the Board, a change in the assessment rate. A change in the assessment rate is
13 subject to rulemaking by the Secretary.

14
15 (f) When an organic producer, organic handler or organic importer fails to pay the assessment
16 within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest.
17 The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary.
18 All late assessments shall be subject to the specified late payment charge and interest. Persons failing to
19 remit total assessments due in a timely manner may also be subject to actions under federal debt
20 collection procedures.

21
22 (g) The Board may accept advance payment of assessments from any organic producer, organic
23 handler, or organic importer that will be credited toward any amount for which that person may become
24 liable. The Board may not pay interest on any advance payment.

25
26 (h) If the Board is not in place by the date the first assessments are to be collected, the Secretary
27 shall receive assessments and shall pay such assessments and any interest earned to the Board when it is
28 formed.

29
30 **§12XX.53 Voluntarily assessed entities.**

31 (a) *Voluntary assessment.*

1
2 (1) Organic producers with gross organic revenue less than \$250,000 in the last marketing year
3 may elect to participate in the Order as a voluntarily assessed entity by remitting an assessment of one-
4 tenth of one percent of either (A) net organic sales or (B) Producer Net Profit, prior to the start of the
5 marketing year.
6

7 (2) Organic handlers with gross organic revenue less than \$250,000 in the last marketing year
8 may elect to participate in the Order as a voluntarily assessed entity by remitting an assessment of one-
9 tenth of one percent of net organic sales prior to the start of the marketing year.
10

11 (3) (a) Organic importers with gross organic revenue less than \$250,000 in the prior marketing
12 year may elect to participate in the Order as a voluntarily assessed entity by remitting an assessment of
13 one-tenth of one percent of net organic sales prior to the start of the marketing year.
14

15 (b) Organic importers with gross organic revenue of greater than \$250,000 of organic products
16 during the prior marketing year, and that had less than \$250,000 of gross organic revenue during the
17 marketing year shall automatically receive a refund from the Board for the applicable assessments. The
18 Board shall refund such organic importers their assessments as collected by Customs no later than 60
19 calendar days after receipt of such assessments by the Board. The Board will stop the refunding of
20 assessments to such organic importers who during the marketing year had gross organic revenue of more
21 than \$250,000 organic products. These organic importers will be notified accordingly. No interest shall
22 be paid on the assessments collected by Customs or the Board. Any organic importer who receives a
23 refund pursuant to this subsection may elect to participate in the Order as a voluntarily assessed entity
24 by remitting an assessment of one-tenth of one percent of net organic sales.
25

26 (4) If an entity is a combination of an organic producer, organic handler and/or an organic
27 importer, such entity's combined gross organic revenue during a marketing year shall count towards the
28 \$250,000 gross organic revenue threshold.
29

30 (5) Organic producers, organic handlers and organic importers that had gross organic revenue of
31 greater than \$250,000 during the marketing year shall pay the Board the applicable assessments owed
32 within 30 calendar days after the end of the marketing year and submit any necessary reports to the
33 Board pursuant to §12XX.XX.
34

35 (b) Dual-covered commodity exemption. Organic producers and organic handlers of dual-
36 covered commodities may apply to the Board, on a form provided by the Board, for a certificate of
37 exemption prior to the start of the marketing year. This is an annual exemption and organic producers
38 and organic handlers must reapply each year. Such organic producers and organic handlers shall certify
39 that they have remitted an assessment for the dual-covered commodity pursuant to a commodity
40 promotion law. Upon receipt of an application for exemption, the Board shall determine whether an
41 exemption may be granted. The Board may request documentation providing proof of the remittance of
42 the assessment for the dual-covered commodity. The Board will issue, if deemed appropriate, a
43 certificate of exemption to the eligible organic producer or organic handler. It is the responsibility of the
44 organic producer or organic handler to retain a copy of the certificate of exemption.
45

46 **§12XX.54 Assessment offset.**
47

1 The Board may, with the approval of the Secretary, authorize a credit to an organic producer and
2 organic handlers of up to 25 percent of the amount to be remitted to the Board pursuant to §12XX.52 of
3 this subpart to offset collection and compliance costs relating to such assessments and for fees paid to
4 Qualified State Commodity Boards required by State law.

5
6 **PROMOTION, RESEARCH AND INFORMATION**

7
8 **§12XX.60 Programs, plans and projects.**

9
10 (a) The Board shall develop and submit to the Secretary for approval programs, plans and
11 projects authorized by this subpart. Such programs, plans and projects shall provide for promotion,
12 research, information and other activities including consumer and industry information and advertising.

13
14 (b) No program, plan or project shall be implemented prior to its approval by the Secretary. Once
15 a program, plan or project is so approved, the Board shall take appropriate steps to implement it.

16
17 (c) The Board must evaluate each program, plan and project authorized under this subpart to
18 ensure that it contributes to an effective and coordinated program of research, promotion, and
19 information. The Board must submit the evaluations to the Secretary. If the Board finds that a program,
20 plan or project does not contribute to an effective program of promotion, research, or information, then
21 the Board shall terminate such program, plan or project.

22
23 **§12XX.61 Independent evaluation.**

24
25 At least once every five years, the Board shall authorize and fund from funds otherwise available
26 to the Board, an independent evaluation of the effectiveness of the Order and the programs conducted by
27 the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public,
28 the results of each periodic independent evaluation conducted under this section.

29
30 **§12XX.62 Patents, copyrights, trademarks, inventions, product formulations, and publications.**

31
32 Any patents, copyrights, trademarks, inventions, product formulations, and publications
33 developed through the use of funds received by the Board under this subpart shall become part of the
34 public domain.

35
36 **REPORTS, BOOKS, AND RECORDS**

37
38 **§12XX.70 Reports.**

39
40 (a) Organic producers, organic handlers and organic importers will be required to provide
41 periodically to the Board such information as the Board, with the approval of the Secretary, may require.
42 Such information may include, but not be limited to:

43
44 (1) For organic producers and organic handlers:

45
46 (i) The name, address and telephone number of the organic producer and/or organic handler and
47

1 (ii) The value of net organic sales of the organic products.

2
3 (2) For organic importers:

4
5 (i) The name, address and telephone number of the organic importer;

6
7 (ii) The value of the net organic sales of the organic products imported by type; and

8
9 (iii) The country/countries of export.

10
11 (b) For organic producers and organic handlers, such information shall be reported to the Board
12 no later than 60 days following the end of the year or the end of the quarter in which the organic
13 product was produced or handled and shall accompany the collected payment of assessments as
14 specified in §12XX.XX. First quarter data (January-March) shall be reported to the Board no later than
15 the 30th calendar day of May; second quarter data (April-June) shall be reported no later than the 30th
16 calendar day of August; third quarter data (July-September) shall be reported no later than the 30th
17 calendar day of November; and fourth quarter data (October-December) shall be reported no later than
18 the 30th calendar day of February of the following marketing year.

19
20 (c) For organic importers who pay their assessments directly to the Board, such information shall
21 accompany the payment of collected assessments within 60 calendar days after the end of the year or the
22 end of the quarter in which the organic product was imported specified in §12XX.XX.

23
24 **§12XX.71 Books and records.**

25
26 Each organic producer, organic handler and organic importer shall maintain any books and
27 records necessary to carry out the provisions of this subpart and regulations issued thereunder, including
28 such records as are necessary to verify any required reports. Such books and records must be made
29 available during normal business hours for inspection by the Board's or Secretary's employees or agents.
30 Organic producers, organic handlers and organic importers must maintain the books and records for two
31 years beyond the fiscal year to which they apply.

32
33 **§12XX.72 Confidential treatment.**

34
35 All information obtained from books, records, or reports under the Act, this subpart and the
36 regulations issued thereunder shall be kept confidential by all persons, including all employees and
37 former employees of the Board, all officers and employees and former officers and employees of
38 contracting and subcontracting agencies or agreeing parties having access to such information. Such
39 information shall not be available to Board members or organic producers, organic handlers and organic
40 importers. Only those persons having a specific need for such information solely to effectively
41 administer the provisions of this subpart shall have access to such information. Only such information so
42 obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial
43 proceeding or administrative hearing brought at the direction, or at the request, of the Secretary, or to
44 which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in
45 this section shall be deemed to prohibit:

1 (a) The issuance of general statements based upon the reports of the number of persons subject to
2 this subpart or statistical data collected therefrom, which statements do not identify the information
3 furnished by any person; and
4

5 (b) The publication, by direction of the Secretary, of the name of any person who has been
6 adjudged to have violated this part, together with a statement of the particular provisions of this part
7 violated by such person.
8

9 **MISCELLANEOUS**

10
11 **§12XX.80 Right of the Secretary.**

12
13 All fiscal matters, programs, plans or projects, contracts, rules or regulations, reports, or other
14 substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.
15

16 **§12XX.81 Referenda.**

17
18 (a) *Initial referendum.* The Order shall not become effective unless the Order is approved by a
19 majority of eligible voters voting in the referendum. A single eligible voter may cast one vote in the
20 referendum. Bloc voting shall be prohibited.
21

22 (b) *Subsequent referenda.* Every seven years, the Department shall hold a referendum to
23 determine whether assessed entities favor the continuation, suspension, or termination of the Order. The
24 Order shall continue if it is favored by a majority of the assessed entities voting. The Department will
25 also conduct a referendum if 20 percent or more of all assessed entities request the Department to hold a
26 referendum. Bloc voting shall be prohibited.
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.
47

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 Amendments to this subpart may be proposed from time to time by the Board and will be subject
15 to a referendum.

16
17 **§12XX.88 OMB control numbers.**

18
19 The control numbers assigned to the information collection requirements by the Office of
20 Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are
21 OMB control number XXXX-XX (Board nominee background statement) and OMB control number
22 XXXX.XXXX.

23
24 **Subpart B—Referendum Procedures**

25
26 **§12XX.100 General.**

27
28 Referenda to determine whether eligible organic producers, organic handlers and organic
29 importers favor the issuance, continuance, amendment, suspension, or termination of the Generic
30 Research and Promotion Order for Organic shall be conducted in accordance with this subpart.

31
32 **§12XX.101 Definitions.**

33
34 For the purposes of this subpart:

35
36 (a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to
37 delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been
38 delegated or may hereafter be delegated to act in the Administrator's stead.

39
40 (b) *Organic product* means any product produced under the authority of the Organic Foods
41 Production Act of 1990 (7 U.S.C. 6501-6522), and any amendments thereto.

42
43 (c) *Customs or CBP* means the U.S. Customs and Border Protection, an agency of the U.S.
44 Department of Homeland Security.

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

5 (e) *Eligible voter* means any person who is currently (i) an organic producer or organic handler
6 that either has gross organic revenue in excess of \$250,000 in organic products during the representative
7 period, (ii) an eligible importer, or (iii) an organic producer, organic handler or eligible importer that has
8 voluntarily opted to remit an assessment pursuant to §12XX.53. Any person that holds multiple organic
9 certificates (i.e. for both production and handling) will be treated as a separate eligible voter for each
10 organic certificate.
11

12 (f) *Eligible importer* means any person who is currently an organic importer with gross organic
13 revenue in excess of \$250,000 of organic products during the representative period as a principal or as
14 an agent, broker, or consignee of any person who produced or handled organic products outside of the
15 United States for sale in the United States, and who is listed as the importer of record for such organic
16 products. Importation occurs when organic products outside of the United States is released from
17 custody by Customs and introduced into the stream of commerce in the United States. Included are
18 persons who hold title to foreign-manufactured organic products immediately upon release by Customs,
19 as well as any persons who act on behalf of others, as agents or brokers, to secure the release of organic
20 products from Customs when such organic products is entered or withdrawn for use in the United States.
21

22 (g) *Order* means the Generic Research and Promotion Order for Organic.
23

24 (h) *Person* means any individual, group of individuals, partnership, corporation, association,
25 cooperative, or any other legal entity. For the purpose of this definition, the term “partnership” includes,
26 but is not limited to:
27

28 (1) A husband and a wife who have title to, or leasehold interest in organic production, organic
29 handling or organic import entity as tenants in common, joint tenants, tenants by the entirety, or, under
30 community property laws, as community property; and
31

32 (2) So called “joint ventures” wherein one or more parties to an agreement, informal or
33 otherwise, contributed land, facilities, capital, labor, management, equipment, or other services, or any
34 variation of such contributions by two or more parties, so that it results in the production, handling or
35 importation of organic products and the authority to transfer title to the organic products.
36

37 (i) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to
38 conduct the referendum.
39

40 (j) *Representative period* means the period designated by the Department.
41

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

45 **§12XX.102 Voting.**
46

1 (a) Each eligible voter shall be entitled to request a ballot and may cast only one ballot in the
2 referendum.

3
4 (b) Proxy voting is not authorized, but an officer or employee of an eligible voter, or an
5 administrator, executor, or trustee of an eligible voter may cast a ballot on behalf of such entity. Any
6 individual so voting in a referendum shall certify that such individual is an officer or employee of the
7 eligible voter, or an administrator, executive, or trustee of an eligible entity and that such individual has
8 the authority to take such action. Upon request of the referendum agent, the individual shall submit
9 adequate evidence of such authority.

10
11 (c) A single eligible voter may cast one vote in the referendum.

12
13 (d) All ballots are to be cast by mail, in person at a local Farm Services Agency office, or by
14 other means, as instructed by the Department.

15
16 **§12XX.103 Instructions.**

17
18 The referendum agent shall conduct the referendum, in the manner provided in this subpart,
19 under the supervision of the Administrator. The Administrator may prescribe additional instructions,
20 consistent with the provisions of this subpart, to govern the procedure to be followed by the referendum
21 agent. Such agent shall:

22
23 (a) Determine the period during which ballots may be cast;

24
25 (b) Provide ballots and related material to be used in the referendum. The ballot shall provide for
26 recording essential information, including that needed for ascertaining whether the person voting, or on
27 whose behalf the vote is cast, is an eligible voter;

28
29 (c) Give reasonable public notice of the referendum:

30
31 (1) By using available media or public information sources, without incurring advertising
32 expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent
33 information. Such sources of publicity may include, but are not limited to, print and radio; and

34
35 (2) By such other means as the agent may deem advisable.

36
37 (d) The Secretary must provide public notice of instructions on voting and a summary of the terms
38 and conditions of the proposed Order. All eligible voters may request and receive by mail a ballot. No
39 person who claims to be eligible to vote shall be refused a ballot;

40
41 (e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the
42 results in the presence of an agent of a third party authorized to monitor the referendum process;

43
44 (f) Prepare a report on the referendum; and

45
46 (g) Announce the results to the public.

1 **§12XX.104 Subagents.**

2
3 The referendum agent may appoint any individual or individuals necessary or desirable to assist
4 the agent in performing such agent's functions of this subpart. Each individual so appointed may be
5 authorized by the agent to perform any or all of the functions which, in the absence of such appointment,
6 shall be performed by the agent.

7
8 **§12XX.105 Ballots.**

9
10 The referendum agent and subagents shall accept all ballots cast. However, if an agent or
11 subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse
12 above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom
13 challenged, the reasons therefore, the results of any investigations made with respect thereto, and the
14 disposition thereof. Ballots invalid under this subpart shall not be counted.

15
16 **§12XX.106 Referendum report.**

17
18 Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator
19 a report on the results of the referendum, the manner in which it was conducted, the extent and kind of
20 public notice given, and other information pertinent to the analysis of the referendum and its results.

21
22 **§12XX.107 Confidential information.**

23
24 The ballots and other information or reports that reveal, or tend to reveal, the vote of any person
25 covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

26
27 **§12XX.108 OMB control number.**

28
29 The control number assigned to the information collection requirement in this subpart by the
30 Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. is
31 OMB control number XXX.