

Generic Research and Promotion Order for Organic (GRO Organic) PROGRAM SUMMARY

In a groundbreaking move for the nation's organic sector, the Organic Trade Association, in collaboration with the GRO Organic Core Committee, has formally petitioned the U.S. Department of Agriculture (USDA) for a research and promotion check-off program for organic. This action reflects three years of dialogue with organic farmers, processors, handlers and businesses in town hall meetings, panel discussions, and phone calls. As proposed, the organic check-off would be a full supply chain check-off program, promoting the organic brand and organic production practices. A summary of the proposal is shared here along with the enclosed excerpt of the regulation. A copy of the full application can be found on the GROorganic.net web site. Please contact OTA (info@ota.com or 802.275.3800) with questions, or if you are interested in speaking with a member of the GRO Organic Core Committee.

Program Objectives

The American organic industry is relatively young, with a national standard set forth by the U.S. Department of Agriculture (USDA) in 2002. Despite the newness of the industry, it has experienced rapid growth with organic sales increasing by double digits annually in recent years. U.S. organic sales reached nearly \$40 billion in 2014.¹ The rapid growth of the U.S. organic industry has given rise to unique challenges that need to be addressed in order for the industry to sustain and continue its current growth. The GRO Organic Program would help to address such challenges as domestic supply shortages, viable pest management options, and market confusion.

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

Domestic Supply Shortages

Supply shortages in the U.S. organic industry is one of the greatest challenges facing the industry today. Despite the continued growth in organic production, organic handlers are not able to keep up with demand, which has grown at an even faster rate than production. According to a 2004 USDA Economic Research Service (ERS) report, "44 percent of organic handlers reported short supplies of needed ingredients or products" and "13 percent were unable to meet market demand for at least one of their organic products that year."² In addition, 52 percent of organic companies said that "a lack of dependable supply of organic

¹ Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Overview*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture.aspx>. See also OTA's 2015 U.S. Organic Industry Survey (May 2015)

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

raw materials has restricted their company from generating more sales of organic products.” Organic food sales currently make up four percent of total food sales, while acreage devoted to organic agriculture is less than one percent of total U.S. cropland.

There has been increasing news coverage of the organic supply shortage. Bloomberg recently wrote about the lack of organic farmers and low supplies of organic feed grain that is restraining organic dairy production across the U.S. and causing “severe shortages in the organic dairy aisle.”³ The lack of domestic organic barley farmers, in addition to weather problems, is forcing brewers to increase prices and import more expensive foreign organic barley as reported in USA Today.⁴ Maine’s Public Broadcast News reported that one of the reasons behind the supply shortage was the lack of farmers willing to transition to organic due to the cost to transition and other factors.⁵ Agri-Pulse also reported the struggle to meet demand that food manufacturers are facing because not enough farmers are transitioning to organic due to “various financial and regulatory hurdles.”⁶ Demand for organic eggs is up, but there are not enough U.S. farmers growing organic soybeans and organic corn to feed the organic chickens making organic egg producers cut back on production or buy expensive foreign organic feed as reported by NPR.⁷

The organic industry has identified a growing need to close the gap between U.S. organic production and the demand for organic products. More needs to be done to assist farmers as they transition to organic agriculture, like programs educating farmers on the certification process, the organic label, and organic farming techniques. The lack of farmers willing and able to transition to organic has led organic processors and handlers to look abroad to fulfill their orders. Organic milk producers must turn to imports to source enough organic feed for their cattle.⁸ The amount of foreign-grown organic products imported into the U.S. demonstrates a need for growth in U.S. organic – which would be supported by a USDA-sanctioned organic research and promotion board.

Research for Pest Management Solutions

Organic farming faces very real and imminent threats from invasive species and other types of pests. There was a supply shortage of organic apples across the U.S. in April 2014 due to insect problems and some acreage reduction.⁹ Organic farmers, however, face an even harder battle in developing an effective program of pest management. Not only do organic farmers have to find the right combinations of techniques and substances, the pool of available substances is limited. Organic farmers are limited to the substances that are approved in the National List of Allowed and Prohibited Substances (National List), which includes limited approved pest management strategies.

³ Lydia Mulvany, *Grocery Stores Are Running Out of Organic Milk*, Bloomberg Business (February 9, 2015), available at <http://www.bloomberg.com/news/articles/2015-02-10/not-only-hipsters-cry-when-u-s-grocers-run-out-of-organic-milk>.

⁴ Tony Kiss, *Barley Shortages has Craft Beer Makers Foaming*, USA Today (February 3, 2015), available at <http://www.usatoday.com/story/money/business/2015/02/03/beer-barley-shortage/22792533/>.

⁵ Jennifer Mitchell, *Organic Milk Scarce on Maine Store Shelves as Demand Outstrips Supply*, MPBN News (January 15, 2015), available at <http://news.mpbn.net/post/organic-milk-scarce-maine-store-shelves-demand-outstrips-supply>.

⁶ Aarian Marshall, *Organic Farmers Struggle with Recruiting – and Supply*, Agri-Pulse (June 4, 2014), available at <http://www.agri-pulse.com/Organic-farmers-struggle-with-recruiting-and-supply-06042014.asp>.

⁷ Dan Charles, *Chickens That Lay Organic Eggs Eat Imported Food, And It's Pricey*, NPR (February 27, 2014), available at <http://www.npr.org/blogs/thesalt/2014/02/26/283112526/chickens-laying-organic-eggs-eat-imported-food-and-its-pricey>.

⁸ Mark Peters, *A Gap in Organic Food Chain*, The Wall Street Journal (July 14, 2013), available at <http://www.wsj.com/articles/SB10001424127887324867904578594171667940126>.

⁹ Dan Wheat, *Organic Apples May Run Out Sooner Than Usual*, Capital Press (April 8, 2014), available at <http://www.capitalpress.com/Organic/20140408/organic-apples-may-run-out-sooner-than-usual>.

The National Organic Standards Board (NOSB) maintains the National List and reviews petitions from individuals and organizations to add, remove, or change a listed substance and makes recommendations based on those petitions to the USDA twice a year.¹⁰ The list has been fine-tuned several times since its creation in 2002. Several substances that were once allowed are now prohibited in an effort to improve the list and limit the number of synthetic substances allowed in organic production. With the removal of certain substances, organic farmers must reevaluate how to manage particular pests with what remains available to them.

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

Most current funding for organic research is devoted to researching prohibited substances. There is a lack of funding for research devoted to helping organic farmers develop practices for current and possible future pest management issues, such as citrus greening. There is no strategy, either conventional or organic, that has proven to be 100 percent effective at treating or preventing the spread of citrus greening. Application of synthetic pesticides, however, has been mandated as an eradication method in California without any organic alternative, leaving organic growers in a predicament.¹² Organic citrus growers need viable alternatives to the synthetic pesticides used in the conventional treatment of citrus greening and other pest issues. The Organic Agriculture Research and Extension Initiative (OREI), which is administered by the National Institute of Food and Agriculture, helps organic farmers develop pest management strategies, but the funding is limited, not exclusive to pest management, and requires recipients to contribute matching funds or in-kind support.¹³ More funding is needed to research better and more effective pest management techniques and applications for organic agriculture – and that could be accomplished through GRO Organic.

Market Confusion

According to Consumer Reports, 84 percent of U.S. consumers buy organic foods sometimes, and 45% buy them at least once a month, but there's a disparity between what the seal means and what consumers think it means.¹⁴ The Natural Marketing Institute issued

¹⁰ National Organic Program, *About the National List*, Agricultural Marketing Service, USDA (last modified on February 24, 2015), available at <http://www.ams.usda.gov/AMSv1.0/NOPPetitionedSubstancesDatabase>.

¹¹ Harold Ostenson and David Granatstein, *Critical Issue Report: Fire Blight Control Programs in Organic Fruit*, The Organic Center (November 2013), see page 4.

¹² The Organic Center, *Organic Solutions for Citrus Greening* (last modified June 24, 2014), available at <http://organic-center.org/citrus-research/savecitrus/>.

¹³ National Institute of Food and Agriculture, *Organic Agriculture Research and Extension Initiative: 2014 Request for Applications*, see p. 14, available at http://www.nifa.usda.gov/funding/rfas/pdfs/14_OREI.pdf.

¹⁴ National Research Center, *Organic Food Labels Survey*, Consumer Reports (March 2014), p. 3, available at <http://www.greenerchoices.org/pdf/CR2014OrganicFoodLabelsSurvey.pdf>.

a report stating that most consumers “don’t know what the characteristics or regulations of organics are, they are unclear about the benefits, or they easily confuse it with natural.”¹⁵ Today, there is an ever-increasing number of labels that may be used on packaging (e.g. Natural, Local, non-GMO, etc.) contributing to consumer confusion.

A number of articles from major news agencies emphasize the problem of consumer confusion facing the market today. ABC News released an article on how several labels in the market, including “natural,” mislead consumers about what is actually in their products.¹⁶ Forbes covered a report showing the organic label to be one of the most confusing labels in the market due to the rapid growth in organic demand and not enough public education on the label.¹⁷ The New York Times showed that more choices on food labels has increased the confusion about what all of the labels mean.¹⁸

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

The GRO Organic Program proposes an assessment rate of one-tenth of one percent of net organic sales. (“Net Organic Sales” is defined as total gross sales of organic products minus the cost of certified organic ingredients, feed, and inputs used in the production of organic products.)²⁰ The assessment is anticipated to generate over \$35 million for the GRO Organic Board.²¹ This assessment is vital to the long-term success of the industry so that the resources of the diverse organic community can be pooled together to solve the problems faced at the farmgate, in the research labs and test fields, and in the minds of the consumers.

Expected Income, Fees and Assessments

¹⁵ Natural Marketing Institute, *2015 Growing the Organic Industry, Strategies for Brand Success* (February 2015), available at <http://www.nmisolutions.com/index.php/research-reports/health-a-wellness-reports/2015-growing-the-organic-industry-strategies-for-brand-success>.

¹⁶ David Kerley, ‘Natural’ vs ‘Organic’: How Food Labels Deceive, ABC News (February 17, 2014), available at <http://abcnews.go.com/blogs/lifestyle/2014/02/natural-vs-organic-how-food-labels-deceive/>.

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

¹⁸ Kim Severson, *More Choice, and More Confusion, in a Quest for Healthy Eating*, The New York Times (September 8, 2012), available at <http://www.nytimes.com/2012/09/09/us/would-be-healthy-eaters-face-confusion-of-choices.html?pagewanted=all>.

¹⁹ The Organic Trade Association, *2014 U.S. Families’ Organic Attitudes and Beliefs Study* (April 2014), available at <https://ota.com/what-ota-does/market-analysis/consumer-attitudes-and-beliefs-study>.

²⁰ United for More Organic, *Organic Check-off Preamble (Version 3.0)*, Organic Trade Association (Last accessed February 4, 2015), available at <http://www.unitedformoreorganic.com/research-promotion-program/organic-research-and-promotion-program-preamble/>.

²¹ This is based upon data from the 2012 U.S. Census of Agriculture, Characteristics of All Farms and Farms with Organic Sales (NASS, USDA), Issued September 2014.

The GRO Organic Board could expect to generate over \$35 million in income from U.S. organic operations at the optimum assessment rate. The proposed assessment rate is one-tenth of one percent of Net Organic Sales. Organic handlers would pay one-tenth of one percent of Net Organic Sales. Organic producers would have the option of paying one-tenth of one percent of either Net Organic Sales or Producer Net Profit. This will apply to all assessed organic producers, organic handlers, and importers of organic products. Small farms, with gross organic revenue of less than \$250,000 annually, would be covered but not assessed, and would have the option of not paying in, or paying a voluntary assessment of the same one-tenth of one percent of Net Organic Sales. (“Gross Organic Revenue” is defined as total gross sales in organic products.)

In order to administer the program, all mandatory organic certificate holders²² throughout the supply chain, including producers, handlers, brand manufacturers, co-packers, and importers, with Gross Organic Revenue in excess of \$250,000 per year, would be subject to a mandatory organic check-off assessment. Because of the complexity and diversity of the organic value chain, the Organic Trade Association and the GRO Organic Core Committee determined that the assessment rate would be a value-added model that would assess one-tenth of one percent of Net Organic Sales (i.e. total gross organic sales minus the cost of certified organic goods). For example, there would be a \$300 assessment at \$300,000 Net Organic Sales and a \$3,000 assessment at \$3,000,000 Net Organic Sales.

The GRO Organic Program will impose minimal compliance requirements on small businesses. Organic producers, handlers, and importers with Gross Organic Revenue of less than \$250,000 in the last fiscal year will not be assessed, but may voluntarily contribute to the program. Organic producers, handlers, and importers will have the option to participate in the program as a voluntarily assessed entity by remitting an assessment of one-tenth of one percent of their Net Organic Sales, which will allow them to request a ballot to vote in any program referendums. By casting a vote, they agree to voluntarily pay into the program for seven years. All of the required compliance requirements will be annual so there will not be a distinction in initial versus operating costs.

The GRO Organic Program has set a cap of 15 percent on administrative expenses. This cap would also apply to any organization (e.g. a research university) that receives funding from the GRO Organic Program. Government reimbursements are not expected to exceed \$350,000 annually. It is estimated that the funds remaining after program administration costs are paid would be nearly \$30 million.

The 2014 Farm Bill allocated \$167.5 million for organic programs over five years, which amounts to roughly \$33.5 million per year.²³ This money includes funding for certification assistance (\$11.5 million per year), economic data research and database upgrade (\$2 million per year), and organic agriculture research and extension funding (\$20 million per year).²⁴ The GRO Organic Board will have comparable funds to these Farm Bill programs.

²³ Catherine Greene, *Organic Agriculture*, Economic Research Service, USDA (last modified April 07, 2014), see *Farm Act-Organic Provisions*, available at <http://www.ers.usda.gov/topics/natural-resources-environment/organic-agriculture/farm-act%E2%80%9494organic-provisions.aspx>.

²⁴ Ibid.

**Generic Research and Promotion Order for Organic (GRO Organic)
REGULATIONS EXCERPT**

GOVERNANCE

The Board shall be composed of 50% producers, 50% handlers, processors and importers, and one non-voting at large totaling 17 members as follows:

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

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

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

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

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

(6) One member shall be an organic producer from the South which consists of the states of Alabama, Arkansas, Florida, Georgia, Kentucky, Oklahoma, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, as well as the territories of Puerto Rico, and the U.S. Virgin Islands, and all other parts of the United States not listed above; and

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

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

(9) Five organic handlers;

(10) Two organic product processor members;

(11) One organic importer member; and,

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

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

The Board will review the geographical distribution of certified organic operations in the United States with respect to the organic producer Board member seats. The review will be conducted using the NOP's list of certified organic operations and, if available, other reliable reports from the industry. If warranted, the Board will recommend to the Secretary that the membership or size of the Board be adjusted to reflect changes in geographical distribution of certified organic operations in the United States. Any changes in Board composition shall be implemented by the Secretary through rulemaking.

Nominations and appointments to the board

Direct Balloting for producer seats, for the Board seats allocated by region or State, organic producers must be domiciled in the region for which they seek nomination. All names of nominees shall be placed on a ballot by region. The ballots along with the background statements shall be mailed to all organic producers in that particular region. Organic producers may vote in each region in which they produce organic products. The top two candidates for each position shall be submitted to the Secretary for appointment.

Direct Balloting for voluntarily assessed entities, the names of nominees shall be placed on a ballot. The ballot along with the background statements shall be mailed to all voluntarily assessed entities. The top two candidates for each position shall be submitted to the Secretary for appointment.

For the Board seats allocated to organic handlers, organic product processors, the organic importer, and the non-voting at-large members, nominees may submit applications directly to the Secretary for appointment.

Initial nominations The Secretary shall select the initial members of the Board from the nominations submitted.

General reformers to encourage broad participation- No two members of the Board shall be employed by a single corporation, company, partnership or any other legal entity;

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

Board Terms.

Each Board member shall serve for a term of three years. Each term of office shall begin on January 1 and end on December 31. No member may serve more than two full consecutive three-year terms.

For the initial Board, the terms of the Board members shall be staggered for two, three and four years.

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

Reimbursement and attendance at board meetings.

Board members shall serve without compensation, but shall be reimbursed for reasonable travel expenses, as approved by the Board.

Duties of the board.

The Board shall have the following powers and duties:

- a. To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines appropriate;
- b. Notify all Board meetings through a press release or other means.
- c. To develop and submit programs, plans and projects for the development and carrying out of programs, for promotion, research, and information.
- d. To cause its books to be audited by an independent auditor at the end of each fiscal year and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;
- e. Prepare and make public reports of program activities and, at least once each fiscal year, to make public an accounting of funds received and expended;
- f. To work to achieve an effective, continuous, and coordinated program of promotion, research, and information and to carry out programs, plans, and projects designed to provide maximum benefits to the organic sector.

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

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

Budget and expenses.

The Board shall prepare and submit a budget for the fiscal year covering its anticipated expenses and disbursements in administering this part. 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;
- (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, northern and southern California, Southwest, North Central, South or Northeast who will make a recommendation that shall be voted on by the Board.

(e) The Board may accept voluntary contributions. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

The Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 15 percent of the assessment.

Any program, plan or project receiving funds from the order may not expend for administration an amount that is greater than 15 percent of the total funds allocated to the program, plan or project.

Assessments.

Each organic producer, organic handler and organic importer with gross organic revenue of greater than \$250,000 shall pay the following assessments to the Board:

(1) Organic producers shall have the option of paying one-tenth of one percent of either (A) net organic sales or (B) producer net profit.

(2) Organic handlers shall pay an assessment of one-tenth of one percent of net organic sales of products that are certified to the “100% organic” or “organic” standard pursuant to 7 CFR § 205.301(a) and (b). Organic handlers 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).

(3) Organic importers shall pay an assessment to the Board through Customs on organic products imported for marketing in the United States. Organic importers shall pay an assessment of one-tenth of one percent of net organic sales of products that are certified to the “100% organic” or “organic” standard pursuant to 7 CFR § 205.301(a) and (b). 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).

(d) Any organic producer, organic handler or organic importer with gross organic revenue less than \$250,000 shall have the option of participating in the Order as a voluntarily assessed entity following the above rates.

(e) Any change in the assessment rate is subject to rulemaking.

Exemptions.

Organic producers and organic handlers of dual-covered commodities may apply to the Board, on a form provided by the Board, for a certificate of exemption prior to the start of the marketing year. This is an annual exemption and organic producers and organic handlers must reapply each year. Such organic producers and organic handlers shall certify that they have remitted an assessment for the dual-covered commodity pursuant to a commodity promotion law.

Assessment offset.

The Board may authorize a credit to an organic producer and organic handlers of up to 25 percent of the amount to be remitted to offset assessments and for fees paid to Qualified State Commodity Boards required by State law.

Programming approval.

The Board must evaluate each program, plan and project to ensure that it contributes to an effective and coordinated program of research, promotion, and information. If the Board finds that a program, plan or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate that particular program, plan or project.

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

Patents, copyrights, trademarks, inventions, product formulations, and publications.

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

Referenda.

Initial referendum. The Order shall not become effective unless the Order is approved by a majority of eligible voters voting in the referendum. A single eligible voter may cast one vote in the referendum. Bloc voting shall be prohibited.

Subsequent referenda. Every seven years, the USDA must hold a referendum to determine whether assessed entities favor the continuation, suspension, or termination of the Order. USDA will also conduct a referendum if 20 percent or more of all assessed entities request the Department to hold a referendum. Bloc voting shall be prohibited.

Voting

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

(b) Proxy voting is not authorized, but an officer or employee of an eligible voter, or an administrator, executor, or trustee of an eligible voter may cast a ballot on behalf of such entity.

(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.

Instructions

USDA-AMS will determine the period during which ballots may be cast; 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 eligible voter.

USDA-AMS will give reasonable public notice of the referendum: by using available media or public information sources, 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

USDA must provide public notice of instructions on voting and a summary of the terms and conditions of the proposed Order. All eligible voters may request and receive by mail a ballot. No person who claims to be eligible to vote shall be refused a ballot;

USDA will prepare a report on the referendum; and announce the results to the public.

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.

Definition for eligible voter- Eligible voter means any person who is currently (i) an organic producer or organic handler that either has gross organic revenue in excess of \$250,000 in organic products during the representative period, (ii) an eligible importer, or (iii) an organic producer, organic handler or eligible importer that has voluntarily opted to pay an assessment.