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R&P Program Partial Proposal Application Industry Overview

The National Farmers Union (NFU) hereby submits this proposal for the Generic Research and Promotion Order for Organic pursuant to the Commodity Promotion, Research and Information Act of 1996.

Board Composition

Following the intent of the 1996 Generic Act, the board should reflect both the composition of the industry in that most certificate holders are producers and should have a mandatory producer majority. The board has considerable oversight of the checkoff dollars and should constitute a significant producer majority.

In 2010, the USDA's Economic Research Service estimated that for every retail dollar spent, food processors received 34.8 cents. This is more than double the 16 cents received by farm and agribusiness. The farm share of the retail dollar has trended down since 1993. Overall, since 2000, the farm share of the retail food dollar has remained under 16 cents. This figure is for the *farm* share, however, not the *farmer's* share which only amounts to 6.6 cents.

The major justification for generic commodity programs is that agricultural products are homogenous, and the issue of free-riders, where those who benefit from resources do not pay for them and wait for it to be done by others, creates little incentive for unilateral promotion.¹ Commodity promotion programs were intended to help sell commodities that have no major market distinctions. While the law now classifies the entire organic sector as a commodity, it as a sector has unique challenges for setting up a research and promotion order that meets the intent of the 1996 Generic Act. The intent of the 1996 Generic Act specifically states that generic promotion, research and information activities are for the particular benefit of small producers "who lack the resources or market power to advertise on their own."²

Processors of organic products are far more diverse than processors included in assessments of other agricultural checkoff programs. Turning fluid milk into cheese is a far different process than turning a number of organic products into a microwavable organic macaroni and cheese dinner. The microwavable organic macaroni and cheese has an identifiable brand, a larger share of the retail dollar, and does not suffer from the free-rider problem.

¹ Armbruster, W. J., & Knutson, R. D. (2012). US programs affecting food and agricultural marketing (Vol. 38). Springer Science & Business Media.

² 1996 Farm Bill. <http://www.gpo.gov/fdsys/pkg/PLAW-104publ127/pdf/PLAW-104publ127.pdf>

NFU is not opposed to processors maintaining seats on the board. A number of NFU's members process agricultural products themselves. There is a substantial difference between peeling and cutting organic butternut squash and packaging it for sale and making organic Oreos.

For the reasons delineated above, the board must be a producer majority.

Importers

NFU policy states, "Disbursement of funds collected is controlled solely by boards of non-processing domestic producers elected by the domestic producers assessed, and the operations of the program are solely controlled by those domestic producer boards." NFU proposes that USDA solely collect assessments from domestic producers, so that no importers are required to have a seat on the board. In the Commodity, Promotion, Research, and Information Act of 1996, Congress found, "The production of agricultural commodities plays a significant role in the economy of the United States. Thousands of producers in the United States are involved in the production of agricultural commodities, and such commodities are consumed by millions of people throughout the United States and foreign countries." The Act highlights the importance of agricultural commodities to the domestic economy. All research and promotion activities should be for the benefit of domestic producers.

Allocation

The organic sector has had scarce resources available for organic research. As noted in the original proposal, the total amount allocated by Congress in the 2014 Farm Bill for all federal agriculture research was \$1.2 billion. Commodity research and promotion programs are, and always have been, intended to support the efforts of producers of agricultural commodities. An organic checkoff must fill the gap in agricultural research and prioritize addressing the production research needs of the industry. Agricultural research should be a major focus of the checkoff's work.

Administrative cap

While the 1996 Generic Act allows for a cap of up to 15 percent, this is the statutory maximum. In the first three years of the checkoff's operation, the administrative rate can be much higher. It would best serve the organic industry to lower the cap to 5 percent.

A potential organic checkoff presents opportunity to address some of the needs of the organic sector including unified messaging, promotion and education. These needs are considerable and could be addressed by a well-managed organic checkoff. According to the Organic Trade Association's research, organic sales continue to climb at unprecedented rates. In 2014, organic food sales increased 11 percent from the previous year. Given that organic sales have continued to grow for 20 years, and at a price premium over conventional counterparts, we encourage AMS to exercise caution when considering the justification for an organic checkoff. Organic demand already outstrips supply, so domestic companies are resorting to imports from overseas.³ NFU recognizes the importance of the organic sector, especially to small farmers, beginning farmers and socially-disadvantaged farmers. Organic agriculture has helped create robust local and regional food economies that benefit family farmers and their communities. NFU questions the need for an organic checkoff that seeks to increase consumer demand without prioritizing resources towards increasing domestic supply. An organic checkoff that focuses on increased demand

³ Hunger for Organic Foods Stretches Supply Chain. (n.d.). Retrieved May 27, 2015, from <http://www.wsj.com/articles/organic-food-firms-tackle-supply-constraints-1428081170>

though “information” and “promotion” would significantly increase demand for imports, without providing benefits for American family farmers and ranchers.

We appreciate your consideration of this supplemental proposal and look forward to working with AMS to achieve an organic checkoff that benefits America’s all organic family farmers and ranchers, as well as the entire sector.

Text of the Partial Proposal

Part 12XX—Generic Research and Promotion Order for Organic Subpart A ---Generic Research and Promotion Order for Organic

NFU’s partial proposal would strike definitions for:

- §12XX.4 Certificate of exemption
- §12XX.6 Covered entity
- §12XX.7 Customs or CBP
- §12XX.33 Voluntarily assessed entity

DEFINITIONS

§12XX.2 Assessed entity

Assessed entity means any organic producer or organic handler with a U.S. Department of Agriculture organic certificate.

§12XX.12 Information

Information means educational activities to enhance and broaden the understanding of the use and attributes of organic products for producers, processors, and handlers. This includes industry information that would enhance the image of the organic industry and encourage the transition of more acres to organic production in the United States. This would also include technical assistance, including information related to agronomic practices and certification requirements, and information supporting the transition of acres to organic production in the United States, increasing organic production domestically, direct and local marketing opportunities, and export opportunities.

§12XX.19 Organic product processor

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

§12XX.27 Research

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

§12XX.28 Agricultural Research

Agricultural research means any type of test, study, or analysis designed to enhance or increase organic production methods including, but not limited to, research on crop production, pest management, water management, animal health and husbandry, climate change, soil health, air and water quality, plant breeding, and other agronomy research.

GENERIC RESEARCH AND PROMOTION ORDER FOR ORGANIC BOARD

(b) The Board shall be composed of 19 members and shall be established as follows:

- (1) Thirteen organic producers with equitable diversity in geography, commodity, and size of operation. Each region shall nominate two candidates to the Secretary through a regional election process. None of these producer members may hold additional organic certificates;
- (2) Two organic producer-handler members;
- (3) Two organic handler members;
- (4) One organic product processor member; and
- (5) One at-large public member, who shall be a non-voting member.

(c) At least once in every five-year period, but not more frequently than once in every three-year period, the Board will review the geographical distribution, commodity representation, and sizes of operations of certified organic operation 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.

§12XX.41 Nominations and appointments

- (a) Nominees must be organic producers, organic producer-handlers, organic handlers, organic product processors who produce, handle, or import organic products in a marketing year, except for the at-large public member.
- (b) The Secretary shall publicize the nomination process using trade press and outreach to all known organic producers, organic handlers, organic producer handlers, and organic product processors. The Secretary may use local, state, or regional entities, mail or other methods to elicit potential nominees. The Secretary shall select the initial members of the Board from the nominations submitted.
- (c) Subsequent nominations shall be conducted as follows:
 - (1) The Board shall conduct outreach to all known organic producers, organic handlers, organic producer-handlers, and organic product processors. Organic producers, organic handlers, organic producer-handlers, organic product processors, and non-voting at-large candidates may submit nominations to the Secretary;
 - (2) Organic producers, organic producer-handlers, organic handlers, organic product processor members, and at-large public candidates shall provide the Secretary with

a short background statement outlining their qualifications to serve on the Board;

- (3) Nominees for organic producer seats may not hold multiple organic certificates. Organic producer-handlers, organic handlers, and organic product processors may hold multiple organic certificates and may seek nomination to the Board for any non-producer seat for which they are qualified;
- (4) All candidates for seats on the Board shall submit applications directly to the Secretary;
- (5) Any person nominated to serve on the Board shall file with the Secretary at the time of nomination a background questionnaire including information on location of the operation, size of the operation, and organic production;
- (6) From the nominations made pursuant to this section, the Secretary shall appoint the members of the Board on the basis of representation provided in §12XX.40;
- (7) No two members of the Board shall be employed by a single corporation, company, partnership, or any other legal entity;
- (8) The Board may recommend to the Secretary modifications to its nomination procedures as it deems appropriate. Any such modifications shall be implemented through rulemaking by the Secretary; and
- (9) 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, 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.

§12XX.46 Powers and Duties

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) To administer this subpart in accordance with its terms and conditions and to collect assessments;
- (c) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the function of the Board, and such rules and regulations as may be necessary to administer the Order, including activities authorized to be carried out under the Order;
- (d) To meet not less than annually, organize, and select from among the members of the Board a chairperson, vice chairperson, secretary/treasurer, other officers, and committees and subcommittees, as the Board determines appropriate;

- (e) To employ or contract with persons, other than the Board members, as the Board considers necessary to assist the Board in carrying out its duties, and to determine the compensation and specify the duties of the persons. Such persons shall not be employed by any organization that carries lobbying activities;
- (f) To notify all Board meetings through a press release or other means and to give the Secretary the same notice of meetings of the Board (including committee, subcommittee, and the like) as is given to members so that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board to the Secretary;
- (g) To develop and submit programs, plans and projects to the Secretary for the Secretary's approval, and enter into contracts or agreements related to such programs, plans and projects, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs, plans or projects of promotion, research, and information. The payment of costs for such activities shall be from funds collected pursuant to this Order. Each contract or agreement shall provide that:
 - (1) The contractor or agreeing party shall develop and submit to the Board a program, plan or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan or project;
 - (2) All programs and plans must be competitively awarded;
 - (3) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;
 - (4) The Secretary may audit the records of the contracting or agreeing party periodically; and
 - (5) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor.
- (h) To prepare and submit for the approval of the Secretary fiscal year budgets in accordance with §12XX.XX;
- (i) To borrow funds necessary for startup expenses of the Order during the first year of operation by the Board;
- (j) To invest assessments collected and other funds received pursuant to the Order and use earnings from invested assessments to pay for activities carried out pursuant to the Order;
- (k) To recommend changes to the assessment rates as provided in this part;

- (l) 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;
- (m) To periodically 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;
- (n) To maintain such minutes, books and records and prepare and submit such reports and records from time to time to the Secretary as the Secretary may prescribe; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;
- (o) To receive, investigate, and report to the Secretary complaints of violations of the Order;
- (p) To recommend to the Secretary such amendments to the Order as the Board considers appropriate;
- (q) 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 industry; and
- (r) 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.

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: 30 percent for agricultural research, 30 percent for research, 15 percent for information, 15 percent for promotion, and 10 percent for discretionary funds;

(ii) Of the funds allocated to research and promotion, no less than half shall be allocated to regional research and promotion needs; 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.

(h) For fiscal years beginning three years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and the functioning of the Board an amount that is greater than 5 percent of the assessment and other income received by and available to the Board for the fiscal years. For purposes of this limitation, reimbursements shall not be considered administrative costs. For the first three years, administrative costs must not be greater than 15 percent of the assessment and other income received by and available to the Board.

(i) Any program, plan, or project receiving funds under this section shall not expend for administration an amount that is greater than 5 percent of the total funds allocated to the program, plan, or project.

§12XX.52 Assessments

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

(b) Subject to the offset specified in §12XX.54 each organic producer, organic handler, organic producer-handler, and organic product processor shall pay one-tenth of one percent of net organic sales to the Board.

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

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

(e) When an organic producer, organic handler, organic producer-handler, or organic product processor fails to pay the assessment within 60 calendar days of the date it is due, the Board may impose a late payment charge and interest. The late payment charge and rate of interest shall be prescribed in regulations issued by the Secretary. All late assessments shall be subject to the specified late payment charge and interest. Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt

collection procedures.

- (f) The Board may accept advance payment of assessments from any organic producer, organic handler, organic producer-handler, or organic product processor that will be credited toward any amount for which that person may become liable. The Board may not pay interest on any advance payment.
- (g) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall receive assessments and shall pay such assessments and any interest earned to the Board when it is formed.

§12XX.81 Referenda

- (a) *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.
- (b) *Subsequent referenda.* Every five years, the Department shall hold a referendum to determine whether assessed entities favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of the assessed entities voting. The Department will also conduct a referendum if 10 percent or more of all assessed entities request the Department to hold a referendum. Bloc voting shall be prohibited.