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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1255

[Document Number AMS-SC-16-0112; PR-B]

RIN 0581-AD55

Organic Research, Promotion, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on procedures for conducting a referendum to determine whether the issuance of a proposed Organic Research, Promotion, and Information Order (proposed Order) is favored by certified organic producers, certified organic handlers, and importers of certified organic products. The organic market includes a range of agricultural commodities such as fruits, vegetables, dairy, meat, poultry, breads, grains, snack foods, condiments, beverages, and packaged and prepared foods, as well as non-food items such as fiber (linen and clothing), personal care products, pet food, and flowers. The procedures would also be used for any subsequent referendum under the proposed Order. The proposed Order is being published separately in this issue of the **Federal Register**. This document also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

DATES: Comments must be received by [Insert date 60 days after the date of publication in the Federal Register]. Pursuant to the Paperwork Reduction Act (PRA), comments on the

information collection burden that would result from this proposal must be received by [Insert date 60 days after the date of publication in the Federal Register].

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments may be submitted on the Internet at: <http://www.regulations.gov> or to the Promotion and Economics Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, S.W., Room 0632-S, Stop 0244, Washington, D.C. 20250-0244; facsimile: (202) 205-2800. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection, including name and address, if provided, in the above office during regular business hours or it can be viewed at <http://www.regulations.gov>.

Pursuant to the PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, N.W., Room 725, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Heather Pichelman, Division Director, Promotion and Economics Division, Specialty Crops Programs, AMS, USDA, 1400 Independence Avenue, S.W., Room 0632-S, Stop 0244, Washington, D.C. 20250-0244; facsimile: (202) 205-2800; or electronic mail: Heather.Pichelman@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425).

Executive Order 12866 and Executive Order 13563

This rule has been determined to be not significant for purposes of Executive Order 12866, as supplemented by Executive Order 13563, and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

What is the purpose of this action?

This proposed rule invites comments on procedures for conducting a referendum to determine whether covered domestic certified organic producers, certified organic handlers and importers of organic products favor issuance of a proposed Order.¹ Accordingly, this rule would add subpart B to part 1255 that would establish procedures for conducting the referendum. The procedures would cover definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information. The U.S. Department of Agriculture (USDA) would conduct the referendum. The program would be implemented if it is favored by a majority of domestic certified organic producers, certified organic handlers and importers of organic products voting in the referendum. The procedures would be applicable for the initial referendum and future referenda under the proposed Order.

This document also announces AMS's intent to request approval by the OMB of new

¹ For clarification, the phrase "organic products" used throughout the proposed Order and referendum procedures is synonymous with the terms: "certified products" or "certified organic products". The words "certified organic" are used to modify the terms "certified organic handler" at section 1255.9 and "certified organic producer" at section 1255.10 for the purpose of reiterating the concept that certified products originate from certified entities.

information collection requirements to implement the program. The proposed Order is being published separately in this issue of the **Federal Register**.

What are the key statutes and regulations governing this action?

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425) (Act) provides that it shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

The Act authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. To date, there are 10 commodity promotion programs (i.e., research and promotion programs or R&P programs) operating under the authority of the Act. On February 7, 2014, section 10004 of the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113–79) amended section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), which authorizes generic commodity promotion programs under the various commodity promotion laws, to allow for an organic commodity promotion order. Specifically, the definition of “agricultural commodity” under section 513(1)(E) of the Act was amended to include “products, as a class, that are produced on a certified organic farm (as defined in 7 U.S.C. 6502); and certified to be sold or labeled as “organic” or “100 percent organic” (as defined in part 205 of title 7, Code of Federal Regulations

(or a successor regulation)). Should this proposed rule become final, pursuant to section 10004 of the 2014 Farm Bill, the regulatory language currently exempting organic commodities from assessment by generic commodity promotion programs created under the various commodity promotion laws (7 U.S.C. 7401(e)) shall no longer be in effect. Such commodities would then become “dual-covered commodities”, and persons producing, handling and importing them would need to elect to pay assessments to the commodity-specific program, or the organic commodity promotion program.

The 2014 Farm Bill amendments to the Act allowed the organic industry to submit a proposal for an organic R&P program. As the membership-based business association for the organic industry in North America, the Organic Trade Association (OTA) took on the role as a proponent group in the development of an organic R&P program proposal. OTA represents businesses across the organic supply chain and addresses all things organic, including food, fiber/textiles, personal care products, and new sectors as they develop. To develop the proposal, OTA established and collaborated with the 7-member GRO Organic Core Committee. The GRO Organic Core Committee is a subset of OTA’s larger Organic Research and Promotion Program Steering Committee. It included OTA subcommittee chairs and other industry leaders who built on the outreach and input from the larger committee to guide the development of a proposed Order.

Under section 519 of the Act, a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an

order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

What are organic products?

To make an organic claim or use the USDA Organic Seal, the final product must follow the applicable production, handling and labeling regulations and go through the organic certification process specified at 7 CFR part 205. To become certified, producers and handlers must apply to a USDA-accredited certifying agent, develop and implement an organic system plan, and be inspected. Organic certification allows producers and handlers to sell their raw, processed, and multi-ingredient products as organic. Each production or handling operation that produces or handles crops, livestock, livestock products, or other agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))" must be certified according to the USDA organic regulations (7 CFR part 205).²

Who would be assessed under this program?

² USDA organic regulations at 7 CFR 205.101 provides for some exclusions and exemptions from certification. For example, a production or handling operation that sells agricultural products as "organic" but whose gross agricultural income from organic sales totals \$5,000 or less annually is exempt from organic certification but must comply with

Consistent with the definition of “covered person” at 7 U.S.C. 7401, which describes who may be subject to an organic commodity promotion order as “a producer, handler, marketer, or importer of an organic agricultural commodity”, the definition for “assessed entity” at section 1255.4 states that this order is applicable to any certified organic producer or certified organic handler that has gross organic sales in excess of \$250,000 for the previous marketing year, any importer with a transaction value greater than \$250,000 in organic products during the previous marketing year, and any voluntarily assessed entity. The proposed Order would provide for an initial assessment rate of one-tenth of one percent of net organic sales for domestic certified organic producers and certified organic handlers with gross organic sales greater than \$250,000 in the previous marketing year. Net organic sales would be equal to total gross sales in certified organic products minus (a) the cost of certified organic ingredients, feed, and inputs used in the production of certified products, and (b) the cost of any non-organic agricultural ingredients used in the production of certified products.³ Certified organic handlers may also deduct the cost of certified organic products purchased from producers. Importers with transaction value that exceeds \$250,000 in organic products during the prior year would remit one-tenth of one percent of the declared transaction value of those certified organic products at the time of importation. This means that importers would remit assessments to the Board upon taking ownership of the imported product.

Under the permissive terms under section 516 of the Act, the term “assessed entity” also allows orders to provide exemptions for covered persons. More specifically, certified organic

the applicable organic production and handling requirements as specified at 7 CFR 205.101(a)(1).

³ Examples of organic input costs that may be deducted from gross sales include fertilizer, lime, and soil conditioners; agricultural chemicals and other organic materials for pest control; seeds, plants, vines and trees;

producers and certified organic handlers with gross organic sales less than or equal to \$250,000 of certified organic products for the previous marketing year would be exempt, and have the option to choose to pay assessments into the program as “voluntarily assessed” entities. Importers with \$250,000 or less in transaction value of imported organic products during the prior marketing year are exempt from remitting assessments to the board, and could also opt to be voluntarily assessed. Finally, certified organic producers, certified organic handlers, and importers of dual-covered commodities would be eligible to apply for an exemption.⁴ Such entities also have the option to choose to pay assessments into the program as “voluntarily assessed” entities, which would make them eligible to participate in the referendum. The purpose of the program would be to strengthen the position of certified organic products in the marketplace, support research to benefit the organic industry, and improve access to information and data across the organic sector.

What products would be covered under this program?

Understanding that section 7412(1)(E)(ii) of the Act specified that the scope of an “agricultural commodity” as limited to products that are “certified to be sold or labeled as “organic” or “100 percent organic”, this proposal would assess only the value added of the certified organic ingredient content of “made with organic” products rather than the entire certified product. Consequently, the scope of covered products spans a range of agricultural commodities such as fruits, vegetables, dairy, meat, poultry, breads, grains, snack foods,

livestock purchased or leased; and feed purchased for livestock and poultry.

⁴The 2014 Farm Bill amendments to 7 U.S.C. 7401 also included a requirement for an organic research and promotion order to allow covered persons (which can include producers, handlers, and importers, depending upon the order) to elect whether to be assessed under the organic commodity promotion order or another applicable agricultural commodity promotion order. For example, an organic blueberry producer would have the option to pay

condiments, beverages, and packaged and prepared foods, as well as non-food items such as fiber (linen and clothing), personal care products, pet food, and flowers. While the USDA organic regulations do not detail standards specific to non-food items, items that are agricultural products (e.g., pet food) and that meet the certification requirements of the USDA organic regulations can be certified and labeled “organic”, irrespective of the end use of the product.⁵ There are currently 38 Harmonized Tariff Schedule (HTS) codes representative of imported organic agricultural products. These codes and their product descriptions are listed in the table below.

into the blueberry program or the organic program.

⁵ In August 2005, the NOP issued a Policy Memorandum 11-2 to certifying agents, stating that agricultural products which meet the NOP certification standards can be certified and labeled “organic,” irrespective of the end use of the product. Policy Memo 11-2 is available on the AMS website in the NOP Handbook at: <http://www.ams.usda.gov/rules-regulations/organic/handbook>.

HTS Code	HTS Description
0409000005	NATURAL HONEY, CERTIFIED FOR ORGANIC
0703200005	GARLIC, FRESH WHOLE BULBS, CERTIFIED ORGANIC
0709604015	SWT BELL PEPPER,FRT OF CAPSICUM/PIMENTA,GRNHSE,CERT ORGANIC
0709604065	SWT BELL PEPPER,OTH,FRUIT,CAPSICUM/PIMENTA,CERT ORGANIC,OTHER
0802120005	SHELLED ALMONDS, CERTIFIED ORGANIC
0803900025	FRESH BANANAS, CERTIFIED ORGANIC
0804400020	AVOCADOS, HASS & HASS LIKE, CERTIFIED ORGANIC
0804504045	FRESH MANGOES ENTERED SEPT 1 TO MAY 31,CERTIFIED ORGANIC
0804506045	FRESH MANGOES ENTERED JUNE 1 TO AUG 31,CERTIFIED ORGANIC
0808100045	APPLES, FRESH, VALUED > \$0.22 PER KG, CERTIFIED ORGANIC
0808302015	PEARS, ORGANIC, ENTERED 4/1 - 6/30, FRESH
0808304015	PEARS, ORGANIC, ENTERED 7/1 - 3/31 FRESH
0808402015	QUINCES;FRESH,APR 1 THRU JUNE 30,CERTIFIED ORGANIC
0808404015	QUINCES, ORGANIC, ENTERED 7/1 - 3/31, FRESH
0810400026	BLUEBERRIES, FRESH, CULTIVATED, CERTIFIED ORGANIC
0901110015	ARABICA COFFEE NOT ROAST/DECAFFEINATED, CERTIFIED ORGANIC
0901110045	COFFEE,NOT ROASTED,NOT DECAFFEINATED,OTHER,CERTIFIED ORGANIC
0901120015	COFFEE, DECAFFEINATED, NOT ROASTED, CERTIFIED ORGANIC
0901210035	COFFEE,ROASTED;NOT DECAFFEINATED,<=2KG RET CONT,CERT ORGANIC
0901210055	COFFEE,ROASTED,N/DECAFFEINATED,NOT 2KG OR LESS,CERT ORGANIC
0901220035	COFFEE,ROASTED,DECAFFEINATED,<= 2 KG RETAIL CONT,CERT ORGANIC
0902101015	FLAVORED GREEN TEA IMMEDIATE PACKING NOT EXCEED 3KG,CERT ORGANIC
0902109015	GREEN TEA(NOT FERM) IMMEDIATE PACKINGS NTE 3KG,N/FLVR,CERT ORGANIC
0902209015	OTHER GREEN TEA (NOT FERMENTED),N/FLAVORED,CERTIFIED ORGANIC
0902300015	BLACK TEA FERMENT/PRT FERMENTED,IN TEA BAGS,<=3KG,CERT ORGANIC
0910110010	GINGER, NOT GROUND, CERTIFIED ORGANIC
1001190025	DURUM WHEAT, CERTIFIED ORGANIC, EXCEPT SEED
1005902015	CORN (MAIZE) - YELLOW DENT CORN, CERTIFIED ORGANIC
1006309015	RICE:OTHER SEMI OR WHOLLY MILLED POL/GLZ OR NOT,CERT ORGANIC
1201900010	SOYBEANS, ORGANIC, WHETHER OR NOT BROKEN, NESOI
1204000025	FLAXSEED (LINSEED), FOR USE AS OIL STOCK, W/N BROKEN,ORGANIC
1509102030	CER OR LB EX VIRGIN OLIVE OIL N/CHEM MOD CON LT 18 KG
1509102040	OLIVE OIL,NOT CHEM.MOD.VIRGIN,WT< 18KG,ORG,OTH THAN XTRA VIR
1509104030	OLIVE OIL,NOT CHEM MOD,VIRGIN,OTH,CERT ORG,LAB EXTRA VIRGIN
1509104040	OLIVE OIL,NOT CHEM MOD,VIRGIN,OTH,CERT ORG,NT LAB EXTRA VIR
2204100065	SPARKLING WINE, OF FRESH GRAPES VALUED >\$ 1.59 PER LITER,ORG
2204215035	RED WINE,>\$1.05 PER L,ALCHL STRNGTH BY VOLM<=14%,CONT<=2L,ORG
2204215050	WHEEWINE >\$1.05/L,ALCHOL STRNGTH BY VOLUM<=14%,CONT<=2L,ORG

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on these entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural support services firms (handlers and importers) as those having annual receipts of no more than \$7.5 million.

In 2014, there were a total of 19,466 certified organic operations in the U.S. and its territories.⁶ This total includes both certified organic producers and certified organic handlers. The number of operations that were certified solely as organic handlers, according to NOP, totaled 8,327 entities. The remaining 11,139 certified organic entities include operations that are certified only as producers and operations that are certified as both producers and handlers. Organic producers are also required to be certified as organic handlers in order to sell, process, or package agricultural products, except in such cases where a producer is simply selling, transporting or delivering crops or livestock to a handler (7 CFR 205.2).

Data from USDA's National Agricultural Statistics Service (NASS) 2014 Organic Survey show that about 91 percent of certified organic producers had 2014 organic sales value of \$750,000 or less. Applying this proportion to the 11,139 certified organic producers referenced earlier results in 10,126 producing entities being considered small.

There is no one catch-all definition by the SBA of what constitutes a small handler of

agricultural products. Therefore, to maintain consistency with other federal programs and marketing orders, AMS defines a small handler as one which has no more than \$7.5 million in annual receipts as defined by the SBA under subsector 115 of the North American Industry Classification System (NAICS), “Support Activities for Agriculture and Forestry”.⁷ According to the 2012 County Business Patterns and 2012 Economic Census released June 22, 2015, about 95 percent of firms classified under subsector 115 of NAICS had less than \$7.5 million in annual receipts and would be considered small. Applying this proportion to the number of certified organic handlers results in an estimated 7,895 handler operations out of 8,327 being considered small under the SBA definition.

According to data from the U.S. Customs and Border Protection (CBP), there were 2,135 importers of organic products with codes in the HTS in 2014. Of these, about 98 percent had annual sales revenue of less than \$7.5 million in 2014. Adding the 2,135 number of organic importers to the 19,466 combined number of certified organic producers and handlers results in a total of 21,601 operations with sales of certified organic products in the U.S. Of this total, 20,121 entities, or 93 percent, would be considered to be small under the SBA definitions.

The Organic Industry Survey, which was carried out by the Nutrition Business Journal (NBJ) on behalf of OTA, reported 2014 retail sales of all organic commodities at \$39.1 billion. Imports of the 38 organic products with HTS codes listed previously amounted to more than \$1.2

⁶ NOP Organic Integrity database. *Available at:* <https://apps.ams.usda.gov/integrity/>.

⁷ U.S. Small Business Administration, “Table of Small Business Size Standards Matched to North American Industry Classification System Codes”, February 26, 2016.

billion in 2014. In 2014, NASS, which collects data on farm-level production and sales, reported total certified organic sales of nearly \$5.5 billion, up 54 percent from three years previously.⁸

This proposed rule invites comments on procedures for conducting a referendum to determine whether issuance of a proposed Order is favored by domestic certified producers, certified handlers and importers of certified organic products. Organic agricultural ingredients are used in a range of products (e.g. food items (fruits, vegetables, dairy, meat, poultry, breads, grains, snack foods, condiments, beverages, and packaged and prepared foods), and non-food items (fiber (linen and clothing), supplements, personal care products, pet food, household products, and flowers)). The procedures would also be used for any subsequent referendum under the proposed Order. USDA would conduct the referendum.

The Act provides for alternatives within the terms of a variety of provisions. Paragraph (e) of section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) by a majority of those persons voting; (2) by persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under an order. OTA recommended that the program be implemented if it is favored by a majority of assessed entities voting in the referendum. For example, if 10,000 certified organic producers, certified organic handlers, and importers voted in a referendum,

⁸ National Agricultural Statistics Service, *2014 Organic Survey*, U.S. Department of Agriculture (September 2015), p. 1, available at <http://usda.mannlib.cornell.edu/usda/current/OrganicProduction/OrganicProduction-09-17-2015.pdf>

5,001 would have to vote in favor of the proposed Order for it to pass in the referendum. It is proposed that a single assessed entity may cast one vote in the referendum. A single entity is recognized by its individual tax identification number. This is a modification from the proponent's proposal, which recommended a single assessed entity would have one vote for each organic certificate held.

Regarding the economic impact of this rule on affected entities, eligible domestic certified producers, certified handlers and importers of certified organic products would have the opportunity to participate in the referendum. The proposed Order would exempt: (a) producers and handlers with gross sales of \$250,000 or less of certified organic products for the previous marketing year, (b) importers with \$250,000 or less in transaction value of imported organic products during the prior marketing year, and (c) certified organic producers, certified organic handlers, and importers of dual-covered commodities who select to pay into the commodity-specific program instead of the organic program. Entities under the \$250,000 thresholds stated above would have the option to choose to pay assessments into the program as "voluntarily assessed" entities, which would make them eligible to participate in the referendum. Certified producers, certified handlers and importers of certified organic products exercising their exemptions would not be eligible to participate in the referendum.

AMS used 2014 data from multiple sources, such as the USDA Economic Research Service (ERS), USDA NASS, USDA Foreign Agricultural Service (FAS), USDA National Organic Program (NOP), U.S. Customs and Border Protection (CBP), and OTA industry surveys for consistency in estimating potential assessment income at producer, handler and importer

levels. Based on an assumption that there is no participation by voluntarily assessed entities, of the 11,139 producers, 8,327 handlers, and 2,135 importers, it is estimated that about 2,691 producers, 5,015 handlers, and 326 importers would pay assessments under the proposed Order and thus be eligible to vote in the referendum. Assessment revenue that would be collected at the proposed exemption level of \$250,000 in gross annual revenue from organic sales would be \$25.3 million.⁹ Of this assessment revenue, about 14 percent would come from producers, 81 percent would come from handlers, and 5 percent would be from importers. In terms of the total value of exempt sales and the total number of exempt entities at the proposed exemption level, AMS estimates that about 5 percent of gross organic sales value would be exempt, and 63 percent of certified organic producers and handlers and organic importers, combined, would be exempt. At the producer level, 12 percent of certified organic sales value would be exempt, and 76 percent of entities would be exempt. For handlers, 3 percent of certified organic sales value and 40 percent of entities would be exempt. Of the total importers of organic products, 4 percent of organic sales value would be exempt, and 85 percent of entities would be exempt.

Voting in the referendum is optional. If domestic certified organic producers, certified organic handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they favor the proposed program.

Regarding alternatives, USDA considered requiring voters to vote in person at various USDA offices across the country. USDA also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot

⁹ No expense data exists for handlers, so input costs have not been deducted from total sales at the handler level. This means that handler assessable sales is likely lower than what is reported; however, all assumptions made in estimating potential assessment revenue have been made to generate a conservative figure.

would be more cost effective and reliable. USDA would provide easy access to information for potential voters through a toll free telephone line.

This action would impose an additional reporting burden on assessed entities. Those who would be assessed would have the opportunity to complete and submit a ballot to USDA indicating whether or not they favor implementation of the proposed Order. The specific burden for the ballot is detailed later in this document in the section titled **Paperwork Reduction Act**. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Regarding outreach efforts, USDA would keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA would also publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

USDA has performed this initial RFA analysis regarding the impact of this proposed rule on small businesses.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: Organic Research, Promotion, and Information Order.

OMB Number: 0581-NEW.

Expiration Date of Approval: 3 years from OMB date of approval.

Type of Request: New information collection for an organic research, promotion, and information program.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act. The information collection concerns a proposal received by USDA for a national research and promotion program for the organic industry. The program would be financed by an assessment on importers and domestic certified organic producers and certified organic handlers of organic products, and would be administered by a board of industry members selected by the Secretary. The program would exempt: (a) certified organic producers and certified organic handlers with gross sales \$250,000 or less of certified organic products for the previous marketing year, (b) importers with \$250,000 or less in transaction value of imported organic products during the prior marketing year, and (c) certified organic producers, certified organic handlers, and importers of dual-covered commodities, as applicable. Exports of certified organic products from the United States would also be exempt from assessments. A referendum would be held among eligible domestic certified organic producers, certified organic handlers and importers of certified organic products to determine whether they favor implementation of

the program prior to it going into effect. The purpose of this program would be to: (1) develop and finance an effective and coordinated program of research, promotion, industry information, and consumer education regarding organic commodities; and (2) maintain and expand existing markets for organic commodities.

The information collection requirements in this rule concern the referendum that would be held to determine whether the program is favored by the industry. Domestic certified organic producers and certified organic handlers with gross organic sales greater than \$250,000, importers with transaction value that exceeds \$250,000 in organic products during the prior year, and “voluntarily assessed” entities would be eligible to participate in the referendum. The ballot would be completed by eligible domestic certified organic producers, certified organic handlers, and importers who want to indicate whether or not they support implementation of the program. The following burden estimate assumes 0% voluntarily assessed participation.

REFERENDUM BALLOT

Estimate of Burden: Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

Respondents: Domestic certified organic producers, certified organic handlers, and importers.

Estimated Number of Respondents: 8,032 (7,706 domestic producers and handlers and 326 importers).

Estimated Number of Responses per Respondent: 1 every 7 years (0.14).

Estimated Total Annual Burden on Respondents: 281.12 hours.

The ballot would be added to the other information collections approved under OMB No. 0581-NEW.

An estimated 8,032 respondents would provide information to the Board (7,706 domestic producers and handlers and 326 importers). The estimated cost of providing the information to the Board by respondents would be \$9,754.99. This total has been estimated by the adding the cost of the hours required for producer and handling reporting (269.71 hours multiplied by \$33.60 (the average mean hourly earnings of certified producers and handlers) and importer reporting (11.41 hours multiplied by \$30.85, the average mean hourly earnings of importers). Data for computation of the hourly rate for producers and handlers (Occupation code 11-9013: Farmers, Ranchers, and other Agricultural Managers) and importers (Occupation code 13-1020: Buyers and Purchasing Agents) was obtained from the U.S. Department of Labor, Bureau of Labor Statistics.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

Request for Public Comment under the Paperwork Reduction Act

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including

the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal organic production areas in the United States; (d) the accuracy of USDA's estimate of the number of domestic certified organic producers, certified organic handlers, and importers of organic products that would be covered under the program (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581-NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this rule.

A 60-day comment period is provided to allow interested persons to comment on this proposed information collection. All written comments received will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

List of Subjects in 7 CFR Part 1255

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Organic, Promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations, as proposed to be amended elsewhere in this issue of the Federal Register, be further amended as follows:

PART 1255—ORGANIC RESEARCH AND PROMOTION ORDER

1. The authority citation for part 1255 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. Add Subpart B to read as follows:

Subpart B—Referendum Procedures

Sec.

1255.100 General.

1255.101 Definitions.

1255.102 Voting.

1255.103 Instructions.

1255.104 Subagents.

1255.105 Ballots.

1255.106 Referendum report.

1255.107 Confidential information.

1255.108 OMB Control number.

Subpart B—Referendum Procedures

§1255.100 General.

Referenda to determine whether eligible certified organic producers, certified organic

handlers and importers of organic products favor the issuance, continuance, amendment, suspension, or termination of the Organic Research, Promotion, and Information Order shall be conducted in accordance with this subpart.

§1255.101 Definitions.

For the purposes of this subpart:

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

(b) *Assessed entity* means any certified organic producer or certified organic handler that has gross organic sales in excess of \$250,000 for the previous marketing year, any importer with a transaction value greater than \$250,000 in organic products during the previous marketing year, and any voluntarily assessed entity.

(c) *Certification or certified*. A determination made by a USDA-accredited certifying agent that a production or handling operation is in compliance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522) and the regulations in 7 CFR part 205 or to an authorized international standard, and any amendments thereto, and which is documented by a certificate of organic operation.

(d) *Certified operation*. A crop or livestock production, wild-crop harvesting or handling operation, or portion of such operation that is certified by a USDA-accredited certifying agent as utilizing a system of organic production or handling as described by the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522) and the regulations in 7 CFR part 205.

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

(f) *Certified organic producer* means a person who produces certified organic products in accordance with the definition specified in 7 CFR 205.100, the requirements specified in 7 CFR 205.202 through 7 CFR 205.207 or 7 CFR 205.236 through 7 CFR 205.240, and all other applicable requirements of part 205.

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

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

(i) *Dual-covered commodity* means an agricultural commodity that is produced on a certified organic farm and is covered under this part and any other agricultural commodity promotion order issued under a commodity promotion law.

(j) *Gross organic sales* means the total amount the person received for all organic products during the fiscal year without subtracting any costs or expenses.

(k) *Importer* means any person who imports certified organic products from outside the

United States for sale in the United States as a principal or as an agent, broker, or consignee of any person who produces organic products outside the United States for sale in the United States, and who is listed in the import records as the importer of record for such organic products.

Organic importers can be identified through organic certificates, import certificates, HTS codes, or any other demonstration that they meet the definition above.

(l) *Ingredient*. Any substance used in the preparation of an agricultural product that is still present in the final commercial product as consumed.

(m) *National Organic Program* means the program authorized by the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501-6522) for the purpose of implementing its provisions.

(n) *Net organic sales* means total gross sales in organic products minus:

(1) The cost of certified organic ingredients, feed, and agricultural inputs used in the production of certified products; and

(2) The cost of any non-organic agricultural ingredients used in the production of certified products.

(o) *Order* means the Organic Research, Promotion, and Information Order.

(p) *Organic* means a labeling term that refers to an agricultural product produced in accordance with the Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501-6522) and the regulations in 7 CFR part 205.

(q) *Organic products* means products produced and certified under the authority of the Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522) and the regulations in 7 CFR part

205 or to an authorized international standard, and any amendments thereto.

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

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

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

(s) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

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

(u) *Voluntarily assessed entity* means any covered person with gross organic sales or transaction value of \$250,000 or less for the previous marketing year and thus not subject to assessment under this part, but elects to participate in the Order by remitting an assessment pursuant to §1255.52

§1255.102 Voting.

(a) Each assessed entity shall be entitled to cast one ballot in the referendum. Organic importers shall be entitled to request one ballot per business entity that meets the definition of importer.

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

(c) Each assessed entity may cast one ballot in the referendum.

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

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

(1) A dual-covered entity must demonstrate that it has paid into the organic research and promotion program for a majority of the years since the most recent referendum; or

(2) A voluntarily-assessed entity must demonstrate that it has paid into the organic research and promotion program for a majority of the years since the most recent referendum; or

(3) An entity must demonstrate that it attained its organic certification since the most

recent referendum; or

(4) An assessed entity that does not meet any of the above descriptions must demonstrate that it has paid into the organic research and promotion program every year since the most recent referendum.

§1255.103 Instructions.

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

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

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

(c) Give reasonable public notice of the referendum:

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

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

(d) The Secretary must provide public notice of instructions on voting and a summary of the terms and conditions of the Order. All assessed entities may request and receive by mail a

ballot. No person who claims to be an assessed entity shall be refused a ballot;

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

(f) Prepare a report on the referendum; and

(g) Announce the results to the public.

§1255.104 Subagents.

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

§1255.105 Ballots.

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

§1255.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the

extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

§1255.107 Confidential information.

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

§1255.108 OMB control number.

The control number assigned to the information collection requirement in this subpart by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is OMB control number 0581-NEW.

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Dated: January 9, 2017

Elanor Starmer
Administrator
Agricultural Marketing Service

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