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Subtitle B—Regulations of the Department of Agriculture (Continued)

CHAPTER XI—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; MISCELLANEOUS COMMODITIES), DEPARTMENT OF AGRICULTURE

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PART 1200—RULES OF PRACTICE AND PROCEDURE GOVERNING PROCEEDINGS UNDER RESEARCH, PROMOTION, AND INFORMATION PROGRAMS

Subpart A—Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order

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Subpart B—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted from Research, Promotion, and Information Programs

1200.50 Words in the singular form.
1200.51 Definitions.
1200.52 Institution of proceeding.

AUTHORITY: 7 U.S.C. 2111, 2620, 2713, 4509, 4609, 4814, 4909, 6106, 6306, 6410, 7418, and 7486.

Subpart A—Rules of Practice and Procedure Governing Proceedings To Formulate and Amend an Order

AUTHORITY: 7 U.S.C. 2103, 2614, 2704, and 4804.

SOURCE: 47 FR 44684, Oct. 8, 1982, unless otherwise noted.

§ 1200.1 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 1200.2 Definitions.

(a) The term *Act* means the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; and the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627].

(b) *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(b) *Board* means the board or council established by the order to administer the program.

(c) *Department* means the U.S. Department of Agriculture.

(d) FEDERAL REGISTER means the publication provided for by the FEDERAL REGISTER Act, approved July 26, 1935 [44 U.S.C. 1501–1511], and acts supplementing and amending it.

(e) *Hearing* means that part of the proceeding which involves the submission of evidence.

(f) *Judge* means any administrative law judge appointed pursuant to 5 U.S.C. 3105 and assigned to conduct the hearing.

(g) *Hearing* means that part of the proceeding that involves the submission of evidence.

(h) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(i) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term *order* shall include plans issued under the Acts listed in paragraph (a) of this section.

(j) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

(k) *Secretary* means the Secretary of Agriculture of the United States, 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 for the Secretary.

[67 FR 44350, July 2, 2002]

§ 1200.3 Proposals.

(a) An order may be proposed by any organization certified pursuant to the Act or any interested person affected by the Act, including the Secretary. Any person or organization other than the Secretary proposing an order shall file with the Administrator a written application, together with a copy of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such proposal, the Administrator shall cause such investigation to be made and such consideration to be given as, in the Administrator's opinion, are warranted. If the investigation and consideration lead the Administrator to conclude that the proposed order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, the Administrator shall deny the application, and promptly notify the applicant of such denial, which notice shall be accompanied by a brief statement of the grounds for the denial.

(b) If the investigation and consideration lead the Administrator to conclude that the proposed order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose an order, the Administrator shall sign and cause to be served a notice of hearing, as provided herein.

§ 1200.4 Reimbursement of Secretary's expenses.

If provided for in the Act or any amendment thereto, expenses incurred by the Secretary in preparing or amending the order, administering the order, and conducting the referendum shall be reimbursed.

§ 1200.5 Institution of proceedings.

(a) *Filing and contents of the notice of hearing*. The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall contain either the terms or substance of the proposed order or a description of the subjects and issues involved; and shall state the time and place of such hearing, and the place where copies of such proposed order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the FEDERAL REGISTER, as provided herein, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: Except that in the case of hearings on amendments to an order, the time of the hearing may be less than 15 days but shall not be less than three days after the date of publication in the FEDERAL REGISTER.

(b) *Giving notice of hearing and supplemental publicity*. (1) The Administrator shall give or cause to be given notice of hearing in the following manner:

(i) By publication of the notice of hearing in the FEDERAL REGISTER;

(ii) By mailing a copy of the notice of hearing to each organization known by the Administrator to be interested therein;

(iii) By issuing a press release containing the complete text or a summary of the contents of the notice of hearing and making the same available to such newspapers as, in the Administrator's discretion, are best calculated to bring the notice to the attention of the persons interested therein; and

(iv) By forwarding copies of the notice of hearing addressed to those Governors of the States and executive heads of territories and possessions of the United States and the mayor of the District of Columbia that are directly affected by such order.

(2) Legal notice of the hearing shall be deemed to be given if notice is given in the manner provided by paragraph (b)(1)(i) of this section; failure to give notice in the manner provided in paragraphs (b)(2) (ii), (iii), and (iv) of this section shall not affect the legality of the notice.

(c) *Record of notice and supplemental publicity*. There shall be filed with the hearing clerk or submitted to the judge at the hearing an affidavit or certificate of the person giving the notice provided in paragraphs (b)(1) (iii) and (iv) of this section. In regard to the

provisions relating to mailing in paragraph (b)(1)(ii) of this section, determination by the Administrator that such provisions have been complied with shall be filed with the hearing clerk or submitted to the judge at the hearing. In the alternative, if notice is not given in the manner provided in paragraphs (b)(1) (ii), (iii), and (iv) of this section there shall be filed with the hearing clerk or submitted to the judge at the hearing a determination by the Administrator that such notice is impracticable, unnecessary, or contrary to the public interest with a brief statement of the reasons for such determination. Determinations by the Administrator as herein provided shall be final.

§ 1200.6 Docket number.

Each proceeding, immediately following its institution, shall be assigned a docket number by the hearing clerk and thereafter the proceeding may be referred to by such number.

§ 1200.7 Judge.

(a) *Assignment*. No judge who has any pecuniary interest in the outcome of a proceeding shall serve as judge in such proceeding.

(b) *Power of judge*. Subject to review by the Secretary, as provided elsewhere in this subpart, the judge in any proceeding shall have power to:

(1) Rule upon motions and requests;

(2) Change the time and place of hearings, and adjourn the hearing from time to time or from place to place;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine and cross-examine witnesses and receive evidence;

(5) Admit or exclude evidence;

(6) Hear oral argument on facts or law; and

(7) Do all acts and take all measures necessary for the maintenance of order at the hearings and the efficient conduct of the proceeding.

(c) *Who may act in absence of judge*. In case of the absence of the judge or the judge's inability to act, the powers and duties to be performed by the judge under this part in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other judge.

(d) *Disqualification of judge*. The judge may at any time withdraw as judge in a proceeding if such judge deems himself or herself to be disqualified. Upon the filing by an interested person in good faith of a timely and sufficient affidavit of personal bias or disqualification of a judge, the Secretary shall determine the matter as a part of the record and decision in the proceeding, after making such investigation or holding such hearings, or both, as the Secretary may deem appropriate in the circumstances.

§ 1200.8 Motions and requests.

(a) *General*. (1) All motions and requests shall be filed with the hearing clerk, except that those made during the course of the hearing may be filed with the judge or may be stated orally and made a part of the transcript.

(2) Except as provided in § 1200.17(b) such motions and requests shall be addressed to, and ruled on by, the judge if made prior to certification of the transcript pursuant to § 1200.11 or by the Secretary if made thereafter.

(b) *Certification to Secretary*. The judge may, in his or her discretion, submit or certify to the Secretary for decision any motion, request, objection, or other question addressed to the judge.

§ 1200.9 Conduct of the hearing.

(a) *Time and place*. The hearing shall be held at the time and place fixed in the notice of hearing, unless the judge shall have changed the time or place, in which event the judge shall file with the hearing clerk a notice of such change, which notice shall be given in the same manner as provided in § 1200.5 (relating to the giving of notice of the hearing): Except that if the change in time or place of hearing is made less than five days prior to the date previously fixed for the hearing, the judge either in addition to or in lieu of causing the notice of the change to be given, shall announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) *Appearances*—(1) *Right to appear*. At the hearing, any interested person

shall be given an opportunity to appear, either in person or through authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his or her name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names, addresses, and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting such appearance as the judge may request.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before the judge, such judge finds that a person, acting as counsel or representative for any person participating in the proceeding, is guilty of unethical or unprofessional conduct, the judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: Except that the judge may suspend the proceeding for a reasonable time for the purpose of enabling the client to obtain other counsel or representative.

(ii) In case the judge has ordered that a person be precluded from further action as counsel or representative in the proceeding, the judge within a reasonable time thereafter shall submit to the Secretary a report of the facts and circumstances surrounding such order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* If any interested person fails to appear at the hearing, that person shall be deemed to have waived the right to be heard in the proceeding.

(c) *Order of procedure.* (1) The judge shall, at the opening of the hearing prior to the taking of testimony, have noted as part of the record the notice of hearing as filed with the Office of the Federal Register and the affidavit or certificate of the giving of notice or the determination provided for in § 1200.5(c).

(2) Evidence shall then be received with respect to the matters specified in the notice of the hearing in such order as the judge shall announce.

(d) *Evidence*—(1) *General.* The hearing shall be publicly conducted, and the testimony given at the hearing shall be reported verbatim.

(i) Every witness shall, before proceeding to testify, be sworn or make affirmation. Cross-examination shall be permitted to the extent required for a full and true disclosure of the facts.

(ii) When necessary, in order to prevent undue prolongation of the hearing, the judge may limit the number of times any witness may testify to the same matter or the amount of corroborative or cumulative evidence.

(iii) The judge shall, insofar as practicable, exclude evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* If a party objects to the admission or rejection of any evidence or to any other ruling of the judge during the hearing, such party shall state briefly the grounds of such objection, whereupon an automatic exception will follow if the objection is overruled by the judge. The transcript shall not include argument or debate thereon except as ordered by the judge. The ruling of the judge on any objection shall be a part of the transcript. Only objections made before the judge may subsequently be relied upon in the proceeding.

(3) *Proof and authentication of official records or documents.* An official record or document, when admissible for any

purpose, shall be admissible as evidence without the presence of the person who made or prepared the same. The judge shall exercise discretion in determining whether an official publication of such record or document shall be necessary, or whether a copy would be permissible. If permissible such a copy should be attested to by the person having legal custody of it, and accompanied by a certificate that such person has the custody.

(4) *Exhibits.* All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon satisfactory showing of authenticity, relevancy, and materiality, be numbered as exhibits and received in evidence and made a part of the record. Such exhibits shall be submitted in quadruplicate and in documentary form. In case the required number of copies is not made available, the judge shall exercise discretion as to whether said exhibits shall, when practicable, be read in evidence or whether additional copies shall be required to be submitted within a time to be specified by the judge. If the testimony of a witness refers to a statute, or to a report or document (including the record of any previous hearing), the judge, after inquiry relating to the identification of such statute, report, or document, shall determine whether the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report or document (including the record of any previous hearing) containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall be excluded and shall be segregated insofar as practicable, subject to the direction of the judge.

(5) *Official notice.* Official notice at the hearing may be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: Except that interested persons shall be given an adequate period of time, at the hearing or subsequent to it, of matters so noticed and shall be given adequate opportunity to show that such facts are inaccurate or are erroneously noticed.

(6) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the judge's ruling in excluding the evidence was erroneous. The judge shall not allow the insertion of such evidence in toto if the taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the judge erred in excluding the evidence, and that such error was substantial, the hearing shall be reopened to permit the taking of such evidence.

§ 1200.10 Oral and written arguments.

(a) *Oral argument before the judge.* Oral argument before the judge shall be in the discretion of the judge. Such argument, when permitted, may be limited by the judge to any extent that the judge finds necessary for the expeditious disposition of the proceeding and shall be reduced to writing and made part of the transcript.

(b) *Briefs, proposed findings, and conclusions.* The judge shall announce at the hearing a reasonable period of time within which interested persons may file with the hearing clerk proposed findings and conclusions, and written arguments or briefs, based upon the evidence received at the hearing, citing, where practicable, the page or pages of the transcript of the testimony where such evidence appears. Factual material other than that adduced at the hearing or subject to official notice shall not be alluded to therein, and, in any case, shall not be considered in the formulation of the order. If the person filing a brief desires the Secretary to consider any objection made by such person to a ruling of the judge, as provided in § 1200.9(d), that person shall include in the brief a

concise statement concerning each such objection, referring, where practicable, to the pertinent pages of the transcript.

§ 1200.11 Certification of the transcript.

The judge shall notify the hearing clerk of the close of a hearing as soon as possible thereafter and of the time for filing written arguments, briefs, proposed findings, and proposed conclusions and shall furnish the hearing clerk with such other information as may be necessary. As soon as possible after the hearing, the judge shall transmit to the hearing clerk an original and three copies of the transcript of the testimony and the original and all copies of the exhibits not already on file in the office of the hearing clerk. The judge shall attach to the original transcript of the testimony a certificate stating that, to the best of the judge's knowledge and belief, the transcript is a true transcript of the testimony given at the hearing, except in such particulars as the judge shall specify, and that the exhibits transmitted are all the exhibits as introduced at the hearing with such exceptions as the judge shall specify. A copy of such certificate shall be attached to each of the copies of the transcript of testimony. In accordance with such certificate the hearing clerk shall note upon the official record copy, and cause to be noted on other copies of the transcript, each correction detailed therein by adding or crossing out (but without obscuring the text as originally transcribed) at the appropriate place any words necessary to make the same conform to the correct meaning, as certified by the judge. The hearing clerk shall obtain and file certifications to the effect that such corrections have been effectuated in copies other than the official record copy.

§ 1200.12 Copies of the transcript.

(a) During the period in which the proceeding has an active status in the Department, a copy of the transcript and exhibits shall be kept on file in the office of the hearing clerk where it shall be available for examination during official hours of business. Thereafter said transcript and exhibits shall be made available by the hearing clerk for examination during official hours of business after prior request and reasonable notice to the hearing clerk.

(b) Transcripts of hearings shall be made available to any person at actual cost of duplication.

[47 FR 44684, Oct. 8, 1982, as amended at 67 FR 10830, Mar. 11, 2002]

§ 1200.13 Administrator's recommended decision.

(a) *Preparation.* As soon as practicable following the termination of the period allowed for the filing of written arguments or briefs and proposed findings and conclusions the Administrator shall file with the hearing clerk a recommended decision.

(b) *Contents.* The Administrator's recommended decision shall include: (1) a preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law, or discretion presented on the record, and proposed findings and conclusions about such issues, including the reasons or basis for such proposed findings; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed order effectuating the Administrator's recommendations.

(c) *Exceptions to recommended decision.* Immediately following the filing of the recommended decision, the Administrator shall give notice thereof and opportunity to file exceptions thereto by publication in the FEDERAL REGISTER. Within a period of time specified in such notice any interested person may file with the hearing clerk exceptions to the Administrator's proposed order and a brief in support of such exceptions. Such exceptions shall be in writing, shall refer, where practicable, to the related pages of the transcript, and may suggest appropriate changes in the proposed order.

(d) *Omission of recommended decision.* The procedure provided in this section may be omitted only if the Secretary finds on the basis of the record that due and timely execution of the Secretary's functions imperatively and unavoidably requires such omission.

§ 1200.14 Submission to Secretary.

Upon the expiration of the period allowed for filing exceptions or upon request of the Secretary, the hearing clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: All motions and requests filed with the hearing clerk and rulings thereon; the certified transcript; any proposed findings or conclusions or written arguments or briefs that may have been filed; the Administrator's recommended decision, if any; and such exceptions as may have been filed.

§ 1200.15 Decision by the Secretary.

After due consideration of the record, the Secretary shall render a decision. Such decision shall become a part of the record and shall include: (a) a statement of findings and conclusions, including the reasons or basis for such findings, upon all the material issues of fact, law, or discretion presented on the record, (b) a ruling upon each proposed finding and proposed conclusion not previously ruled upon in the record, (c) a ruling upon each exception filed by interested persons, and (d) either (1) denial of the proposal to issue an order, or (2) if the findings upon the record so warrant, an order, the provisions of which shall be set forth and such order shall be complete except for its effective date and any determinations to be made under § 1200.16: *Except that* such order shall not be executed, issued, or made effective until and unless the Secretary determines that the requirements of § 1200.16 have been met.

§ 1200.16 Execution of the order.

(a) *Issuance of the order*. The Secretary shall, if the Secretary finds that it will tend to effectuate the purposes of the Act, issue and make effective the order which was filed as part of the Secretary's decision pursuant to § 1200.15: Except that the issuance of such order shall have been approved or favored by eligible voters as required by the applicable Act.

(b) *Effective date of order*. No order shall become effective in less than 30 days after its publication in the FEDERAL REGISTER, unless the Secretary, upon good cause found and published with the order, fixes an earlier effective date.

(c) *Notice of issuance*. After issuance of the order, such order shall be filed with the hearing clerk, and notice thereof, together with notice of the effective date, shall be given by publication in the FEDERAL REGISTER.

§ 1200.17 Filing, extension of time, effective date of filing, and computation of time.

(a) *Number of copies*. Except as provided otherwise herein, all documents or papers required or authorized by the foregoing provisions hereof to be filed with the hearing clerk shall be filed in quadruplicate. Any documents or papers so required or authorized to be filed with the hearing clerk shall be filed with the judge during the course of an oral hearing.

(b) *Extension of time*. The time for filing of any document or paper required or authorized by the foregoing provisions to be filed may be extended by the judge (before the record is so certified by the judge) or by the Administrator (after the record is so certified by the judge but before it is transmitted to the secretary), or by the Secretary (after the record is transmitted to the secretary) upon request filed, and if, in the judgment of the judge, Administrator, or the Secretary, as the case may be, there is good reason for the extension. All rulings made pursuant to this paragraph shall be filed with the hearing clerk.

(c) *Effective date of filing*. Any document or paper required or authorized in this subpart to be filed shall be deemed to be filed at the time it is received by the Hearing Clerk.

(d) *Computation of time*. Each day, including Saturdays, Sundays, and legal public holidays, shall be included in computing the time allowed for filing any document or paper: *Provided*, That when the time for filing a document or paper expires on a Saturday, Sunday, or legal public holiday, the time allowed for filing the document or paper shall be extended to include the following business day.

[47 FR 44684, Oct. 8, 1982, as amended at 67 FR 10830, Mar. 11, 2002]

§ 1200.18 Ex parte communications.

(a) At no stage of the proceeding following the issuance of a notice of hearing and prior to the issuance of the Secretary's decision thereon shall an employee of the Department who is or may reasonably be expected to be involved in the decision process of the proceeding discuss ex parte the merits of the proceeding with any person having an interest in the proceeding or with any representative of such person: Except that procedural matters and status reports shall not be included within the limitation: And except further that an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding may discuss the merits of the proceeding with such a person if all parties known to be interested in the proceeding have been given notice and an opportunity to participate. A memorandum of any such discussion shall be included in the record of the proceeding.

(b) No person interested in the proceeding shall make or knowingly cause to be made to an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding an ex parte communication relevant to the merits of the proceeding except as provided in paragraph (a) of this section.

(c) If an employee of the Department who is or may reasonably be expected to be involved in the decisional process of the proceeding receives or makes a communication prohibited by this section, the Department shall place on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda, stating the substance of all oral responses thereto.

(d) Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this section, the Department may, to the extent consistent with the interest of justice and the policy of the underlying statute, take whatever steps are deemed necessary to nullify the effect of such communication.

(e) For the purposes of this section, *ex parte communication* means any oral or written communication not on the public record with respect to which reasonable prior notice to all interested parties is not given, but which shall not include requests for status reports (including requests on procedural matters) on a proceeding.

§ 1200.19 Additional documents to be filed with hearing clerk.

In addition to the documents or papers required or authorized by the foregoing provisions of this subpart to be filed with the hearing clerk, the hearing clerk shall receive for filing and shall have custody of all papers, reports, records, orders, and other documents which relate to the administration of any order and which the Secretary is required to issue or to approve.

§ 1200.20 Hearing before Secretary.

The Secretary may act in the place and stead of a judge in any proceeding herein. When the Secretary so acts, the hearing clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions, and orders, and the Secretary shall then, after due consideration of the record, issue the final decision in the proceeding: Except the Secretary may issue a tentative decision in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final decision.

Subpart B—Rules of Practice Governing Proceedings on Petitions to Modify or To Be Exempted from Research, Promotion and Information Programs

AUTHORITY: 7 U.S.C. 2111, 2620, 2713, 4509, 4609, 4814, 4909, 6008, 6106, 6306, 6410, 6807, 7106, 7418, 7486, and 7806.

SOURCE: 60 FR 37326, July 20, 1995, unless otherwise noted.

§ 1200.50 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the

plural, and *vice versa*, as the case may demand.

§ 1200.51 Definitions.

As used in this subpart, the terms as defined in the Act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means the Commodity Research, Promotion, and Information Act of 1996 [7 U.S.C. 7401–7425]; the Cotton Research and Promotion Act, as amended [7 U.S.C. 2101–2119]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513]; the Egg Research and Consumer Information Act, as amended [7 U.S.C. 2701–2718]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Hass Avocado Promotion, Research, and Information Act of 2000 [7 U.S.C. 7801–7813]; the Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the Pecan Promotion and Research Act of 1990 [7 U.S.C. 6001–6013]; the Popcorn Promotion, Research, and Consumer Information Act [7 U.S.C. 7481–7491]; the Pork Promotion, Research, and Consumer Information Act [7 U.S.C. 4801–4819]; the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627]; the Sheep Promotion, Research, and Information Act of 1994 [7 U.S.C. 7101–7111]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; and the Watermelon Research and Promotion Act, as amended, [7 U.S.C. 4901–4916].

(b) *Administrator* means the Administrator of the Agricultural Marketing Service or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act for the Administrator.

(c) *Decision* means the judge's initial decision and includes the judge's:

(1) Findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis thereof;

(2) Order; and

(3) Rulings on findings, conclusions and orders submitted by the parties.

(d) *Department* means the U.S. Department of Agriculture.

(e) Hearing means that part of the proceedings which involves the submission of evidence.

(f) *Hearing clerk* means the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C.

(g) *Judge* means any administrative law judge, appointed pursuant to 5 U.S.C. 3105, and assigned to the proceeding involved.

(h) *Order* means any order or any amendment thereto which may be issued pursuant to the Act. The term order shall include plans issued under the Acts listed in paragraph (a) of this section.

(i) *Party* includes the Department.

(j) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity subject to an order or to whom an order is sought to be made applicable, or on whom an obligation has been imposed or is sought to be imposed under an order.

(k) *Petition* includes an amended petition.

(l) *Proceeding* means a proceeding before the Secretary arising under the pertinent section of an Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, 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 for the Secretary.

[67 FR 44350, July 2, 2002]

§ 1200.52 Institution of proceeding.

(a) *Filing and service of petitions.* Any person subject to an order desiring to complain that such order or any provision of such order or any obligation imposed in connection with an order is not in accordance with law, shall file with the hearing clerk, in quintuplicate, a petition in writing addressed to the Secretary. Promptly upon receipt of the petition in writing the hearing clerk shall transmit a true copy thereof to the Administrator and the General Counsel, respectively.

(b) *Contents of petitions.* A petition shall contain:

(1) The correct name, address, and principal place of business of the petitioner. If the petitioner is a corporation, such fact shall be stated, together

with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions held by its officers and directors; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner;

(2) Reference to the specific terms or provisions of the order, or the interpretation or application of such terms or provisions, which are complained of;

(3) A full statement of the facts, avoiding a mere repetition of detailed evidence, upon which the petition is based, and which it is desired that the Secretary consider, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the order or the interpretation or application thereof, which are complained of;

(4) A statement of the grounds on which the terms or provisions of the order, or the interpretation or application thereof, which are complained of, are challenged as not in accordance with law;

(5) Requests for the specific relief which the petitioner desires the Secretary to grant; and

(6) An affidavit by the petitioner, or, if the petitioner is not an individual, by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for purposes of delay.

(c) *A motion to dismiss a petition: filing, contents, and responses to a petition.* If the Administrator is of the opinion that the petition, or any portion thereof, does not substantially comply, in form or content, with the Act or with requirements of paragraph (b) of this section, the Administrator may, within 30 days after the service of the petition, file with the hearing clerk a motion to dismiss the petition, or any portion of the petition, on one or more of the grounds stated in this paragraph. Such motion shall specify the grounds for objection to the petition and if based, in whole or in part, on allegations of fact not appearing on the face of the petition, shall be accompanied by appropriate affidavits or documentary evidence substantiating such allegations of fact. The motion may be accompanied by a memorandum of law. Upon receipt of such motion, the hearing clerk shall cause a copy thereof to be served upon the petitioner, together with a notice stating that all papers to be submitted in opposition to such motion, including any memorandum of law, must be filed by the petitioner with the hearing clerk not later than 20 days after the service of such notice upon the petitioner. Upon the expiration of the time specified in such notice, or upon receipt of such papers from the petitioner, the hearing clerk shall transmit all papers which have been filed in connection with the motion to the judge for the judge's consideration.

(d) *Further proceedings.* Further proceedings on petitions to modify or to be exempted from the Order shall be governed by §§ 900.52(c)(2) through 900.71 of the Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From Marketing Orders. However, each reference to *marketing order* in the title shall mean *order*.

[47 FR 44684, Oct. 8, 1982, as amended at 67 FR 10830, Mar. 11, 2002]

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AUTHORITY: 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

Subpart—Procedures for Conduct of Sign-up Period

SOURCE: 62 FR 1660, Jan. 13, 1997, unless otherwise noted.

DEFINITIONS

§ 1205.10 Act.

The term *Act* means the Cotton Research and Promotion Act, as amended [7 U.S.C 2101–2118; Public Law 89–502, 80 Stat 279, as amended].

§ 1205.11 Administrator.

The term *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

§ 1205.12 Cotton.

The term *cotton* means all Upland cotton harvested in the United States and all imports of Upland cotton, including the Upland cotton content of products derived thereof. The term *cotton* does not include imported cotton for which the assessment is less than the value of $2.00 per line item entry as established by regulations.

[62 FR 1660, Jan. 13, 1997, as amended at 67 FR 21169, Apr. 30, 2002]

§ 1205.13 Upland cotton.

The term *Upland cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

§ 1205.14 Department.

The term *Department* means the U.S. Department of Agriculture.

§ 1205.15 Farm Service Agency.

The term *Farm Service Agency*—formerly Agricultural Stabilization and Conservation Service (ASCS)—also referred to as ''FSA,'' means the Farm Service Agency of the Department.

§ 1205.16 Order.

The term *Order* means the Cotton Research and Promotion Order.

§ 1205.17 Person.

The term *person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

§ 1205.18 Producer.

The term *producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

[67 FR 21169, Apr. 30, 2002]

§ 1205.19 Importer.

The term *importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States, and the term import means any such entry.

§ 1205.20 Representative period.

The term *representative period* means the 2006 calendar year.

[72 FR 51160, Sept. 6, 2007]

§ 1205.21 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has been delegated to act in the Secretary's stead.

§ 1205.22 State.

The term *State* means each of the 50 states.

§ 1205.23 United States.

The term *United States* means the 50 states of the United States of America.

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§ 1205.24 General.

A sign-up period will be conducted to determine whether eligible producers and importers favor the conduct of a referendum on the continuance of the 1991 amendments to the Order.

(a) If the Secretary determines, based on the results of the sign-up period, that at least 10 percent (4,622) or more of the number of cotton producers and importers who voted in the 1991 referendum request the conduct of a continuance referendum on the 1991 Order amendments, a referendum will be held within 12 months after the end of the sign-up period. Not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers from any one state or from importers of cotton.

(b) If the Secretary determines that fewer than 10 percent (4,622) of the number of producers and importers who voted in the 1991 referendum do not favor a continuance referendum, no referendum will be held.

§ 1205.25 Supervision of sign-up period.

The Administrator shall be responsible for conducting the sign-up period in accordance with this subpart.

§ 1205.26 Eligibility.

Only persons who meet the eligibility requirements in this subpart may participate in the sign-up period. No person is entitled to sign up more than once.

(a) Except as set forth in paragraphs (b) and (c) of this section, the following persons are eligible to request the conduct of a continuance referendum:

(1) Any person who was engaged in the production of Upland cotton during calendar year 2006; and

(2) Any person who was an importer of Upland cotton and imported Upland cotton in excess of the value of $2.00 per line item entry during calendar year 2006.

(b) A general partnership is not eligible to request a continuance referendum, however, the individual partners of an eligible general partnership are each entitled to submit a request.

(c) Where a group of individuals is engaged in the production of Upland cotton under the same lease or cropping agreement, only the individual or individuals who signed or entered into the lease or cropping agreement are eligible to participate in the sign-up period. Individuals who are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, are each entitled to submit a request if they share in the proceeds of the required crop as owners, cash tenants, share tenants, sharecroppers or landlords of a fixed rent, standing rent or share tenant.

(d) An officer or authorized representative of a qualified corporation, association, or limited partnership may submit a request on behalf of that corporation, association, or limited partnership.

(e) A guardian, administrator, executor, or trustee of any qualified estate or trust may submit a request on behalf of that estate or trust.

(f) An individual may not submit a request on behalf of another individual.

(g) Participation in the sign-up by proxy or power of attorney is not authorized.

[62 FR 1660, Jan. 13, 1997, as amended at 67 FR 21169, Apr. 30, 2002; 72 FR 51160, Sept. 6, 2007]

§ 1205.27 Participation in the sign-up period.

The sign-up period will be from September 4, 2007, through November 30, 2007. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by November 30, 2007.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers in the country that it serves during the representative period, and AMS shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, AMS shall mail a request form to

each known, eligible, cotton importer. Importers who wish to request a referendum and who do not receive a request form in the mail by September 4, 2007, may particiapte in the sign-up period by submitting a signed, written request for a continuance referendum, along with a copy of a U.S. Customs and Border Protection form 7501 showing payment of a cotton assessment for calendar year 2006. Importers must submit their requests and supporting documents to USDA, FSA, DAFO, Attention: Rick Pinkston, P.O. Box 23103, Washington, DC 20026–3103. All requests and supporting documents must be received by November 30, 2007.

(c) Each person on the county FSA office lists may participate in the sign-up period. Eligible producers must date and sign their name on the ''County FSA Office Sign-up Sheet.'' A person whose name does not appear on the county FSA office list may participate in the sign-up period.

Such person must be identified on FSA–578 during the representative period or provide documentation that demonstrates that the person was a cotton producer during the representative period. Cotton producers not listed on the FSA–578 shall submit at least one sales receipt for cotton they planted during the representative period. Cotton producers must make requests to the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make request at the county officer where FSA administratively maintains and processes the producer's farm records. It is the responsibility of the person to provide the information need by the county FSA office to determine eligibility. It is not the responsibility of the county FSA office to obtain this information. If any person whose name does not appear on the county FSA office list fails to provide at least one sales receipt for the cotton they produced during the representative period, the county FSA office shall determine that such person is ineligible to participate in the sign-up period, and shall note ''ineligible'' in the remarks section next to the person's name on the county FSA office sign-up sheet. In lieu of personally appearing at a county FSA office, eligible producers may request a sign-up form from the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make the request for the sign-up form at the county office where the FSA administratively maintains and processes the producer's farm records. Such request must be accompanied by a copy of at least one sales receipt for cotton they produced during the representative period. The appropriate FSA office must receive all completed forms and supporting documentation by November 30, 2007.

[72 FR 51161, Sept. 6, 2007]

§ 1205.28 Counting.

County FSA offices and FSA, Deputy Administrator for Field Operations (DAFO), shall begin counting requests no later than November 30, 2007. FSA shall determine the number of eligible persons who favor the conduct of a continuance referendum.

[62 FR 1660, Jan. 13, 1997, as amended at 67 FR 21170, Apr. 30, 2002; 72 FR 51161, Sept. 6, 2007]

§ 1205.29 Reporting results.

(a) Each county FSA office shall prepare and transmit to the state FSA office by December 7, 2007, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) DAFO shall prepare, by December 7, 2007, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by December 7, 2007, forward all county reports to DAFO. By December 14, 2007, DAFO shall forward its report of the total number of eligible producers and importers that requested a continuance referendum, through the sign-up period, to the Deputy Administrator, Cotton Program, AMS, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224.

[72 FR 51161, Sept. 6, 2007]

§ 1205.30 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms consistent with the provisions of this subpart to govern conduct of the sign-up period.

Subpart—Procedures for the Conduct of Referenda in Connection With Cotton Research and Promotion Order

SOURCE: 74 FR 51070, Oct. 5, 2009, unless otherwise noted.

§ 1205.200 General.

Referenda for the purpose of ascertaining whether producers and importers favor the issuance, continuance, amendment, suspension, or termination of the Cotton Research and Promotion Order shall be conducted in accordance with this subpart.

§ 1205.201 Definitions.

(a) *Act* means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; Pub. L. 89–502, as amended).

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom authority has been delegated to act in the Administrator's stead.

(c) *Agricultural Marketing Service* also referred to as ''AMS'' means the Agricultural Marketing Service of the Department.

(d) *Cotton* means all Upland cotton harvested in the United States or imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include any entry of imported cotton by an importer which has a value or weight less than the *de minimis* value established by the Secretary or industrial products as that term is defined by regulation.

(e) *Upland Cotton* means all cultivated varieties of the species *Gossypium hirsutum L.*

(f) *Department* means the U.S. Department of Agriculture.

(g) *Deputy Administrator* means the Deputy Administrator for Field Operations and also referred to as ''DAFO.''

(h) *Farm Service Agency* also referred to as ''FSA'' means the Farm Service Agency of the Department.

(i)(1) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton, and

(2) the term *import* means any such entry.

(j) *Order* means the Cotton Research and Promotion Order.

(k) *Person* means any individual 18 years of age or older, or any partnership, corporation, association, or any other entity.

(l) *Producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

(m) *Representative Period* means the period designated by the Secretary pursuant to section 8 of the Act (7 U.S.C. 2107).

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

(o) *State* means each of the 50 states.

(p) *United States* means 50 states of the United States of America.

(q) *Customs and Border Protection* means the U.S. Customs and Border Protection of the Department of Homeland Security. Customs and Border Protection is also referred to as ''CBP.''

§ 1205.202 Agencies through which a referendum shall be conducted.

(a) Agricultural Marketing Service. The Administrator shall:

(1) Determine the referendum period.

(2) Give producers and importers reasonable advance notice of the referendum

(i) by utilizing without advertising expense, available media of public information (including, but not being limited to, press and radio facilities) to

announce the dates, places, or methods of voting, and other pertinent information, and

(ii) by such other means as the Administrator may deem advisable.

(3) Provide ballots and related material to be used in the referendum to FSA. The ballots:

(i) shall provide for recording essential information for ascertaining whether the person voting is an eligible voter, and

(ii) may provide for recording the total amount of Upland cotton produced by the producer or the total amount of cotton imported by the importer during the appropriate representative period.

(4) Make available to producers through FSA county offices instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the method to be used in determining the amount of Upland cotton produced during the representative period and shall specify whether such amount is to be entered on the ballot by the voter, subject to the following terms and conditions:

(i) If a current production year for which harvesting has not been completed is designated as the representative period, the amount of Upland cotton produced shall be determined by the FSA county office on the basis of the acreage planted or in the case of approved prevented plantings under the disaster payment program, the acreage the person intended to plant up to the allotted acreage as determined by the FSA county office, and the established yield for FSA program payment purposes: *Provided,* That on farms for which an established yield has not been established, the county committee shall determine an established yield based on actual production records on the farm for the preceding three years, as adjusted for any abnormal conditions, if available; if not available, on the basis of yield on similar farms in the area.

(ii) On farms in which more than one eligible voter is engaged in production, the vote cast by each voter shall represent only the amount of Upland cotton that is the voter's share of the crop, or proceeds thereof.

(iii) If an eligible voter is engaged in production of Upland cotton on more than one farm, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount of Upland cotton that is that voter's share of the crop, or proceeds thereof, on all such farms: *Provided,* That only farms for which records are maintained by the FSA county office designated as the voter's polling place shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of such county office the voter's share of the crop, or proceeds thereof, on an additional farm or farms.

(5) Make available to importers through FSA instructions on voting, an appropriate ballot and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order. The instructions on voting shall explain the appropriate method to be used in determining the amount of cotton imported during the representative period and specify whether such amount is to be entered on the ballot. If applicable, the following terms and conditions apply:

(i) For importer entities in which more than one importer is eligible to vote, the vote cast by each importer shall represent only the amount in weight or value of cotton imported by each eligible voter.

(ii) If an eligible importer is engaged in importation of cotton as more than one importer entity, such voter is entitled to only one vote but any vote cast by such voter shall represent the total amount in weight or value, of cotton in the voters share of cotton imported from each such importer entity: Provided, that only the importer entities for which records are maintained by CBP or other source determined by the Administrator shall be considered unless the voter, prior to the expiration of the referendum period, establishes to the satisfaction of the Administrator the voters share, in weight or value, of the imported cotton.

(b) *Farm Service Agency*. Except for the functions specified in paragraph (a)

of this section the Deputy Administrator shall be in charge of and responsible for conducting the referendum. Each FSA county office shall be in charge and responsible for conducting such referendum in its State. Each county office shall be responsible for the proper holding of such referendum in its county. It shall be the duty of each FSA county office to conduct each referendum in a fair, unbiased, and impartial manner in accordance with the regulations in this subpart.

§ 1205.203 Voting eligibility.

(a) *General eligibility requirements.* The following persons shall be eligible to vote in an announced referendum—

(1) each person who was engaged in the production of Upland cotton during the representative period; and

(2) each person who is an importer of Upland cotton and who, during a 12-month period ending no later than 90 days prior to the conduct of the referendum, imported Upland cotton.

(b) *Special eligibility requirements.* (1)(i) A person may qualify as an eligible voter by meeting the eligibility requirements, but no such person shall be entitled to more than one vote regardless of the number of importing entities or Upland cotton farms in which the person is interested or the number of communities, counties, or States in which are located farms in which such person is interested: *Provided, however,* That the individual members of a qualified partnership shall each have one vote, but the partnership as such shall not have a vote and an individual who qualifies as an eligible voter by reason of that individual's separate farming or importing operations will be entitled to one vote even though that person is interested in an entity such as (but not limited to) a corporation which is also eligible as a voter and entitled to one vote. A person who, as a guardian, administrator, executor, or trustee engages in the production of Upland cotton or importation of cotton will be eligible to vote in such a fiduciary capacity if, in such a capacity, that person qualifies as an eligible voter.

(ii) In such cases the person for whom he or she is acting in a fiduciary capacity will not be eligible to vote. An individual may, if otherwise eligible, cast a ballot in his or her individual capacity although that person may also cast a ballot as a guardian, administrator, executor, or trustee. An individual who holds more than one fiduciary position may vote as a fiduciary in each case in which that person is otherwise eligible, as for example, if an individual is administrator of estate X, he or she may cast a ballot as administrator of estate X, and if the same individual is administrator of estate Y, he or she may cast another ballot as administrator or estate Y.

(2) Where a group of several persons, such as a spouse or marital partner, and children, or unrelated individuals, are engaged in the production of Upland cotton under the same lease or cropping agreement, only the person or persons who signed or entered into the lease or cropping agreement shall be eligible to vote. In the event two or more persons are engaged in the production of Upland cotton as joint tenants, tenants in common, or owners of community property, each such person shall be entitled to one vote if otherwise qualified. For example, a husband or a wife is eligible to vote if he or she shares with his or her spouse in the proceeds of the required crop as an owner, cash tenant, share tenant, sharecropper or landlord of a fixed rent, standing rent or share tenant. Thus, if a husband and wife are tenants or sharecropper on a farm, jointly responsible under the rental or sharecropping agreement, both are eligible to vote. This is true whether the rental or sharecropping agreement is written, signed by both parties, or oral, provided both husband and wife made the oral agreement. A minor is not disqualified from voting solely because of minority if otherwise eligible and the minor is not less than 18 years of age.

(c) *Voting by proxy prohibited.* There shall be no voting by proxy or agent but a duly authorized officer of a corporation, association or their legal entity may cast its vote.

§ 1205.204 Voting.

(a) *Place of voting.* The FSA county office serving the county in which the producer's farm is located shall be the producer's polling place. For a person

not participating in an FSA program, the opportunity to vote in a referendum will be provided at the FSA county office serving the county where the person owns or rents land. If a person's operation is located in several counties, the voting office shall be determined based on the major portion of the operation's location. The U.S. Department of Agriculture, FSA, DAFO, P.O. Box 23704, Washington, DC 20026–3704 shall be the polling place for all cotton importers.

(b) *Register of eligible voters.* The FSA county office shall establish a register of known eligible producer voters prior to the referendum. AMS shall establish a register of known eligible importer voters prior to the referendum and provide the list to FAS.

(c) *Voting.* (1) For Upland producers to vote, eligible persons may obtain form CN–100 in-person, by mail or by facsimile from FSA county offices or through the Internet during the voting period. A completed and signed CN–100 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate FSA county office. Forms obtained via the Internet will be located at *http://www.ams.usda.gov/Cotton*. Upon request by Upland producers, ballots shall be mailed by FSA county offices.

(2) For cotton importers to vote, eligible persons may obtain form CN–100 in-person, by mail or by facsimile from USDA, FSA in Washington, D.C. or through the Internet during the voting period. In addition, before the referendum, USDA shall mail a request form to each known, eligible, cotton importer. A completed and signed CN–100 and supporting documentation of CBP Form 7501, must be returned USDA, FSA, DAFO, P.O. Box 23704, Washington, DC 20026–3704. Forms obtained via the Internet will be located at *http://www.ams.usda.gov/Cotton*.

(d) Returning ballot to polling place. Each person to whom a ballot is issued by Internet, mail, facsimile, or in-person shall only be allowed to vote in the referendum by completing and signing the ballot, placing it in an envelope, and delivering or mailing it to the appropriate polling place. In order to be eligible for tabulation, voted ballots must be received at the polling place during the period established for holding the referendum. A ballot shall be considered to have been received during the referendum period if:

(1) In the case of the ballot delivered to the polling place, it was received in the office prior to the close of the work day on the final day of the referendum period, or

(2) In the case of the mailed ballot, it was postmarked not later than midnight of the final day of the referendum period and was received in the polling place prior to the start of canvassing the ballots.

(e) *Placing ballots in ballot box.* Notwithstanding the fact that a ballot(s) may be later challenged by FSA county office or a representative of FSA, envelopes containing ballots received at the polling place during the referendum period shall remain unopened and shall be placed immediately in a ballot box provided by FSA for producers and importers. Such ballot box shall be arranged so that ballots cannot be read or moved without breaking the seal on the container.

§ 1205.205 Canvass of ballots.

(a) *Canvassing procedure.* Canvassing of returned ballots shall take place as soon as possible after the opening of the FSA offices on the fifth day following the close of the referendum period. Such canvassing shall be in the presence of at least one member of the FSA county office for producer ballots or an FSA representative for importer ballots and shall be open to the public. The canvassing and ballots shall be handled in such a manner so that no member of the public may see how any person voted in the referendum. The county office or FSA representative shall supervise the opening of the sealed ballot box, the opening of the envelopes containing the ballots and a determination as to:

(1) The number of eligible voters favoring the Order and where necessary, the amount of cotton represented by them,

(2) The number of eligible voters disapproving the Order and, where necessary, the amount of cotton represented by them.

(3) The number of ballots cast by voters found to be ineligible to vote in the referendum, and

(4) The number of spoiled ballots. The ballots determined to be spoiled or cast by ineligible voters shall not be considered as approving or disapproving the Order, and the persons who cast such ballots shall not be regarded as participating in the referendum.

(b) *Spoiled ballots*. A ballot shall be considered as a spoiled ballot if:

(1) It is mutilated or marked in such a way that it is not possible to determine with certainty how the ballot was intended to be counted, or

(2) It does not contain the signature of the voter, or the voter's properly witnessed mark.

(c) *Challenge of ballots*. A producer ballot may be challenged by the member of the FSA county office and the importer ballot may be challenged by the representative of FSA. Before a challenged ballot is either counted or declared invalid, a determination shall be made by the FSA county office or representative of FSA as to the eligibility of the voter to vote in the referendum.

§ 1205.206 Reporting results of referendum.

(a) Each FSA county office shall transmit a written county summary of ballots showing the results of the referendum in its county to its State office.

(b) Each State office shall transmit a written summary of the referendum results from the county offices within its State to DAFO, and DAFO will provide a copy to the AMS. AMS will make the results available for public inspection for a period of 5 years following the end of the referendum period.

(c) AMS shall prepare and submit to the Secretary a report as to the results of the referendum. The Secretary shall then publically proclaim the results of the referendum.

§ 1205.207 Challenge of correctness of county summary of ballots.

The FSA state offices shall make a prompt investigation and decision in case of any dispute or challenge regarding the correctness of the county summary of ballots in any county:*Provided*, That no dispute of challenge shall be investigated unless it is brought to the attention of the State FSA office within 3 days after receipt by the FSA State office of the county summary of ballots from such county.

§ 1205.208 Disposition of ballots and records.

The FSA county office shall seal the voted ballots, challenged ballots found to be ineligible, spoiled ballots, register sheets, and summary sheets for the county in one or more envelopes or packages, plainly marked with the identification of the referendum, the date and the names of the county and State, and place them under lock and key in a safe place under the custody of the FSA county office for a period of 45 days after the referendum period. If no notice to the contrary is received by the end of such time, and after the ballots and other records have been examined by a representative of the State FSA office, the voted ballots and challenged ballots shall be destroyed, but the registers and county summary sheets shall be filed for a period of 5 years in the office of the FSA county office.

§ 1205.209 Confidential information.

(a) The ballots cast or the manner in which any person voted and all information furnished to, compiled by, or in the possession of the referendum agent shall be regarded as confidential.

(b) 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.

§ 1205.210 Additional instructions and forms.

AMS is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart for the use of State and County FSA offices in conducting a referendum. Such additional instructions may include procedures for FSA county and State offices to report and announce the results of the preliminary count of the votes in the county and the State.

Subpart—Cotton Research and Promotion Order

SOURCE: 31 FR 16758, Dec. 31, 1966, unless otherwise noted.

DEFINITIONS

§ 1205.301 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1205.302 Act.

Act means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; Public Law 89–502, 80 Stat 279, as amended).

[56 FR 64472, Dec. 10, 1991]

§ 1205.303 Person.

Person means any individual, partnership, corporation, association, or any other entity.

§ 1205.304 Cotton.

Cotton means:

(a) All Upland cotton harvested in the United States, and, except as used in §§ 1205.311 and 1205.335, includes cottonseed of such cotton and the products derived from such cotton and its seed, and

(b) Imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term ''cotton'' shall not, however, include:

(1) Any entry of imported cotton by an importer which has a value or weight less than a de minimis amount established in regulations issued by the Secretary and

(2) Industrial products as that term is defined by regulation.

[56 FR 64472, Dec. 10, 1991]

§ 1205.305 Upland cotton.

Upland cotton means all cultivated varieties of the species Gossypium hirsutum L.

[56 FR 64472, Dec. 10, 1991]

§ 1205.306 Bale.

Except as used in § 1205.322, *Bale* means the package of lint cotton produced at a cotton gin or the amount of processed cotton in a manufactured product that is equivalent to a 500 pound bale of lint cotton.

[56 FR 64472, Dec. 10, 1991]

§ 1205.307 Fiscal period.

Fiscal period is the 12-month budgetary period and means the calendar year unless the Cotton Board, with the approval of the Secretary, selects some other 12-months budgetary period.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.308 Cotton Board.

Cotton Board means the administrative body established pursuant to § 1205.318.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.309 Producer.

Producer means any person who shares in a cotton crop actually harvested on a farm, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.310 Importer.

Importer means many person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States, and the term *import* means any such entry.

[56 FR 64472, Dec. 10, 1991]

§ 1205.311 Handler.

Handler means any person who handles cotton, including the Commodity Credit Corporation.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.312 Handle.

Handle means to harvest, gin, warehouse, compress, purchase, market,

transport, or otherwise acquire ownership or control of cotton.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.313 United States.

United States means the 50 States of the United States of America.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.314 Cotton-producing State

Cotton-producing State means each of the following States and combinations of States:

Alabama-Florida; Arizona; Arkansas; California-Nevada; Georgia; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina-Virginia; Oklahoma; South Carolina; Tennessee-Kentucky; Texas.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.315 Marketing.

Marketing includes the sale of cotton or the pledging of cotton to the Commodity Credit Corporation as collateral for a price support loan.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.316 Cotton-Producer organization.

Cotton-Producer organization means any organization which has been certified by the Secretary pursuant to § 1205.341.

[56 FR 64472, Dec. 10, 1991]

§ 1205.317 Cotton-Importer organization.

Cotton-Importer organization means any organization which has been certified by the Secretary pursuant to § 1205.342.

[56 FR 64472, Dec. 10, 1991]

§ 1205.318 Contracting organization or association.

Contracting organization or association means the organization or association with which the Cotton Board has entered into a contract or agreement pursuant to § 1205.328(c).

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.319 Cotton-producing region.

Cotton-producing region means each of the following groups of cotton-producing States:

(a) Southeast Region: Alabama-Florida, Georgia, North Carolina-Virginia, and South Carolina;

(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky;

(c) Southwest Region: Oklahoma and Texas;

(d) Western Region: Arizona, California-Nevada, and New Mexico.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.320 Marketing year.

Marketing year means a consecutive 12-month period ending on July 31.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.321 Part and subpart.

Part means the cotton research and promotion order and all rules, regulations and supplemental orders issued pursuant to the act and the order, and the aforesaid order shall be a ''subpart'' of such part.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

COTTON BOARD

§ 1205.322 Establishment and membership.

(a) There is hereby established a Cotton Board composed of:

(1) Representatives of cotton producers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible producer organizations within a cotton-producing state, as certified pursuant to § 1205.341, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible organizations, from nominations made by producers in a manner authorized by the Secretary, and

(2) Representatives of cotton importers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible importer organizations, as certified pursuant to § 1205.342, or, if the Secretary

determines that a substantial number of importers are not members of or their interests are not represented by any such eligible organization, from nominations made by importers in a manner authorized by the Secretary.

(b) Representation on the Cotton Board shall be as follows:

(1) Each cotton-producing state shall have at least one member and an additional member for each 1 million bales or major fraction (more than half) thereof of cotton produced in the state and marketed above one million bales during the period specified in the regulations for determining Board membership; and

(2) Cotton importers shall be represented by an appropriate number of representatives, as determined by the Secretary, of importers of cotton subject to assessment during the period specified in the regulations for determining Board membership. That number shall not be less than two members. The initial importer representation on the Board shall consist of four representatives. The Secretary may, after consultation with organizations representing importers, reduce or increase the number of importer representatives, in the manner prescribed by the Secretary.

[56 FR 64472, Dec. 10, 1991]

§ 1205.323 Term of office.

All members of the Board and their alternatives shall serve for terms of three years. Each member and alternate shall continue to serve until a successor is selected and has qualified.

[56 FR 64472, Dec. 10, 1991]

§ 1205.324 Nominations.

All nominations authorized under § 1205.322 shall be made within such a period of time and in such a manner as the Secretary shall prescribe. The eligible producer organizations within each cotton-producing state, as certified pursuant to § 1205.341, shall caucus for the purpose of jointly nominating two qualified persons for each member and each alternate member to be selected to represent the cotton producers of such cotton-producing state. The eligible importer organizations, as certified pursuant to § 1205.342, shall caucus for the purpose of jointly nominating two qualified persons for each member and alternate member to be selected to represent cotton importers. If joint agreement is not reached with respect to the nominees for any such position, each such organization may nominate two qualified persons for any position on which there is no agreement.

[56 FR 64472, Dec. 10, 1991; 56 FR 66670, Dec. 24, 1991]

§ 1205.325 Selection.

From the nominations made pursuant to §§ 1205.322 and 1205.324, the Secretary shall select the members of the Board and an alternate for each member on the basis of representation provided for in §§ 1205.322 and 1205.323.

[56 FR 64473, Dec. 10, 1991]

§ 1205.326 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.327 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Board to qualify, or in the event of death, removal, resignation or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in §§ 1205.322, 1205.324 and 1205.325.

[56 FR 64473, Dec. 10, 1991]

§ 1205.328 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of death, removal, resignation or disqualification of a member, the alternate for the member shall act for the member until

a successor for such member is selected and qualified. In the event that both a producer member of the Board and the member's alternate are unable to attend a meeting, the Board may designate any other alternate member from the same cotton-producing state or region to serve in such member's place and stead of such meeting. In the event that both an importer member and the member's alternate are unable to attend a meeting, the Board may designate any other importer alternate member to serve in such member's place and stead at such meeting.

[56 FR 64473, Dec. 10, 1991]

§ 1205.329 Procedure.

A majority of the members of the Board, or alternates acting for members, shall constitute a quorum and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person. For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph or telephone, but any such action by telephone shall be confirmed promptly in writing.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.330 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.331 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) Subject to the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart including the designation of the handler, importer, or other person responsible for collecting the assessments authorized by § 1205.335, which designation may be of different handlers, importers, or other persons, or classes of handlers, importers, or other persons, to recognize differences in marketing practices or procedures in any state or area;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To recommend to the Secretary amendments to this subpart.

[31 FR 16758, Dec. 31, 1966, as amended at 42 FR 4813, Jan. 26, 1977. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

§ 1205.332 Duties.

The Board shall have the following duties:

(a) To select from among its members a chairman and such other officers as may be necessary for the conduct of its business, and to define their duties;

(b) To appoint or employ such persons as it may deem necessary and to determine the compensation and to define the duties of each;

(c) With the approval of the Secretary, to enter into contracts or agreements for the development and submission to it of research and promotion plans or projects authorized by § 1205.333, and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of costs thereof with funds collected pursuant to § 1205.335, with an organization or association whose governing body consists of cotton producers selected by the cotton-producer organizations certified by the Secretary under § 1205.341, in such manner that the producers of each cotton-producing state will, to the extent practicable, have representation on the governing body of such organization in the proportion that the cotton marketed by the producers of such state bears to the total marketed by the producers of all cotton-producing states. Any such contract or agreement shall provide that

such contracting organization or association shall develop and submit annually to the Cotton Board, for the purpose of review and making recommendations to the Secretary, a program of research, advertising, and sales promotion projects, together with a budget, or budgets, which shall show the estimated cost to be incurred for such projects, and that any such projects shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting organization shall keep accurate records of all its transactions, which shall be available to the Secretary and Board on demand, and make an annual report to the Cotton Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(d) To review and submit to the Secretary any research and promotion plans or projects which have been developed and submitted to it by the contracting organization or association, together with its recommendations with respect to the approval thereof by the Secretary;

(e) To submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of advertising and promotion and research and development projects as estimated in the budget or budgets submitted to it by the contracting organization or association, with the Board's recommendations with respect thereto;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit to the Secretary;

(h) To give the Secretary the same notice of meetings of the Board as is given to members in order that his representative may attend such meetings;

(i) To act as intermediary between the Secretary and any producer, importer, or handler.

(j) To submit to the Secretary such information as he may request.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

RESEARCH AND PROMOTION

§ 1205.333 Research and promotion.

The Cotton Board shall in the manner prescribed in § 1205.332(c) establish or provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for the advertising and sales promotion of cotton and its products, which plans or projects shall be directed toward increasing the general demand for cotton or its products in accordance with section 6(a) of the act;

(b) The establishment and carrying on of research and development projects and studies with respect to the production, ginning, processing, distribution, or utilization of cotton and its products in accordance with section 6(b) of the act, to the end that the marketing and utilization of cotton may be encouraged, expanded, improved, or made more efficient.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

EXPENSES AND ASSESSMENTS

§ 1205.334 Expenses.

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(b) The Board shall reimburse the Secretary for:

(1) Expenses up to $300,000 incurred by the Secretary in connection with any referendum conducted under the Act and

(2) Expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The Board shall reimburse any agency of the United States Government that assists in administering the import provisions of the order for a reasonable amount of the expenses incurred by that agency in connection therewith.

(d) The funds to cover such expenses incurred under paragraphs (a), (b) and (c) of this section shall be paid from assessments received pursuant to § 1205.335.

[42 FR 4813, Jan. 26, 1977. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

§ 1205.335 Assessments.

(a) Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Secretary and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Secretary, assessments as prescribed in paragraphs (a) (1) and (2) of this section:

(1) An assessment at the rate of $1 per bale of cotton handled;

(2) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in the Cotton Board rules and regulations. The rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on:

(i) The current value of the cotton, or

(ii) An average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

(b) Each importer of cotton shall pay to the Cotton Board through the U.S. Customs Service, or in such other manner and at such times as prescribed by regulations issued by the Secretary, assessments as prescribed in paragraphs (b)(1) and (2) of this section:

(1) An assessment of $1 per bale of cotton imported or the bale equivalent thereof for cotton products.

(2) A supplemental assessment on each bale of cotton imported, or the bale equivalent thereof for cotton products, which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in the Cotton Board rules and regulations. The rate of the supplemental assessment on imported cotton shall be the same as that paid on cotton produced in the United States. The rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation the value of imported cotton based on an average of current and/or historical cotton prices.

(c) The Secretary may designate by regulation exemptions to assessments provided for in this section for the following:

(1) Entries of products designated by specific Harmonized Tariff Schedule numbers which the Secretary determines are composed of U.S. cotton or other than Upland cotton, and for;

(2) Cotton contained in entries of imported cotton and cotton products that is U.S. produced cotton or is other than Upland cotton.

(d) Assessments collected under this section are to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart.

[56 FR 64473, Dec. 10, 1991]

§ 1205.336 "Importer Reimbursements".

Any cotton importer against whose imports any assessment is made and collected under the authority of the Act who has reason to believe that such assessment or any portion of such assessment was made on U.S. produced cotton or cotton other than Upland cotton shall have the right to demand and receive from the Cotton Board a reimbursement of the assessment or portion of the assessment upon submission of proof satisfactory to the Board that the importer paid the assessment

and that the cotton was produced in the U.S. or is other than Upland cotton. Any such demand shall be made by the importer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. Such time periods shall provide the importer at least 90 days from the date of collection to submit the reimbursement form to the Board. Any such reimbursement shall be made within 60 days after demand therefor.

[56 FR 64474, Dec. 10, 1991]

§ 1205.337 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this subpart.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

REPORTS, BOOKS, AND RECORDS

§ 1205.338 Reports.

Each handler and importer subject to this subpart and importers of de minimis amounts of cotton may be required to report to the Cotton Board periodically such information as is required by regulations, which may include but not be limited to the following:

(a) Number of bales handled or imported;

(b) Number of bales on which an assessment was collected;

(c) Name and address of person from whom the handler has collected the assessments on each bale handled or imported;

(d) Date collection was made on each bale handled or imported.

[56 FR 64474, Dec. 10, 1991]

§ 1205.339 Books and records.

Each handler and importer subject to this subpart and importers of de minimis amounts of cotton shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

[56 FR 64474, Dec. 10, 1991]

§ 1205.340 Confidential treatment.

All information obtained from such books, records or reports shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this § 1205.340 shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart or importers of de minimis amounts of cotton, which statements do not identify the information furnished by any person, or

(b) The publication by the direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

[56 FR 64474, Dec. 10, 1991]

CERTIFICATION OF COTTON PRODUCER ORGANIZATION

§ 1205.341 Certification of cotton producer organization.

Any cotton producer organization within a cotton-producing State may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent such State on the Cotton Board. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(a) Geographic territory within the State covered by the organization's active membership;

(b) Nature and size of the organization's active membership in the State, proportion of total of such active membership accounted for by farmers, a map showing the cotton-producing counties in such State in which the organization has members, the volume of cotton produced in each such county, the number of cotton producers in each such county, and the size of the organization's active cotton producer membership in each such county;

(c) The extent to which the cotton producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its cotton producer membership consists of a sufficiently large number of cotton producers who produce a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any cotton producer organization found eligible by the Secretary under this § 1205.341 will be certified by the Secretary, and the Secretary's determination as to eligibility is final.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64474, Dec. 10, 1991]

§ 1205.342 Certification of cotton importer organizations.

Any importer organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent cotton importers on the Cotton Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(a) Nature and size of organization's active membership, proportion of total active membership accounted for by cotton importers and the total amount of cotton imported by the organization's cotton importer members;

(b) The extent to which the cotton importer membership of such organization is represented in setting the organization's policies;

(c) Evidence of stability and permanency of the organization;

(d) Sources from which the organization's operating funds are derived;

(e) Functions of the organization; and

(f) The organization's ability and willingness to further the aims and objectives of the Act.

The primary consideration in determining the eligibility of an organization shall be whether its membership consist of a sufficient large number of cotton importers who import a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any importer organization found eligible by the Secretary under this § 1205.342 will be certified by the Secretary, and the Secretary's determination as to eligibility is final.

[56 FR 64475, Dec. 10, 1991]

MISCELLANEOUS

§ 1205.343 Suspension and termination.

(a) The Secretary will, whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cotton producers and importers (if subject to the Order) voting in the most recent referendum, to determine whether cotton producers and importers subject to the Order favor the suspension or termination of this subpart, except that in counting such request for a referendum, not more than 20 percent of such request may be from producers

from any one state or importers of cotton (if subject to the Order). The Secretary shall suspend or terminate such subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers subject to the Order voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of cotton, and who produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum.

[56 FR 64474, Dec. 10, 1991]

§ 1205.345 Proceedings after termination.

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

(b) The said trustees shall—

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

(2) Carry out the obligations of the Cotton Board under any contracts or agreements entered into by it pursuant to § 1205.332 (c);

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

(4) Upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all funds, property and claims vested in the Board or the trustees pursuant to this § 1205.345.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this § 1205.345 shall be subject to the same obligation imposed upon the Cotton Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the cotton research or promotion programs hitherto authorized.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64475, Dec. 10, 1991]

§ 1205.346 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder, or (b) release or extinguish any violation of this subpart or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.347 Personal liability.

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

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

§ 1205.348 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances

is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

Subpart—Members of Cotton Board

§ 1205.401 Definitions.

(a) *Cotton Division*. *Cotton Division* means the Cotton Division of the Agricultural Marketing Service of the U.S. Department of Agriculture.

(b) *Director*. *Director* means the Director of the Cotton Division.

[32 FR 1084, Jan. 31, 1967, as amended at 41 FR 37092, Sept. 2, 1976]

§ 1205.402 Determination of Cotton Board membership.

(a) In determining whether any cotton-producing state is entitled to be represented by more than one member of the Cotton Board as provided in § 1205.322, average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years will be used as the criteria for determination of such additional members.

(b) In determining whether importers of cotton and cotton-containing products are entitled to be represented by more than a minimum of two members on the Cotton Board as provided in § 1205.322, the average annual volume of imported cotton and the cotton content of imported products on which assessments have been collected will be used as the criteria for determination of such additional members. This volume of cotton will be expressed in terms of 480-pound net weight bales for the five most recent calendar years. The initial importer representation on the Board shall consist of four importer representatives.

(c) All members appointed from a state will be entitled to serve a full three-year term even though it is determined in a subsequent year that a state should have fewer additional members by using the average production of the five most recent marketing years as specified in paragraph (a) of this section.

(d) All members appointed to represent importers will be entitled to serve a full three-year term even though it is determined in a subsequent year that importers should be represented by fewer additional members by using the average volume of imports of cotton and the cotton content of products on which assessments have been collected as specified in paragraph (b) of this section.

(e) Each year the Director shall:

(1) Based on the average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years, notify all certified cotton producer organizations in each cotton-producing state of the number of vacancies to be filled by cotton producers on the Cotton Board; and

(2) Based on the average annual volume of imports of cotton and the cotton content of cotton-containing products on which assessments as provided for in § 1205.335 have been collected in terms of 480-pound net weight bales for the five most recent calendar years, notify all certified cotton importer organizations of the number of vacancies to be filled by cotton importers on the Cotton Board.

[56 FR 65980, Dec. 20, 1991]

§ 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton-producing state and all certified importer organizations of the location, date, and time of the caucus for nominating producer and importer representatives for the Cotton Board as specified in § 1205.324. The Director will designate a representative from the Cotton Division to attend the caucus meeting of cotton producer organizations in each state, and of cotton importer organizations. Each eligible cotton producer organization within each cotton-producing state and each importer organization will be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. The representative of a cotton producer organization shall be a cotton

producer and resident of such state, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of an importer organization shall be an importer of cotton and/or products containing cotton, an officer or member of the Board of Directors of such organization, and duly and unqualifiedly authorized in writing by such organization to make nominations on its behalf. The representative of the Director designated to attend the caucus meeting of cotton producer organizations in each state and of cotton importer organizations will ascertain the qualifications and eligibility of each representative of a cotton producer organization or cotton importer organization to participate in said meeting and to make nominations.

(b) Each caucus will be conducted as follows:

(1) The representative from the Cotton Division will act as temporary chairperson and will explain the procedure for nominations and the duties of the Cotton Board;

(2) The representatives in attendance from the certified organizations will then select a chairperson and secretary;

(3) At each caucus there will be presented for nomination and there will be nominated not less than the number of nominees required under the provisions of §§ 1205.322, 1205.324, and 1205.402.

[56 FR 65981, Dec. 20, 1991]

Subpart—Cotton Board Rules and Regulations

SOURCE: 42 FR 35974, July 13, 1977, unless otherwise noted.

DEFINITIONS

§ 1205.500 Terms defined.

As used throughout this subpart, unless the context otherwise requires, the following terms shall mean:

(a) *ASCS* means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) *Cotton Board* means the administrative body established pursuant to the Cotton Research and Promotion Order.

(c) *CCC* means the Commodity Credit Corporation.

(d) *Current value of Cotton* means the gross price per pound of lint cotton received by the producer for cotton as shown on the producers' settlement document before deductions are made for weight penalties, buyer's commission or brokerage fees, marketing fees, the $1 per bale cotton research and promotion assessment, picking charges, ginning charges, warehouse receiving charges, warehouse storage charges, transportation charges or any other charges, plus any amount received by a producer in the form of a loan deficiency payment with respect to such cotton.

(e) *Form A* means Cotton Producer's Note, Form CCC Cotton A.

(f) *Gin code number* means the identification number assigned to each cotton gin by the Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture.

(g) *Handle* means to harvest, gin, warehouse, compress, purchase, market, transport, or otherwise acquire ownership or control of cotton.

(h) *Handler* means any person who handles cotton, including CCC.

(i) *Marketing* means any sale of cotton, or the pledging of cotton to CCC as collateral for a price support loan.

(j) *Marketing year* means a consecutive 12-month period ending on July 31.

(k) *Person* means any individual, partnership, corporation, association, or any other entity, whether governmental or private.

(l) *Producer* means any person who owns or shares in a cotton crop (or in the proceeds thereof) as landowner, landlord, tenant, or sharecropper.

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

(n) *Loan deficiency payment* means any payment on Upland cotton made by the Commodity Credit Corporation to a producer in accordance with 7 CFR 713.55.

(o) *Importer* means any person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States and *import* means any such entry.

(p) *Customs Service* means the United States Customs Service of the United States Department of Treasury.

(q) *Cotton* means:

(1) All Upland cotton harvested in the United States, and, except as used in section 7(e) of the Act, includes cottonseed of such cotton and the products derived from such cotton and its seed, and

(2) Imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term *cotton* shall not, however, include:

(i) Any entry of imported cotton by an importer which has a value or weight less than a de minimis amount established in regulations issued by the Secretary and

(ii) Industrial products as that term is defined by regulation.

(r) *Industrial products* means cotton-containing products which are classified in the Harmonized Tariff Schedule of the United States under classifications other than textile classifications. Certain cotton-containing textile products under textile classifications shall also be considered to be industrial products, and are therefore not included in the table appearing in these regulations as products subject to assessment. Such products include, but are not limited to textile fabrics coated, impregnated, covered, or laminated, with other materials, textile piping and tubing, and belting materials.

[42 FR 35974, July 13, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 51 FR 6098, Feb. 20, 1986; 51 FR 37705, Oct. 24, 1986; 57 FR 29185, July 1, 1992]

GENERAL

§ 1205.505 Communication.

All reports, requests, applications for reimbursements, and communications in connection with the Cotton Research and Promotion Order shall be addressed as follows: Cotton Board, Post Office Box 2121, Memphis, Tennessee, 38101–2121.

[57 FR 29186, July 1, 1992]

ASSESSMENTS

§ 1205.510 Levy of assessments.

(a) *Producer assessments*. An assessment of $1 per bale for cotton research and promotion is hereby levied on each bale of Upland cotton that is produced from cotton harvested and ginned except cotton consumed by any governmental agency from its own production. Such assessment shall be payable and collected only once on each bale.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (a) of this section, is hereby levied on each bale of Upland cotton harvested and ginned except cotton consumed by any governmental agency from its own production. The supplemental assessment rate shall be levied at the rate of five-tenths of one percent of:

(i) The current value of the cotton multiplied by the number of pounds of lint cotton or;

(ii) The current value of the cotton converted to a fixed amount per bale as reflected in the following assessment chart:

ASSESSMENT CHART [1]

Current value (cents per pound)	Supplemental Assessment, dollars per bale
.00 to 9.99	0.15
10.00 to 19.99	.40
20.00 to 29.99	.65
30.00 to 39.99	.90
40.00 to 49.99	1.15
50.00 to 59.99	1.40
60.00 to 69.99	1.65
70.00 to 79.99	1.90
80.00 to 89.99	2.15
90.00 to 99.99	2.40
100.00 to 109.99	2.65
110.00 to 119.99	2.90

[1] Assessment is calculated on 5/10 of 1 percent of the midpoint of each 10¢ increment, based on a 500 lb. bale and converted to a fixed amount per bale.

(2) Each marketing year the collecting handler must select one of the two options for collecting the supplemental assessment as provided in paragraph (a)(1) of this section. The handler shall notify the Cotton Board as to the method selected at the time the handler files the first handler report each marketing year.

(b) *Importer assessment.* An assessment for cotton research and promotion of $1 per bale is hereby levied on each bale of cotton, or the bale equivalent thereof for cotton in cotton-containing products identified in the HTS conversion factor table in paragraph (b)(3) of this section and imported into the United States on or after July 31, 1992. The $1 per bale assessment shall be converted to a fixed amount per kilogram to facilitate the U.S. Customs Service in collecting this assessment.

(1) A supplemental assessment for cotton research and promotion in addition to the $1 per bale assessment provided for in paragraph (b) of this section is hereby levied on each bale of cotton or bale equivalent of cotton in cotton-containing products, identified in this subpart, imported into the United States on or after July 31, 1992. The supplemental assessment shall be levied at the rate of five-tenths of one percent of the historical value of cotton as determined by the Secretary and expressed in paragraph (b)(2) of this section. The rate of the supplemental assessment on imported cotton will be the same as that levied on cotton produced within the United States. The supplemental assessment will be calculated as a fixed amount per kilogram and added to the $1 per bale or bale equivalent assessment to facilitate the Customs Service in collecting assessments.

(2) The 12-month average of monthly weighted average prices received by U.S. farmers will be calculated annually. Such weighted average will be used as the value of imported cotton for the purpose of levying the supplemental assessment on imported cotton and will be expressed in kilograms. The value of imported cotton for the purpose of levying this supplemental assessment is $1.0880 cents per kilogram.

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the following table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed.

(i) Any line item entry of cotton appearing on Customs entry documentation in which the value of the cotton contained therein results in the calculation of an assessment of two dollars ($2.00) or less will not be subject to assessments as described in this section.

(ii) In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

IMPORT ASSESSMENT TABLE

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
5201000500	0	1.0880
5201001200	0	1.0880
5201001400	0	1.0880
5201001800	0	1.0880
5201002200	0	1.0880
5201002400	0	1.0880
5201002800	0	1.0880
5201003400	0	1.0880
5201003800	0	1.0880
5204110000	1.1111	1.2089
5204200000	1.1111	1.2089
5205111000	1.1111	1.2089
5205112000	1.1111	1.2089
5205121000	1.1111	1.2089
5205122000	1.1111	1.2089
5205131000	1.1111	1.2089
5205132000	1.1111	1.2089
5205141000	1.1111	1.2089
5205210020	1.1111	1.2089
5205210090	1.1111	1.2089
5205220020	1.1111	1.2089
5205220090	1.1111	1.2089
5205230020	1.1111	1.2089
5205230090	1.1111	1.2089
5205240020	1.1111	1.2089
5205240090	1.1111	1.2089
5205310000	1.1111	1.2089
5205320000	1.1111	1.2089
5205330000	1.1111	1.2089
5205340000	1.1111	1.2089
5205410020	1.1111	1.2089
5205410090	1.1111	1.2089
5205420021	1.1111	1.2089
5205420090	1.1111	1.2089
5205440021	1.1111	1.2089
5205440090	1.1111	1.2089
5206120000	0.5556	0.6045
5206130000	0.5556	0.6045
5206140000	0.5556	0.6045
5206220000	0.5556	0.6045

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
5206230000	0.5556	0.6045
5206240000	0.5556	0.6045
5206310000	0.5556	0.6045
5207100000	1.1111	1.2089
5207900000	0.5556	0.6045
5208112020	1.1455	1.2463
5208112040	1.1455	1.2463
5208112090	1.1455	1.2463
5208114020	1.1455	1.2463
5208114060	1.1455	1.2463
5208114090	1.1455	1.2463
5208118090	1.1455	1.2463
5208124020	1.1455	1.2463
5208124040	1.1455	1.2463
5208124090	1.1455	1.2463
5208126020	1.1455	1.2463
5208126040	1.1455	1.2463
5208126060	1.1455	1.2463
5208126090	1.1455	1.2463
5208128020	1.1455	1.2463
5208128090	1.1455	1.2463
5208130000	1.1455	1.2463
5208192020	1.1455	1.2463
5208192090	1.1455	1.2463
5208194020	1.1455	1.2463
5208194090	1.1455	1.2463
5208196020	1.1455	1.2463
5208196090	1.1455	1.2463
5208224040	1.1455	1.2463
5208224090	1.1455	1.2463
5208226020	1.1455	1.2463
5208226060	1.1455	1.2463
5208228020	1.1455	1.2463
5208230000	1.1455	1.2463
5208292020	1.1455	1.2463
5208292090	1.1455	1.2463
5208294090	1.1455	1.2463
5208296090	1.1455	1.2463
5208298020	1.1455	1.2463
5208312000	1.1455	1.2463
5208321000	1.1455	1.2463
5208323020	1.1455	1.2463
5208323040	1.1455	1.2463
5208323090	1.1455	1.2463
5208324020	1.1455	1.2463
5208324040	1.1455	1.2463
5208325020	1.1455	1.2463
5208330000	1.1455	1.2463
5208392020	1.1455	1.2463
5208392090	1.1455	1.2463
5208394090	1.1455	1.2463
5208396090	1.1455	1.2463
5208398020	1.1455	1.2463
5208412000	1.1455	1.2463
5208416000	1.1455	1.2463
5208418000	1.1455	1.2463
5208421000	1.1455	1.2463
5208423000	1.1455	1.2463
5208424000	1.1455	1.2463
5208425000	1.1455	1.2463
5208430000	1.1455	1.2463
5208492000	1.1455	1.2463
5208494020	1.1455	1.2463
5208494090	1.1455	1.2463
5208496010	1.1455	1.2463
5208496090	1.1455	1.2463
5208498090	1.1455	1.2463
5208512000	1.1455	1.2463
5208516060	1.1455	1.2463
5208518090	1.1455	1.2463
5208523020	1.1455	1.2463

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
5208523045	1.1455	1.2463
5208523090	1.1455	1.2463
5208524020	1.1455	1.2463
5208524045	1.1455	1.2463
5208524065	1.1455	1.2463
5208525020	1.1455	1.2463
5208591000	1.1455	1.2463
5208592025	1.1455	1.2463
5208592095	1.1455	1.2463
5208594090	1.1455	1.2463
5208596090	1.1455	1.2463
5209110020	1.1455	1.2463
5209110035	1.1455	1.2463
5209110090	1.1455	1.2463
5209120020	1.1455	1.2463
5209120040	1.1455	1.2463
5209190020	1.1455	1.2463
5209190040	1.1455	1.2463
5209190060	1.1455	1.2463
5209190090	1.1455	1.2463
5209210090	1.1455	1.2463
5209220020	1.1455	1.2463
5209220040	1.1455	1.2463
5209290040	1.1455	1.2463
5209290090	1.1455	1.2463
5209313000	1.1455	1.2463
5209316020	1.1455	1.2463
5209316035	1.1455	1.2463
5209316050	1.1455	1.2463
5209316090	1.1455	1.2463
5209320020	1.1455	1.2463
5209320040	1.1455	1.2463
5209390020	1.1455	1.2463
5209390040	1.1455	1.2463
5209390060	1.1455	1.2463
5209390080	1.1455	1.2463
5209390090	1.1455	1.2463
5209413000	1.1455	1.2463
5209416020	1.1455	1.2463
5209416040	1.1455	1.2463
5209420020	1.0309	1.1216
5209420040	1.0309	1.1216
5209430030	1.1455	1.2463
5209430050	1.1455	1.2463
5209490020	1.1455	1.2463
5209490090	1.1455	1.2463
5209516035	1.1455	1.2463
5209516050	1.1455	1.2463
5209520020	1.1455	1.2463
5209590025	1.1455	1.2463
5209590040	1.1455	1.2463
5209590090	1.1455	1.2463
5210114020	0.6873	0.7478
5210114040	0.6873	0.7478
5210116020	0.6873	0.7478
5210116040	0.6873	0.7478
5210116060	0.6873	0.7478
5210118020	0.6873	0.7478
5210191000	0.6873	0.7478
5210192090	0.6873	0.7478
5210214040	0.6873	0.7478
5210216020	0.6873	0.7478
5210216060	0.6873	0.7478
5210218020	0.6873	0.7478
5210314020	0.6873	0.7478
5210314040	0.6873	0.7478
5210316020	0.6873	0.7478
5210318020	0.6873	0.7478
5210414000	0.6873	0.7478
5210416000	0.6873	0.7478
5210418000	0.6873	0.7478

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
5210498090	0.6873	0.7478
5210514040	0.6873	0.7478
5210516020	0.6873	0.7478
5210516040	0.6873	0.7478
5210516060	0.6873	0.7478
5211110090	0.6873	0.7478
5211120020	0.6873	0.7478
5211190020	0.6873	0.7478
5211190060	0.6873	0.7478
5211202125	0.6873	0.7478
5211202135	0.4165	0.4532
5211202150	0.6873	0.7478
5211202990	0.6873	0.7478
5211320020	0.6873	0.7478
5211390040	0.6873	0.7478
5211390060	0.6873	0.7478
5211490020	0.6873	0.7478
5211490090	0.6873	0.7478
5211590025	0.6873	0.7478
5212146090	0.9164	0.9970
5212156020	0.9164	0.9970
5212216090	0.9164	0.9970
5509530030	0.5556	0.6045
5509530060	0.5556	0.6045
5513110020	0.4009	0.4362
5513110040	0.4009	0.4362
5513110060	0.4009	0.4362
5513110090	0.4009	0.4362
5513120000	0.4009	0.4362
5513130020	0.4009	0.4362
5513210020	0.4009	0.4362
5513310000	0.4009	0.4362
5514120020	0.4009	0.4362
5516420060	0.4009	0.4362
5516910060	0.4009	0.4362
5516930090	0.4009	0.4362
5601210010	1.1455	1.2463
5601210090	1.1455	1.2463
5601300000	1.1455	1.2463
5602109090	0.5727	0.6231
5602290000	1.1455	1.2463
5602906000	0.526	0.5723
5604909000	0.5556	0.6045
5607909000	0.8889	0.9671
5608901000	1.1111	1.2089
5608902300	1.1111	1.2089
5609001000	1.1111	1.2089
5609004000	0.5556	0.6045
5701104000	0.0556	0.0605
5701109000	0.1111	0.1209
5701901010	1.0444	1.1363
5702109020	1.1	1.1968
5702312000	0.0778	0.0846
5702411000	0.0722	0.0786
5702412000	0.0778	0.0846
5702421000	0.0778	0.0846
5702913000	0.0889	0.0967
5702990500	1.1111	1.2089
5702991500	1.1111	1.2089
5703900000	0.4489	0.4884
5801210000	1.1455	1.2463
5801230000	1.1455	1.2463
5801250010	1.1455	1.2463
5801250020	1.1455	1.2463
5801260020	1.1455	1.2463
5802190000	1.1455	1.2463
5802300030	0.5727	0.6231
5804291000	1.1455	1.2463
5806200010	0.3534	0.3845
5806200090	0.3534	0.3845
5806310000	1.1455	1.2463

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
5806400000	0.4296	0.4674
5808107000	0.5727	0.6231
5808900010	0.5727	0.6231
5811002000	1.1455	1.2463
6001106000	1.1455	1.2463
6001210000	0.8591	0.9347
6001220000	0.2864	0.3116
6001910010	0.8591	0.9347
6001910020	0.8591	0.9347
6001920020	0.2864	0.3116
6001920030	0.2864	0.3116
6001920040	0.2864	0.3116
6003203000	0.8681	0.9445
6003306000	0.2894	0.3149
6003406000	0.2894	0.3149
6005210000	0.8681	0.9445
6005220000	0.8681	0.9445
6005230000	0.8681	0.9445
6005240000	0.8681	0.9445
6005310010	0.2894	0.3149
6005310080	0.2894	0.3149
6005320010	0.2894	0.3149
6005320080	0.2894	0.3149
6005330010	0.2894	0.3149
6005330080	0.2894	0.3149
6005340010	0.2894	0.3149
6005340080	0.2894	0.3149
6005410010	0.2894	0.3149
6005410080	0.2894	0.3149
6005420010	0.2894	0.3149
6005420080	0.2894	0.3149
6005430010	0.2894	0.3149
6005430080	0.2894	0.3149
6005440010	0.2894	0.3149
6005440080	0.2894	0.3149
6006211000	1.1574	1.2593
6006221000	1.1574	1.2593
6006231000	1.1574	1.2593
6006241000	1.1574	1.2593
6006310040	0.1157	0.1259
6006310080	0.1157	0.1259
6006320040	0.1157	0.1259
6006320080	0.1157	0.1259
6006330040	0.1157	0.1259
6006330080	0.1157	0.1259
6006340040	0.1157	0.1259
6006340080	0.1157	0.1259
6006410085	0.1157	0.1259
6006420085	0.1157	0.1259
6006430085	0.1157	0.1259
6006440085	0.1157	0.1259
6101200010	1.0094	1.0982
6101200020	1.0094	1.0982
6102200010	1.0094	1.0982
6102200020	1.0094	1.0982
6103421020	0.8806	0.9581
6103421040	0.8806	0.9581
6103421050	0.8806	0.9581
6103421070	0.8806	0.9581
6103431520	0.2516	0.2737
6103431540	0.2516	0.2737
6103431550	0.2516	0.2737
6103431570	0.2516	0.2737
6104220040	0.9002	0.9794
6104220060	0.9002	0.9794
6104320000	0.9207	1.0017
6104420010	0.9002	0.9794
6104420020	0.9002	0.9794
6104520010	0.9312	1.0131
6104520020	0.9312	1.0131
6104622006	0.8806	0.9581

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
6104622011	0.8806	0.9581
6104622016	0.8806	0.9581
6104622021	0.8806	0.9581
6104622026	0.8806	0.9581
6104622028	0.8806	0.9581
6104622030	0.8806	0.9581
6104622060	0.8806	0.9581
6104632006	0.3774	0.4106
6104632011	0.3774	0.4106
6104632026	0.3774	0.4106
6104632028	0.3774	0.4106
6104632030	0.3774	0.4106
6104632060	0.3774	0.4106
6104692030	0.3858	0.4198
6105100010	0.985	1.0717
6105100020	0.985	1.0717
6105100030	0.985	1.0717
6105202010	0.3078	0.3349
6105202030	0.3078	0.3349
6106100010	0.985	1.0717
6106100020	0.985	1.0717
6106100030	0.985	1.0717
6106202010	0.3078	0.3349
6106202030	0.3078	0.3349
6107110010	1.1322	1.2318
6107110020	1.1322	1.2318
6107120010	0.5032	0.5475
6107210010	0.8806	0.9581
6107220015	0.3774	0.4106
6107220025	0.3774	0.4106
6107910040	1.2581	1.3688
6108210010	1.2445	1.3540
6108210020	1.2445	1.3540
6108310010	1.1201	1.2187
6108310020	1.1201	1.2187
6108320010	0.2489	0.2708
6108320015	0.2489	0.2708
6108320025	0.2489	0.2708
6108910005	1.2445	1.3540
6108910015	1.2445	1.3540
6108910025	1.2445	1.3540
6108910030	1.2445	1.3540
6108920030	0.2489	0.2708
6109100004	0.9956	1.0832
6109100007	0.9956	1.0832
6109100011	0.9956	1.0832
6109100012	0.9956	1.0832
6109100014	0.9956	1.0832
6109100018	0.9956	1.0832
6109100023	0.9956	1.0832
6109100027	0.9956	1.0832
6109100037	0.9956	1.0832
6109100040	0.9956	1.0832
6109100045	0.9956	1.0832
6109100060	0.9956	1.0832
6109100065	0.9956	1.0832
6109100070	0.9956	1.0832
6109901007	0.3111	0.3385
6109901009	0.3111	0.3385
6109901049	0.3111	0.3385
6109901050	0.3111	0.3385
6109901060	0.3111	0.3385
6109901065	0.3111	0.3385
6109901090	0.3111	0.3385
6110202005	1.1837	1.2879
6110202010	1.1837	1.2879
6110202015	1.1837	1.2879
6110202020	1.1837	1.2879
6110202025	1.1837	1.2879
6110202030	1.1837	1.2879
6110202035	1.1837	1.2879

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
6110202040	1.1574	1.2593
6110202045	1.1574	1.2593
6110202067	1.1574	1.2593
6110202069	1.1574	1.2593
6110202077	1.1574	1.2593
6110202079	1.1574	1.2593
6110909022	0.263	0.2861
6110909024	0.263	0.2861
6110909030	0.3946	0.4293
6110909040	0.263	0.2861
6110909042	0.263	0.2861
6111201000	1.2581	1.3688
6111202000	1.2581	1.3688
6111203000	1.0064	1.0950
6111205000	1.0064	1.0950
6111206010	1.0064	1.0950
6111206020	1.0064	1.0950
6111206030	1.0064	1.0950
6111206050	1.0064	1.0950
6111206070	1.0064	1.0950
6111305020	0.2516	0.2737
6111305050	0.2516	0.2737
6111305070	0.2516	0.2737
6112110050	0.7548	0.8212
6112120010	0.2516	0.2737
6112120030	0.2516	0.2737
6112120040	0.2516	0.2737
6112120050	0.2516	0.2737
6112120060	0.2516	0.2737
6112390010	1.1322	1.2318
6112490010	0.9435	1.0265
6114200005	0.9002	0.9794
6114200010	0.9002	0.9794
6114200015	0.9002	0.9794
6114200020	1.286	1.3992
6114200040	0.9002	0.9794
6114200046	0.9002	0.9794
6114200052	0.9002	0.9794
6114200060	0.9002	0.9794
6114301010	0.2572	0.2798
6114301020	0.2572	0.2798
6114303030	0.2572	0.2798
6115101510	1.0417	1.1334
6115103000	1.0417	1.1334
6115298010	1.0417	1.1334
6115959000	1.0417	1.1334
6115966020	0.2315	0.2519
6116101300	0.3655	0.3977
6116101720	0.8528	0.9278
6116926420	1.0965	1.1930
6116926430	1.2183	1.3255
6116926440	1.0965	1.1930
6116928800	1.0965	1.1930
6117809510	0.9747	1.0605
6117809540	0.3655	0.3977
6201121000	0.948	1.0314
6201122010	0.8953	0.9741
6201122050	0.6847	0.7450
6201122060	0.6847	0.7450
6201134030	0.2633	0.2865
6201921000	0.9267	1.0082
6201921500	1.1583	1.2602
6201922010	1.0296	1.1202
6201922021	1.2871	1.4004
6201922031	1.2871	1.4004
6201922041	1.2871	1.4004
6201922051	1.0296	1.1202
6201922061	1.0296	1.1202
6201931000	0.3089	0.3361
6201933511	0.2574	0.2801
6201933521	0.2574	0.2801

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
6201999060	0.2574	0.2801
6202121000	0.9372	1.0197
6202122010	1.1064	1.2038
6202122025	1.3017	1.4162
6202122050	0.8461	0.9206
6202122060	0.8461	0.9206
6202134005	0.2664	0.2898
6202134020	0.333	0.3623
6202921000	1.0413	1.1329
6202921500	1.0413	1.1329
6202922026	1.3017	1.4162
6202922061	1.0413	1.1329
6202922071	1.0413	1.1329
6202931000	0.3124	0.3399
6202935011	0.2603	0.2832
6202935021	0.2603	0.2832
6203122010	0.1302	0.1417
6203221000	1.3017	1.4162
6203322010	1.2366	1.3454
6203322040	1.2366	1.3454
6203332010	0.1302	0.1417
6203392010	1.1715	1.2746
6203399060	0.2603	0.2832
6203422010	0.9961	1.0838
6203422025	0.9961	1.0838
6203422050	0.9961	1.0838
6203422090	0.9961	1.0838
6203424006	1.2451	1.3547
6203424011	1.2451	1.3547
6203424016	0.9961	1.0838
6203424021	1.2451	1.3547
6203424026	1.2451	1.3547
6203424031	1.2451	1.3547
6203424036	1.2451	1.3547
6203424041	0.9961	1.0838
6203424046	0.9961	1.0838
6203424051	0.9238	1.0051
6203424056	0.9238	1.0051
6203424061	0.9238	1.0051
6203431500	0.1245	0.1355
6203434010	0.1232	0.1340
6203434020	0.1232	0.1340
6203434030	0.1232	0.1340
6203434040	0.1232	0.1340
6203498045	0.249	0.2709
6204132010	0.1302	0.1417
6204192000	0.1302	0.1417
6204198090	0.2603	0.2832
6204221000	1.3017	1.4162
6204223030	1.0413	1.1329
6204223040	1.0413	1.1329
6204223050	1.0413	1.1329
6204223060	1.0413	1.1329
6204223065	1.0413	1.1329
6204292040	0.3254	0.3540
6204322010	1.2366	1.3454
6204322030	1.0413	1.1329
6204322040	1.0413	1.1329
6204423010	1.2728	1.3848
6204423030	0.9546	1.0386
6204423040	0.9546	1.0386
6204423050	0.9546	1.0386
6204423060	0.9546	1.0386
6204522010	1.2654	1.3768
6204522030	1.2654	1.3768
6204522040	1.2654	1.3768
6204522070	1.0656	1.1594
6204522080	1.0656	1.1594
6204533010	0.2664	0.2898
6204594060	0.2664	0.2898
6204622010	0.9961	1.0838

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
6204622025	0.9961	1.0838
6204622050	0.9961	1.0838
6204624006	1.2451	1.3547
6204624011	1.2451	1.3547
6204624021	0.9961	1.0838
6204624026	1.2451	1.3547
6204624031	1.2451	1.3547
6204624036	1.2451	1.3547
6204624041	1.2451	1.3547
6204624046	0.9961	1.0838
6204624051	0.9961	1.0838
6204624056	0.9854	1.0721
6204624061	0.9854	1.0721
6204624066	0.9854	1.0721
6204633510	0.2546	0.2770
6204633530	0.2546	0.2770
6204633532	0.2437	0.2651
6204633540	0.2437	0.2651
6204692510	0.249	0.2709
6204692540	0.2437	0.2651
6204699044	0.249	0.2709
6204699046	0.249	0.2709
6204699050	0.249	0.2709
6205202016	0.9961	1.0838
6205202021	0.9961	1.0838
6205202026	0.9961	1.0838
6205202031	0.9961	1.0838
6205202036	1.1206	1.2192
6205202047	0.9961	1.0838
6205202051	0.9961	1.0838
6205202061	0.9961	1.0838
6205202066	0.9961	1.0838
6205202071	0.9961	1.0838
6205202076	0.9961	1.0838
6205302010	0.3113	0.3387
6205302030	0.3113	0.3387
6205302040	0.3113	0.3387
6205302050	0.3113	0.3387
6205302080	0.3113	0.3387
6206100040	0.1245	0.1355
6206303011	0.9961	1.0838
6206303021	0.9961	1.0838
6206303031	0.9961	1.0838
6206303041	0.9961	1.0838
6206303051	0.9961	1.0838
6206303061	0.9961	1.0838
6206403010	0.3113	0.3387
6206403030	0.3113	0.3387
6206900040	0.249	0.2709
6207110000	1.0852	1.1807
6207199010	0.3617	0.3935
6207210030	1.1085	1.2060
6207220000	0.3695	0.4020
6207911000	1.1455	1.2463
6207913010	1.1455	1.2463
6207913020	1.1455	1.2463
6208210010	1.0583	1.1514
6208210020	1.0583	1.1514
6208220000	0.1245	0.1355
6208911010	1.1455	1.2463
6208911020	1.1455	1.2463
6208913010	1.1455	1.2463
6209201000	1.1577	1.2596
6209203000	0.9749	1.0607
6209205030	0.9749	1.0607
6209205035	0.9749	1.0607
6209205040	1.2186	1.3258
6209205045	0.9749	1.0607
6209205050	0.9749	1.0607
6209303020	0.2463	0.2680
6209303040	0.2463	0.2680

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
6210109010	0.2291	0.2493
6210403000	0.0391	0.0425
6210405020	0.4556	0.4957
6211111010	0.1273	0.1385
6211111020	0.1273	0.1385
6211118010	1.1455	1.2463
6211118020	1.1455	1.2463
6211320007	0.8461	0.9206
6211320010	1.0413	1.1329
6211320015	1.0413	1.1329
6211320030	0.9763	1.0622
6211320060	0.9763	1.0622
6211320070	0.9763	1.0622
6211330010	0.3254	0.3540
6211330030	0.3905	0.4249
6211330035	0.3905	0.4249
6211330040	0.3905	0.4249
6211420010	1.0413	1.1329
6211420020	1.0413	1.1329
6211420025	1.1715	1.2746
6211420060	1.0413	1.1329
6211420070	1.1715	1.2746
6211430010	0.2603	0.2832
6211430030	0.2603	0.2832
6211430040	0.2603	0.2832
6211430050	0.2603	0.2832
6211430060	0.2603	0.2832
6211430066	0.2603	0.2832
6212105020	0.2412	0.2624
6212109010	0.9646	1.0495
6212109020	0.2412	0.2624
6212200020	0.3014	0.3279
6212900030	0.1929	0.2099
6213201000	1.1809	1.2848
6213202000	1.0628	1.1563
6213901000	0.4724	0.5140
6214900010	0.9043	0.9839
6216000800	0.2351	0.2558
6216001720	0.6752	0.7346
6216003800	1.2058	1.3119
6216004100	1.2058	1.3119
6217109510	1.0182	1.1078
6217109530	0.2546	0.2770
6301300010	0.8766	0.9537
6301300020	0.8766	0.9537
6302100005	1.1689	1.2718
6302100008	1.1689	1.2718
6302100015	1.1689	1.2718
6302215010	0.8182	0.8902
6302215020	0.8182	0.8902
6302217010	1.1689	1.2718
6302217020	1.1689	1.2718
6302217050	1.1689	1.2718
6302219010	0.8182	0.8902
6302219020	0.8182	0.8902
6302219050	0.8182	0.8902
6302222010	0.4091	0.4451
6302222020	0.4091	0.4451
6302313010	0.8182	0.8902
6302313050	1.1689	1.2718
6302315050	0.8182	0.8902
6302317010	1.1689	1.2718
6302317020	1.1689	1.2718
6302317040	1.1689	1.2718
6302317050	1.1689	1.2718
6302319010	0.8182	0.8902
6302319040	0.8182	0.8902
6302319050	0.8182	0.8902
6302322020	0.4091	0.4451
6302322040	0.4091	0.4451
6302402010	0.9935	1.0809

IMPORT ASSESSMENT TABLE—Continued

[Raw cotton fiber]

HTS No.	Conv. fact.	Cents/kg.
6302511000	0.5844	0.6358
6302512000	0.8766	0.9537
6302513000	0.5844	0.6358
6302514000	0.8182	0.8902
6302600010	1.1689	1.2718
6302600020	1.052	1.1446
6302600030	1.052	1.1446
6302910005	1.052	1.1446
6302910015	1.1689	1.2718
6302910025	1.052	1.1446
6302910035	1.052	1.1446
6302910045	1.052	1.1446
6302910050	1.052	1.1446
6302910060	1.052	1.1446
6303191100	0.9448	1.0279
6303910010	0.6429	0.6995
6303910020	0.6429	0.6995
6304111000	1.0629	1.1564
6304190500	1.052	1.1446
6304191000	1.1689	1.2718
6304191500	0.4091	0.4451
6304192000	0.4091	0.4451
6304910020	0.9351	1.0174
6304920000	0.9351	1.0174
6505901540	0.181	0.1969
6505902060	0.9935	1.0809
6505902545	0.5844	0.6358

(4) Any entry of cotton that qualifies for informal entry according to regulations issued by the Customs Service will not be subject to the assessment.

(5) Imported textile and apparel articles assembled of components formed from cotton produced in the Unites States and identified by HTS numbers 9819.11.03, 9819.11.06, 9820.11.03, 9820.11.06, 9820.11.09, 9820.11.12, 9820.11.18, 9820.11.21, 9802.00.8015, 9802.00.9000, 9802.00.8044, or 9802.00.8046 shall not subject to assessment.

(6) Imported cotton and products may be exempted by the Cotton Board from assessment under this paragraph. Such imported cotton and products may include, but are not limited to cotton and the cotton content of products which is U.S. produced cotton, or cotton other than Upland cotton.

(i) A request for such exemption must be submitted to the Cotton Board by the importer, prior to the importation of the cotton product. The Cotton Board will then issue, if deemed appropriate, a numbered exemption certificate valid for 1 year from the date of issue. The exemption number should be entered by the importer on the Customs entry documentation in the appropriate location as determined by the U.S. Customs Service.

(ii) The request for exemption should include:

(A) the name, address, and importer identification number for the importer;

(B) the HTS classification of the imported product;

(C) weight of the product for which the exemption is sought;

(D) estimated date of entry;

(E) commercial invoices of other such documentation indicating the origin or production or type of the cotton fiber used to produce the imported product;

(F) manufacture's description of the imported product.

(7) The exemption number ''999999999'' shall be entered on the Customs entry summary document, in the appropriate location as determined by the U.S. Customs Service, by the importer when, based on the importer's own determination, the imported product is identified by a Harmonized Tariff Schedule classification number which is subject to assessment but the particular article contains no cotton.

(8) Articles imported into the United States temporarily and under bond which are classified by the Harmonized Tariff Schedule heading which begins with ''9813'' shall not be subject to assessment.

(9) Articles imported into the U.S. after being exported from the U.S. for alterations and which are classified by the Harmonized Tariff Schedule subheadings 9802.00.40 and 9802.00.50 shall not be subject to assessment.

[57 FR 29432, July 2, 1992]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 1205.510, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 1205.511 Payment and collection.

(a) The $1 per bale assessment shall be paid by:

(1) The producer of the cotton to the collecting handler designated in § 1205.512, and

(2) The importer of cotton to the Customs Service as provided in § 1205.514.

(b) The supplemental assessment shall be paid by:

(1) The producer of the cotton to the collecting handler designated in § 1205.513, and

(2) The importer of cotton to the Customs Service as described in § 1205.515.

(c) If more than one person subject to assessment shares in the proceeds received from a bale or bale equivalent, each such person is obligated to pay that portion of the assessment that is equivalent to that person's proportionate share of the proceeds.

(d) Failure of the handler to collect the assessments on each bale shall not relieve the handler of the handler's obligation to remit the assessments to the Cotton Board as required in §§ 1205.512, 1205.513 and 1205.516.

[57 FR 29190, July 1, 1992]

§ 1205.512 Collecting handlers and time of collection of $1 per bale assessment.

Collecting handlers and the time of collecting the $1 per bale assessment shall be as follows:

(a) Except as provided in paragraph (b) of this section, any person who purchases a bale of cotton from the producer of the cotton shall be the collecting handler for such cotton. The handler shall collect the assessment at the time the handler first makes any payment or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(b) Any cooperative marketing association or other person that accepts a bale of cotton from the producer of the cotton under an oral or written contract or agreement providing for the marketing of the cotton shall be the collecting handler for such cotton. Such association or person shall collect the assessment regardless of whether the cotton is marketed or tendered to CCC for price support loan. The handler shall collect the assessment at the time the handler first makes any cash advance, any payment, or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(c) For bales of cotton tendered to CCC for Form A loan, except bales tendered pursuant to paragraph (b) of this section:

(1) The ASCS County Office shall be the collecting handler except as provided in paragraph (c)(2) of this section. The ASCS County Office shall collect the assessment when it makes disbursement based on the Form A loan documents. The producer's copy of the Cotton Producer's Note (Form CCC Cotton A) shall show payment of the assessment and shall constitute the producer's receipt for payment of the assessment.

(2) Any person (other than an ASCS County Office) who advances to the producer the loan value of the cotton as shown on a Cotton Producer's Note (Form CCC Cotton A) shall be the collecting handler for such cotton. The handler shall collect the $1 per bale assessment at the time the handler makes any advance to the producer on the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(d) Any person who purchases cotton in the cotton field where produced or who purchases seed cotton or unbaled lint cotton from the producer of the cotton shall be the collecting handler. The handler shall collect the assessment at the time such cotton is ginned and shall give the producer a receipt indicating payment of the assessment. When a bale is ginned that contains any such cotton purchased from more than one producer, the handler shall collect each producer's proportionate share of the assessment and shall give each producer a receipt indicating the producer's proportionate share of the assessment payment.

(e) Any person who purchases cotton from a producer whereby the producer agrees to deliver a certain quantity of cotton but retains the right to establish the price at some future date shall be the collecting handler for such cotton. The handler shall collect the $1 per bale assessment at the time final settlement is made on the cotton. The handler shall give the producer a receipt indicating payment of the $1 per bale assessment.

(f) Any person who consumes domestically or exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the assessment to the Cotton Board at the time the cotton is consumed or exported.

(g) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d) or (e) of this section shall be the collecting handler for such cotton. Such handler shall collect the assessment at the time such handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the assessment.

(h) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer, or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer for the purposes of this section.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 57 FR 29190, July 1, 1992]

§ 1205.513 Collecting handlers and time of collection of the supplemental assessment.

Collecting handlers and the time of collecting the supplemental assessment shall be as follows:

(a) Except as provided in paragraph (b) of this section, any person who purchases a bale of cotton from the producer of the cotton shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time the handler first makes any payment or any credit to the producer's account for the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(b) Any cooperative marketing association or other person that accepts a bale of cotton from the producer of the cotton under an oral or written contract or agreement providing for the marketing of the cotton shall be the collecting handler for such cotton. Such association or person shall collect the supplemental assessment regardless of whether the cotton is marketed or tendered to CCC for price support loan. The handler shall collect the supplemental assessment at the time the handler first makes any cash advance,

any payment, or any credit to the producer's account for the cotton. Supplemental assessments due on any subsequent cash advances, payments, or credits to the producer's account shall be collected by the handler at the time final settlement is made on the cotton. The handler shall give the producer a receipt each time a supplemental assessment is collected.

(c) For bales of cotton tendered to CCC for Form A loan, except bales tendered pursuant to paragraph (b) of this section:

(1) The ASCS County Office shall be the collecting handler except as provided in paragraph (c)(2) of this section. The ASCS County Office shall collect the supplemental assessment when it makes disbursement based on the Form A loan value of cotton. The producer's copy of the Cotton Producer's Note (Form CCC Cotton A) shall show payment of the supplemental assessment and shall constitute the producer's receipt for payment of the supplemental assessment.

(2) Any person (other than an ASCS County Office) who advances to the producer the loan value of the cotton as shown on a Cotton Producer's Note (Form CCC Cotton A) shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time the handler makes any advance to the producer on the loan value of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(d) With respect to any Upland cotton on which the producer or a cooperative marketing association acting on behalf of a producer receives a loan deficiency payment, the ASCS County Office or the cooperative marketing association shall be the collecting handler of the supplemental assessment on the value of the cotton represented by the loan deficiency payment at the time such payment is made to the producer or the cooperative marketing association. A copy of a document reflecting this transaction issued by the ASCS County Office or cooperative marketing association shall show the amount collected as the supplemental assessment and shall constitute the producer's receipt for payment of the supplemental assessment.

(e) Any person who (1) purchases a producer's equity in cotton tendered to CCC for Form A loan or (2) purchases cotton that a producer has redeemed from the Form A loan, shall be the collecting handler for the portion of the total supplemental assessment not collected under paragraph (c) of this section. The handler shall give the producer a receipt indicating payment of that portion of the supplemental assessment.

(f) Any person who purchases cotton in the cotton field where produced or who purchases seed cotton or unbaled lint cotton from the producer of the cotton shall be the collecting handler. The handler shall collect the supplemental assessment at the time such cotton is ginned and shall give the producer a receipt indicating payment of the supplemental assessment. When a bale is ginned and baled that contains any such cotton purchased from more than one producer, the handler shall collect each producer's proportionate share of the supplemental assessment and shall give each producer a receipt indicating the producer's proportionate share of the supplemental assessment payment.

(g) Any person who purchases cotton from a producer whereby the producer agrees to deliver a certain quantity of cotton but retains the right to establish the price at some future date shall be the collecting handler for such cotton. The handler shall collect the supplemental assessment at the time final settlement is made on the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(h) Any person who consumes domestically cotton of that person's own production shall be the collecting handler for such cotton. The handler shall pay the supplemental assessment at the time of consumption on the basis of a market value determined in consultation with the Cotton Board.

(i) Any person who exports cotton of that person's own production shall be the collecting handler for such cotton. Such handler shall pay the supplemental assessment on the basis of the

current value of cotton as reflected on the export settlement document.

(j) Any person who obtains ownership of a bale of cotton from the producer of the cotton by transfer of any kind or by any means, under conditions other than those described in paragraph (a), (b), (c), (d), (e), or (f) of this section shall be the collecting handler for such cotton. Such handler shall collect the supplemental assessment at the time the handler takes ownership of the cotton. The handler shall give the producer a receipt indicating payment of the supplemental assessment.

(k) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of such producer or the producer's estate, or the person acting on behalf of creditors, shall be considered the producer for the purposes of this section.

[42 FR 35974, July 31, 1977, as amended at 50 FR 10932, Mar. 19, 1985; 51 FR 37705, Oct. 24, 1986; 57 FR 29190, July 1, 1992]

§ 1205.514 Customs Service and the Collection of the $1 per bale assessment.

The Collection of the $1 per bale assessment by the Customs Service shall be as follows:

(a) The Customs Service will collect the assessment from the importer or from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported into the United States. The Customs Service will collect the assessment on cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in § 1205.510(b)(2) at the time of importation and forward such assessment as per the agreement between the United States Customs Service and the U.S. Department of Agriculture.

(b) In the event of an importer's death, bankruptcy, receivership, or incapacity to act, the representative of such importer, or the importer's estate, or the person acting on behalf of creditors, shall be considered the importer for the purposes of this section.

[57 FR 29191, July 1, 1992]

§ 1205.515 Customs Service and the collection of the supplemental assessment.

The collection of the supplemental assessment by the Customs Service shall be as follows:

(a) The Customs Service will collect the supplemental assessment from any person acting as principal, agent, broker or consignee for cotton or cotton-containing products produced outside the United States and imported into the United States. Customs Service will collect the assessment on all cotton and cotton-containing products identified by Harmonized Tariff Schedule heading numbers in § 1205.510(b)(2) at the time of importation and forward such assessment as per the agreement between the United States Customs Service and the U.S. Department of Agriculture.

(b) In the event of an importer's death, bankruptcy, receivership, or incapacity to act, the representative of such importer, or the importer's estate, or the person acting on behalf of creditors, shall be considered the importer for the purposes of this section.

[57 FR 29191, July 1, 1992]

§ 1205.516 Reports and remittance to the Cotton Board.

(a) *Handler reports and remittances.* Each collecting handler shall transmit assessments to the Cotton Board as follows:

(1) *Reporting periods.* Each calendar month shall be a reporting period and the period shall end on the close of business on the last day of the month.

(2) *Reports.* Each collecting handler shall make reports on forms made available or approved by the Cotton Board. Each report shall be mailed to the Cotton Board and postmarked within ten days after the close of the reporting period.

(i) *Collecting handler report.* Each collecting handler shall prepare a separate report form each reporting period for each gin from which such handler handles cotton on which the handler is required to collect the assessments during the reporting period. Each report shall be mailed in duplicate to the Cotton Board and shall contain the following information:

(A) Date of report;

(B) Reporting period covered by report;

(C) Gin code number;

(D) Name and address of handler;

(E) Listing of all producers from whom the handler was required to collect the assessments, their addresses, total number of bales, and total assessment collected and remitted for each producer;

(F) Date of last report remitting assessments to the Cotton Board.

(ii) *No cotton purchased report.* Each collecting handler shall submit a no cotton purchased report form for each reporting period in which no cotton was handled for which the handler is required to collect assessments during the reporting period. A collecting handler who handles cotton only during certain months shall file a final no cotton purchased report at the conclusion of such handlers marketing season. If a collecting handler handles cotton during any month following submission of the final report for the handlers marketing season, such handler shall send a collecting handler report and remittance to the Cotton Board by the 10th day of the month following the month in which cotton was handled. The no cotton purchased report shall be signed and dated by the handler of the handler's agent.

(3) *Remittances.* The collecting handler shall remit all assessments to the Cotton Board with the report required in paragraph (a)(2) of this section. All remittances sent to the Cotton Board by collecting handlers shall be made by check, draft, or money order payable to the order of the ''Cotton Board''. All remittances shall be received subject to collection and payment at par.

(4) *Interest and late payment charges.* (i) There shall be an interest charge, at rates prescribed by the Cotton Board with the approval of the Secretary, on any handler who is sent a second certified mail notice of past-due assessments from the Cotton Board in any one marketing year (August 1–July 31).

(ii) In addition to the interest charge specified in paragraph (a)(4)(i) of this section, there shall be a late payment charge on any handler whose remittance is not received by the Cotton Board within 10 days after the close of the reporting period in which interest charges were first accrued. The late payment charge shall be 5 percent of the unpaid balance before interest charges have accrued.

(iii) The interest and late payment charges on the unremitted assessments for a particular reporting period will be applied from the first working day on or following the 20th day of the month in which the assessments were due.

(b) *Importer reports and remittance.* The United States Customs Service will transmit reports and assessments collected on imported cotton to the Agricultural Marketing Service according to the agreement between the Customs Service and the Agricultural Marketing Service. Upon the request of the Cotton Board, an importer shall file with the Board a report, for a period of time specified in the request, that includes the following information:

(1) The importer's name and address;

(2) The quantity of cotton and cotton products imported;

(3) The amount of the assessment paid on imported cotton and cotton products;

(4) The amount of imported cotton and cotton products on which the assessment was not paid to the Customs Service.

[57 FR 29190, July 1, 1992]

§ 1205.517 Failure to report and remit.

(a) Any collecting handler who fails to submit reports and remittances according to reporting periods and time schedules required in § 1205.516 shall be subject to appropriate action by the Cotton Board which may include one or more of the following actions:

(1) Audits of the collecting handler's books and records to determine the amount owed the Cotton Board;

(2) Requirement that an escrow account for the deposit of assessments collected be established. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Cotton Board with the Approval of the Secretary;

(3) Referral to the Secretary for appropriate enforcement action;

(4) Publication of a collecting handler's name in accordance with the following provisions:

(i) The name of any collecting handler will be subject to publication if the collecting handler:

(A) is sent two certified mail notices of past due assessments and/or collecting handler reports from the Cotton Board in any one marketing year (August 1–July 31), or

(B) is required by the Cotton Board to establish an escrow account for depositing assessments, in accordance with paragraph (a)(2) of this section, and does not comply with the deposit procedures established by the Cotton Board with approval of the Secretary.

(ii) The name of any collecting handler who is subject to publication will be published by the Cotton Board with the approval of the Secretary in a monthly listing during the primary cotton marketing season (September through March) and a bi-monthly listing during the remainder of the year. The published listing will be distributed by the Cotton Board.

(iii) The Cotton Board, with approval of the Secretary, may notify individual producers that the assessments collected by such producer's collecting handler, whose name is subject to publication in accordance with the provisions of paragraph (a)(4)(i) of this section, have not been remitted to the Cotton Board as required.

(b) Any importer who fails to submit reports to the Cotton Board pursuant to request made according to § 1205.516 or assessments to the Customs Service, shall be subject to one or more of the following actions:

(1) Audits of the importer's books and records to determine the amount owed the Cotton Board.

(2) A deduction for the amount of any unpaid assessment by the Customs Service from the importers surety bond.

(3) Referral to the Secretary for appropriate enforcement action.

[57 FR 29191, July 1, 1992]

§ 1205.518 Receipts for payment of assessments.

Each collecting handler who is required by § 1205.512 and § 1205.513 to give the producer a receipt showing payment of cotton research and promotion assessments shall provide the producer with an invoice or settlement sheet for the cotton. Such document shall serve as a receipt shall contain the following information:

(a) Name and address of collecting handler.

(b) Gin code number of gin at which cotton was ginned.

(c) Name and address of producer who paid assessment.

(d) Number of bales on which assessment was paid.

(e) Gross price per pound received by the producer.

(f) Total assessments paid by the producer.

(g) Date on which assessment was paid by producer.

(Approved by the Office of Management and Budget under control number 0581–0115)

[42 FR 35974, July 13, 1977, as amended at 49 FR 8420, Mar. 7, 1984. Redesignated and amended at 51 FR 6099, Feb. 20, 1986. Further redesignated at 57 FR 29190, July 1, 1992]

§ 1205.519 Organic exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, an eligible cotton producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the crop year as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells cotton. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic cotton and 100 percent organic cotton products—on a form provided by the Board—at any time initially and annually thereafter as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic cotton and cotton products bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2754, Jan. 14, 2005]

REIMBURSEMENTS

§ 1205.520 Procedure for obtaining reimbursement.

Each importer against whose imports of cotton or cotton-containing products any assessments are made and collected may obtain a reimbursement on that portion of the assessment that was collected on cotton produced in the United States or cotton other than Upland cotton by following the procedures prescribed in this section.

(a) *Application form.* An importer shall obtain a reimbursement application form from the Cotton Board. Such form may be obtained by written request to the Cotton Board and the request shall bear the importer's signature or the importer's properly-witnessed mark.

(b) *Submission of reimbursement application to Cotton Board.* Any importer requesting a reimbursement shall mail the application on the prescribed form to the Cotton Board. The application shall be postmarked within 180 days from the date the assessments were paid on the cotton by such importer. The reimbursement application shall show:

(1) The importer's name, address, phone number and Customs Service identification number;

(2) Weight of the cotton in each HTS category for which the reimbursement is requested;

(3) Subtotal amounts to be reimbursed for each HTS number and grand total to be reimbursed;

(4) Date or inclusive dates on which the assessments were paid;

(5) The name of the port of entry; and

(6) Certification by the importer that the cotton was grown in the U.S. or is other than Upland cotton.

(c) Where more than one importer shared in the assessment payment on cotton, joint or separate reimbursement application forms may be filed. In any such case, the reimbursement application shall show the names, addresses and proportionate shares of assessments paid by all importers. The reimbursement application shall bear the signature of each importer seeking reimbursement.

(d) *Proof of payment of the assessment on U.S. produced or other than Upland cotton.* A copy of the Customs entry form and the commercial invoice filed with the Customs Service shall accompany the importer's reimbursement application. Within 60 days from the date the properly executed application for reimbursement is received by the Cotton Board, the Cotton Board shall make reimbursement to the importer. For joint applications, the reimbursement shall be made payable to all eligible importers signing the reimbursement application. Documentation submitted with reimbursement applications shall not be returned to the importer.

[57 FR 29192, July 1, 1992, as amended at 62 FR 22879, Apr. 28, 1997]

WAREHOUSE RECEIPTS

§ 1205.525 Entry of gin code number.

The warehouse that first receives a bale for storage after ginning shall enter the gin code number of the gin at which the bale was ginned on the warehouse receipt issued for the bale.

[57 FR 29192, July 1, 1992]

REPORTS AND RECORDS

§ 1205.530 Gin reports and reporting schedule.

(a) *Gin reports.* Each year each cotton gin in the United States shall submit reports to the Cotton Board on forms or certificates made available or approved by the Cotton Board as follows:

(1) *End-of-season report.* Except as provided in paragraph (a)(2) of this section, each gin shall report to the Cotton Board an alphabetical listing of producer names, their addresses, and the number of bales ginned for each such producer during its ginning season.

(2) *Certificate in Lieu of End-of-Season Report.* If a gin is the collecting handler on every bale ginned at such gin and collecting handler reports and remittances of assessments have been made in accordance with § 1205.516, a certification to that effect may be made to the Cotton Board in lieu of an end-of-season report.

(b) *Reporting schedule.* The schedule for submitting gin reports is as follows:

(1) Each gin that completes ginning operations prior to January 16 shall make a report to the Cotton Board within 10 days after completion of ginning.

(2) Each gin that operates on or after January 16 will make a report to the Cotton Board not later than January 25 covering bales ginned through January 15.

(3) Each gin that operates after January 15 shall make a supplemental report to the Cotton Board within 10 days after the close of ginning operations covering bales ginned after January 15.

[42 FR 35974, July 13, 1977, as amended at 57 FR 29192, July 1, 1992]

§ 1205.531 Records.

Each handler or importer required to make reports pursuant to this subpart shall maintain such books and records as are necessary to verify the reports.

[57 FR 29192, July 1, 1992]

§ 1205.532 Retention period for reports and records.

Each handler and importer required to make reports pursuant to this subpart shall retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of the report made to the Cotton Board; and

(b) Such books and records as are necessary to verify such reports.

[57 FR 29192, July 1, 1992]

§ 1205.533 Availability of reports and records.

Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by the Cotton Board, including its designated employees, and the Secretary any reports, books, or records required under this subpart.

[57 FR 29192, July 1, 1992]

CONFIDENTIAL INFORMATION

§ 1205.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers shall be kept confidential in the manner and to the extent provided for in § 1205.340.

[57 FR 29192, July 1, 1992]

§ 1205.541 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Public Law 96–511, is OMB number 0581–0093, except Board member nominee information sheets are assigned OMB number 0505–0001.

[57 FR 29192, July 1, 1992]

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PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 68 FR 58554, Oct. 9, 2003, unless otherwise noted.

Subpart A—Mango Promotion, Research, and Information Order Definitions

SOURCE: 69 FR 59122, Oct. 4, 2004, unless otherwise noted.

§ 1206.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Public Law 104–127; 110 Stat. 1029), or any amendments thereto.

§ 1206.2 Board.

Board or National Mango Promotion Board means the administrative body established pursuant to § 1206.30, or such other name as recommended by the Board and approved by the Department.

§ 1206.3 Conflict of interest.

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

§ 1206.4 Customs.

Customs means the Customs and Border Protection of the U.S. Department of Homeland Security.

§ 1206.5 Department.

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.

§ 1206.6 First handler.

First handler means any person, (excluding a common or contract carrier), receiving 500,000 or more pounds of mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

§ 1206.7 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Department.

§ 1206.8 Foreign producer.

Foreign producer means any person:

(1) Who is engaged in the production and sale of mangos outside of the United States and who owns, or shares the ownership and risk of loss of the crop for sale in the U.S. market or

(2) Who is engaged, outside of the United States, in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

§ 1206.9 Importer.

Importer means any person importing 500,000 or more pounds of mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos.

§ 1206.10 Information.

Information means information and programs that are designed to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of mangos in the United States. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of mangos; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or

increased efficiency for the mango industry, and activities to enhance the image of the mango industry.

§ 1206.11 Mangos.

Mangos means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae*.

§ 1206.12 Market or marketing.

Marketing means the sale or other disposition of mangos in the U.S. domestic market. To market means to sell or otherwise dispose of mangos in interstate or intrastate channels of commerce.

§ 1206.13 Order.

Order means an order issued by the Department under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1206.14 Part.

Part means part 1206 which includes the Mango Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order.

§ 1206.15 Person.

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

§ 1206.16 Producer.

Producer means any person who is engaged in the production and sale of mangos in the United States and who owns, or shares the ownership and risk of loss of, the crop or a person who is engaged in the business of producing, or causing to be produced, mangos beyond the person's own family use and having value at first point of sale.

§ 1206.17 Promotion.

Promotion means any action taken to present a favorable image of mangos to the general public and the food industry for the purpose of improving the competitive position of mangos and stimulating the sale of mangos in the United States. This includes paid advertising and public relations.

§ 1206.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of mangos, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value and benefits, and marketing of mangos.

§ 1206.19 Retailer.

Retailer means a person engaged in the business of selling mangos only to consumers.

§ 1206.20 Secretary.

Secretary means the Secretary of Agriculture of the United States.

§ 1206.21 Suspend.

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

§ 1206.22 Terminate.

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

§ 1206.23 United States.

United States or U.S. means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1206.24 Wholesaler.

Wholesaler means any person engaged in the purchase, assembly, transportation, storage, and distribution of mangos for sale to other wholesalers, retailers, and foodservice firms.

NATIONAL MANGO PROMOTION BOARD

§ 1206.30 Establishment and membership.

(a) *Establishment of the National Mango Promotion Board.* There is hereby established a National Mango Promotion Board composed of eight importers, one first handler, two domestic

producers, seven foreign producers, and two non-voting wholesalers and/or retailers of mangos in the United States. The chairperson shall reside in the United States and the Board office shall also be located in the United States.

(b) *Importer districts.* The importer seats shall be allocated based on the volume of mangos imported into the Customs Districts identified by their name and Code Number as defined in the Harmonized Tariff Schedule of the United States. The initial allocation will be two seats for District I, three seats for District II, two seats for District III, and one seat for District IV.

(1) *District I* includes the Customs Districts of Portland, ME (01), St. Albans, VT (02), Boston, MA (04), Providence, RI (05), Ogdensburg, NY (07), Buffalo, NY (09), New York City, NY (10), Philadelphia, PA (11), Baltimore, MD (13), Norfolk, VA (14), Charlotte, NC (15), Charleston, SC (16), Savannah, GA (17), Tampa, FL (18), San Juan, PR (49), Virgin Islands of the United States (51), Miami, FL (52) and Washington, DC (54).

(2) *District II* includes the Customs Districts of Mobile, AL (19), New Orleans, LA (20), Port Arthur, TX (21), Laredo, TX (23), Minneapolis, MN (35), Duluth, MN (36), Milwaukee, WI (37), Detroit, MI (38), Chicago, IL (39), Cleveland, OH (41), St. Louis, MO (45), Houston, TX (53), and Dallas-Fort Worth, TX (55).

(3) *District III* includes the Customs Districts of El Paso, TX (24), Nogales, AZ (26), Great Falls, MT (33), and Pembina, ND (34).

(4) *District IV* includes the Customs Districts of San Diego, CA (25), Los Angeles, CA (27), San Francisco, CA (28), Columbia-Snake, OR (29), Seattle, WA (30), Anchorage, AK (31), and Honolulu, HI (32).

(c) *Adjustment of membership.* At least once every five years, the Board will review the geographical distribution of production of mangos in the United States, the geographical distribution of the importation of mangos into the United States, the quantity of mangos produced in the United States, and the quantity of mangos imported into the United States. The review will be based on Board assessment records and statistics from the Department. If warranted, the Board will recommend to the Department that membership on the Board be altered to reflect any changes in geographical distribution of domestic mango production and importation and the quantity of domestic production and imports. To ensure equitable representation, additional first handlers may be added to the Board to reflect increases in domestic production.

§ 1206.31 Nominations and appointments.

(a) Voting for first handler, importer, and domestic producer members will be made by mail ballot.

(b) There shall be two nominees for each position on the Board.

(c) Nominations for the initial Board will be handled by the Department. Subsequent nominations will be handled by the Board's staff.

(d) Nominees to fill the first handler member position on the Board shall be solicited from all known first handlers. The nominees shall be placed on a ballot which will be sent to all first handlers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the first handlers' first and second choice nominees.

(e) Nominees to fill the importer positions on the Board shall be solicited from all known importers of mangos. The members from each district shall select the nominees for two positions on the Board. Two nominees shall be submitted for each position. The nominees shall be placed on a ballot which will be sent to importers in the districts for a vote. For each position, the nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the importers' first and second choice nominees.

(f) Nominees to fill the domestic producer member positions on the Board shall be solicited from all known domestic producers. The nominees shall be placed on a ballot which will be sent to all domestic producers for a vote. The nominee receiving the highest

number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees.

(g) Nominees to fill the foreign producer member positions on the Board shall be solicited from organizations of foreign mango producers. Each organization shall submit two nominees for each position, and the nominees shall be representative of the major countries exporting mangos to the United States.

(h) The Board will nominate the wholesaler and/or retailer members.

(i) From the nominations, the Secretary shall select the members of the Board.

§ 1206.32 Term of office.

The term of office for first handler, importer, domestic producer, foreign producer, and wholesaler/retailer members of the Board will be three years, and these members may serve a maximum of two consecutive three-year terms. When the Board is first established, the first handler, two importers, one domestic producer, and two foreign producers will be assigned initial terms of four years; three importers, one domestic producer, and two foreign producers will be assigned initial terms of three years; and three importers, three foreign producers, and two wholesaler and/or retailer members will be assigned initial terms of two years. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

[72 FR 41427, July 30, 2007]

§ 1206.33 Vacancies.

(a) In the event that any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a Board member, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Department that the member be removed from office. If the Department finds the recommendation of the Board shows adequate cause, the Department shall remove such member from office.

(c) Should any member position become vacant, successors for the unexpired term of the member shall be appointed in the manner specified in § 1206.31, except that nomination and replacement shall not be required if the unexpired term is less than six months.

§ 1206.34 Procedure.

(a) At a Board meeting, it will be considered a quorum when at least ten voting members are present.

(b) At the start of each fiscal period, the Board will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All Board members will be notified at least 30 days in advance of all Board and committee meetings unless an emergency meeting is declared.

(d) Each voting member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Committees may consist of individuals other than Board members, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting

of the Board. All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member and shall reside in the U.S.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Department.

§ 1206.35 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1206.36 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

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

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

(d) To employ persons, other than the 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 such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Department before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that: any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Department considers relevant. Furthermore, any 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) 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 Department or the Board may require;

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

(4) 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.

(f) To prepare and submit for approval of the Department calendar year budgets in accordance with § 1206.40;

(g) To maintain such records and books and prepare and submit such reports and records from time to time to the Department as the Department 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;

(h) To cause its books to be audited by a competent auditor at the end of each calendar year and at such other times as the Department may request, and to submit a report of the audit directly to the Department;

(i) To give the Department the same notice of Board and committee meetings as is given to members in order

that the Department's representative(s) may attend such meetings.

(j) To act as intermediary between the Department and any first handler or importer;

(k) To furnish to the Department any information or records that the Department may request;

(l) To receive, investigate, and report to the Department complaints of violations of the Order;

(m) To recommend to the Department such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the mango industry's position in the U.S. domestic market; maintain and expand existing markets and uses for mangos; and to carry out programs, plans, and projects designed to provide maximum benefits to the mango industry.

§ 1206.37 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 is a conflict of interest; and

(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, other than recommending to the Department amendments to the Order.

EXPENSES AND ASSESSMENTS

§ 1206.40 Budget and expenses.

(a) At least 60 days prior to the beginning of each calendar year, and as may be necessary thereafter, the Board shall prepare and submit to the Department a budget for the calendar year covering its anticipated expenses and disbursements in administering this subpart. 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 or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

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

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

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

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

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

(g) The Board shall reimburse the Department for all expenses incurred by the Department in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any calendar year an amount that exceeds 15 percent of the assessments and other income received by the Board for that calendar year. Reimbursements to the Department required under paragraph (g) of this section, are excluded from this limitation on spending.

(i) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

§ 1206.41 Financial statements.

(a) As requested by the Department, the Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

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

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

§ 1206.42 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on first handlers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) The assessment rate shall be ½ cent per pound on all mangos. The assessment rate will be reviewed and may be modified by the Board with the approval of the Department, after the first referendum is conducted as stated in § 1206.71(b). The Department will amend this section if the assessment rate is modified.

(c) *Domestic mangos*. First handlers of domestic mangos are required to pay assessments on all mangos handled for the U.S. market. This includes mangos of the first handler's own production.

(d) *Imported mangos*. Each importer of mangos shall pay an assessment to the Board through Customs on mangos imported for marketing in the United States.

(1) The assessment rate for imported mangos shall be the same or equivalent to the rate for mangos produced in the United States.

(2) The import assessment shall be uniformly applied to imported mangos that are identified by the numbers 0804.50.4040 and 0804.50.6040 in the Harmonized Tariff Schedule of the United States.

(3) The assessments due on imported mangos shall be paid when they enter or are withdrawn for consumption in the United States.

(e) Each person responsible for remitting assessments under paragraph (c) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the mangos were marketed, in such manner as prescribed by the Board.

(f) A late payment charge shall be imposed on any person failing to remit to the Board the total amount for which the person is liable by the payment due date established under this section. The amount of the late payment charge shall be prescribed by the Department.

(g) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed by the Department.

(h) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(i) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Department.

§ 1206.43 Exemptions.

(a) Any first handler or importer of less than 500,000 pounds of mangos per calendar year may claim an exemption from the assessments required under § 1206.42. Mangos produced domestically and exported from the United States may annually claim an exemption from the assessments required under § 1206.42.

(b) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 500,000 pounds of domestic mangos for the fiscal period for which the exemption is claimed. An importer shall certify that the importer will import less than 500,000 pounds of mangos during the fiscal period for which the exemption is claimed.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the mangos were actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt mangos and, in the case of importers, proof of payment of assessments.

PROMOTION, RESEARCH, AND INFORMATION

§ 1206.50 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Department for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to mangos; and

(2) The establishment and conduct of research with respect to: the use, nutritional value and benefits, sale, distribution, and marketing of mangos in the United States; the creation of new products thereof, to the end that the marketing and use of mangos in the United States may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of mangos in the United States.

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

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Mangos of all origins shall be treated equally.

§ 1206.51 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of

the effectiveness of the Order and other programs conducted by the Board pursuant to the Act. The Board shall submit to the Department, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1206.52 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department Upon termination of this subpart, § 1206.73 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§ 1206.60 Reports.

(a) Each first handler will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of domestic mangos handled;

(2) Number of pounds of domestic mangos on which an assessment was paid;

(3) Name and address of the producers from whom the first handler has received mangos;

(4) Date that assessment payments were made on each pound of domestic mangos handled;

(5) Number of pounds of domestic mangos exported;

(6) The first handler's tax identification number;

(b) Each importer may be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Department, which may include but not be limited to the following:

(1) Number of pounds of mangos imported;

(2) Number of pounds of mangos on which an assessment was paid;

(3) Name, address, and tax identification number of the importer; and

(4) Date that assessment payments were made on each pound imported.

§ 1206.61 Books and records.

Each first handler and importer shall maintain and make available for inspection by the Department such books and records as are necessary to carry out the provisions of this part, any regulations issued under this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1206.62 Confidential treatment.

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

(a) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify

the information furnished by any person; and

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

MISCELLANEOUS

§ 1206.70 Right of the Secretary.

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

§ 1206.71 Referenda.

(a) *Initial Referendum.* The Order shall not become effective unless:

(1) The Department determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of the first handlers and importers voting, who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

(b) *Subsequent referenda.* Every five years, the Department shall hold a referendum to determine whether first handlers and importers of mangos favor the continuation of the Order. The Order shall continue if it is favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos. The Department will also conduct a referendum if 10 percent or more of all non-exempt, first handlers and importers of mangos request the Department to hold a referendum. In addition, the Department may hold a referendum at any time.

§ 1206.72 Suspension and termination.

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

(b) The Department shall suspend or terminate this subpart at the end of the marketing year whenever the Department determines that its suspension or termination is approved or favored by a majority of the first handlers and importers voting who, during a representative period determined by the Department, have been engaged in the handling or importation of mangos.

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

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

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

§ 1206.73 Proceedings after termination.

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

(b) The said trustees shall:

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

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

(3) From time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Department may direct; and

(4) Upon request of the Department, execute such assignments or other instruments necessary and appropriate to vest in such persons title and right to all funds, property and claims vested

in the Board or the trustees pursuant to the Order.

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more mango industry organizations in the interest of continuing mango promotion, research, and information programs.

§ 1206.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Department, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States, or of the Department, or of any other persons with respect to any such violation.

§ 1206.75 Personal liability.

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

§ 1206.76 Separability.

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

§ 1206.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Department.

§ 1206.78 OMB control number.

The control numbers assigned to the information collection requirements of this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, are OMB control number 0505–0001 and OMB control number 0581–0209.

Subpart B—Referendum Procedures.

§ 1206.100 General.

Referenda to determine whether eligible first handlers and importers of mangos favor the issuance, amendment, suspension, or termination of the Mango Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1206.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, 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) *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.

(c) *Eligible first handler* means any person, (excluding a common or contract carrier), receiving 500,000 or more pounds of mangos from producers in a calendar year and who as owner, agent, or otherwise ships or causes mangos to be shipped as specified in this Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing mangos in commercial quantities. The term first handler includes a producer who handles or markets mangos of the producer's own production.

(d) *Eligible importer* means any person importing 500,000 or more pounds of

mangos into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or handles mangos outside of the United States for sale in the United States, and who is listed as the importer of record for such mangos that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0804.50.4040 and 0804.50.6040, during the representative period. Importation occurs when mangos originating outside of the United States are released from custody by the Customs and Border Protection and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced mangos immediately upon release by the Customs and Border Protection, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mangos from the Customs and Border Protection when such mangos are entered or withdrawn for consumption in the United States.

(e) *Mangos* means all fresh fruit of *Mangifera indica L.* of the family *Anacardiaceae*.

(f) *Order* means the Mango Promotion, Research, and Information Order.

(g) *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, a mango farm 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 and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

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

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

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

§ 1206.102 Voting.

(a) Each eligible first handler and eligible importer of mangos shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible 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 eligible entity, or an administrator, executive, or trustee of an eligible 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) All ballots are to be cast by mail, as instructed by the Department.

§ 1206.103 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, not inconsistent 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 eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing 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) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote 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.

(g) Announce the results to the public.

§ 1206.104 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 or such appointment, shall be performed by the agent.

§ 1206.105 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 invalid under this subpart shall not be counted.

§ 1206.106 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.

§ 1206.107 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.

§ 1206.108 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 0581–0209.

Subpart C—Rules and Regulations

SOURCE: 70 FR 2754, Jan. 14, 2005, unless otherwise noted.

§ 1206.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Mango Promotion, Research, and Information Order.

§ 1206.201 Definitions.

Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

§ 1206.202 Exemption for organic mangos.

(a) A first handler who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, handles only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation shall be exempt from the payment of assessments.

(b) To obtain this exemption, an eligible first handler shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the first handler continues to be eligible for the exemption.

(c) The request shall include the following: The first handler's name and address, a copy of the organic farm or organic handling operation certificate

provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the first handler complies with the requirements of paragraph (a) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the first handler. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic mangos—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of first handlers in paragraph (c). If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer within the applicable timeframe. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic mangos bearing this HTS classification assigned by the Board will not be subject to assessments.

(f) The exemption will apply immediately following the issuance of the certificate of exemption.

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

Subpart—Potato Research and Promotion Plan

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AUTHORITY: 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

Subpart—Potato Research and Promotion Plan

SOURCE: 37 FR 5008, Mar. 9, 1972, unless otherwise noted.

DEFINITIONS

§ 1207.301 Secretary.

Secretary means the Secretary of Agriculture of the United States, 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 his stead.

§ 1207.302 Act.

Act means the Potato Research and Promotion Act, *Title III of Public Law 91–670, 91st Congress, approved January 11, 1971, 84 Stat. 2041,* as amended.

[56 FR 40229, Aug. 14, 1991]

§ 1207.303 Plan.

Plan means this potato research and promotion plan issued by the Secretary pursuant to the act.

§ 1207.304 Person.

Person means any individual, partnership, corporation, association, or other entity.

§ 1207.305 Producer.

Producer means any person engaged in the growing of 5 or more acres of potatoes who owns or shares the ownership and risk of loss of such potato crop.

§ 1207.306 Potatoes.

Potatoes means any or all varieties of Irish potatoes grown by producers in the 50 states of the United States and grown in foreign countries and imported into the United States.

[56 FR 40229, Aug. 14, 1991]

§ 1207.307 Handle.

Handle means to grade, pack, process, sell, transport, purchase, or in any other way to place potatoes or cause potatoes to be placed in the current of commerce. Such term shall not include the transportation or delivery of field-run potatoes by the producer thereof to a handler for grading, storage, or processing.

§ 1207.308 Handler.

Handler means any person (except a common or contract carrier of potatoes owned by another person) who handles potatoes, including a producer who handles potatoes of his own production.

§ 1207.309 Board.

Board means the National Potato Promotion Board, hereinafter established pursuant to § 1207.320.

§ 1207.310 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12-month period from July 1 through June 30 of the following year or such other period which may be approved by the Secretary.

§ 1207.311 Programs and projects.

Programs and *projects* mean those research, development, advertising or promotion programs or projects developed by the Board pursuant to § 1207.335.

§ 1207.312 Importer.

Importer means any person who imports tablestock, frozen or processed potatoes for ultimate consumption by humans, or seed potatoes into the United States.

[56 FR 40229, Aug. 14, 1991]

§ 1207.313 Customs Service.

Customs Service means the United States Customs Service of the United States Department of the Treasury.

[56 FR 40229, Aug. 14, 1991]

NATIONAL POTATO PROMOTION BOARD

§ 1207.320 Establishment and membership.

(a) There is hereby established a National Potato Promotion Board, hereinafter called the ''Board'', composed of producers, importers, and a public member appointed by the Secretary. Producer members shall be appointed from nominations submitted by producers in the various States or groups of States pursuant to § 1207.322. Importer members shall be appointed from nominations submitted by importers pursuant to § 1207.322. The public member shall be nominated by Board members in such manner as recommended by the Board and approved by the Secretary, and shall be appointed by the Secretary.

(b) Producer membership upon the Board shall be determined on the basis of the potato production reported in the latest Crop Production Annual Summary Report issued by the Crop Reporting Board, U.S. Department of Agriculture. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, for each five million hundredweight of such production, or major fraction thereof, produced within each State, such State shall be entitled to one member. However, each State shall initially be entitled to at least one member.

(c) The number of importer member positions on the Board shall be based on the hundredweights of potatoes, potato products equivalent to fresh potatoes, and seed potatoes imported into the United States but shall not exceed five importer members. Unless the Secretary, upon recommendation of the Board, determines an alternate basis, there shall be one importer member position for each 5 million hundredweight, or major fraction thereof, of potatoes, potato product equivalents, and seed potatoes imported into the United States.

(d) Any State in which the potato producers fail to respond to an officially called nomination meeting may be combined with an adjacent State for the purpose of representation on the Board, in which case the Board's producer member selected by the Secretary will represent both States, but such member's voting power under § 1207.325 shall not be increased.

(e) The Secretary, upon recommendation of the Board, may establish, through rule making procedure, districts or groups of States in order to change the representation requirements for membership on the Board. In such event the voting power of members under § 1207.325 would be based upon the total production within the new district or group of States.

(f) Should the Board fail to nominate a public member, the Secretary may appoint such member.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 49 FR 31390, Aug. 7, 1984; 56 FR 40229, Aug. 14, 1991]

§ 1207.321 Term of office.

(a) The term of office of Board members shall be 3 years, beginning July 1, or such other beginning date as may be approved pursuant to regulations.

(b) The terms of office of the Board's producer members shall be so determined that approximately one-third of the terms will expire each year. Importer and public member terms shall run concurrently. All members serving on the Board on the effective date of this amendment to the Plan shall continue serving the term to which they were appointed.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve for more than two full successive terms of office.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40229, Aug. 14, 1991]

§ 1207.322 Nominations and appointment.

The Secretary shall select the producer, importer, and public members of the Board from nominations which may be made in the following manner.

(a) A meeting or meetings of producers shall be held in each State to nominate producer members for the Board. For nominations to the initial Board the meetings shall be announced by the U.S. Department of Agriculture. The Department may call upon other organizations to assist in conducting the meetings such as State and national organizations of potato producers. Such nomination meetings shall be held not later than 60 days after the issuance of this subpart. Any organization designated to hold such nomination meetings shall give adequate notice of such meetings to the potato producers affected; also to the Secretary so that a representative of the Secretary, if available, may conduct such meetings or act as secretary of such nomination meetings.

(b) After the establishment of the initial Board, the nominations for subsequent Board producer members shall be made by producers at meetings in the producing sections or States. The Board shall hold such meetings, or cause them to be held, in accordance with rules established pursuant to recommendation of the Board.

(c) Only producers may participate in designating producer nominees. Each producer is entitled to one vote only on behalf of himself, his partners, agents, subsidiaries, affiliates, and representatives for each position for which nominations are being held. If a producer is engaged in producing potatoes in more than one State, he shall elect the State in which he shall vote. In no event shall he vote in nominations in more than one meeting.

(d) The importer members shall be nominated by importers of potatoes, potato products and/or seed potatoes. The number of importer members on the Board shall be announced by the Secretary and shall not exceed five members. The Board may call upon organizations of potato, potato products and/or seed potato importers to assist in nominating importers for membership on the Board. If such organizations fail to submit nominees or are determined by the Board to not adequately represent importers, then the Board may conduct meetings of importers to nominate eligible importers for Board member positions. In determining if importer organizations adequately represent importers, the Board shall consider:

(1) How many importers belong to the association;

(2) What percentage of the total number of importers is represented by the association;

(3) Is the association representative of the potato, potato product, and seed potato import industry;

(4) Does the association speak for potato, potato product, and seed potato importers; and

(5) Other relevant information as may be warranted.

(e) The public member shall be nominated by the producer and importer members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of potatoes except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall prescribe such additional qualifications, administrative rules and procedures for selection and voting for each candidate as it deems necessary and the Secretary approves.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 56 FR 40229, Aug. 14, 1991]

EFFECTIVE DATE NOTE: At 62 FR 46179, Sept. 2, 1997, in § 1207.322, paragraphs (a) and (d)(1) through (d)(5); in paragraph (b), the words ''at meetings'' in the first sentence and the entire last sentence; in paragraph (c), the last sentence; and in paragraph (d), the last two sentences of the introductory text were suspended, effective Sept. 3, 1997.

§ 1207.323 Acceptance.

Each person selected by the Secretary as a member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

§ 1207.324 Vacancies.

To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in

the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1207.322. In the event of failure to provide nominees for such vacancies, the Secretary may select other eligible persons.

§ 1207.325 Procedure.

(a) Each State (or district or group of States established pursuant to § 1207.320) which has a member on the Board shall be entitled to not less than one vote for any production up to 1 million hundredweight, plus one additional vote for each additional 1 million hundredweight of production, or major fraction thereof, as determined by the latest crop production annual summary report issued by the Crop Reporting Board, U.S. Department of Agriculture. The casting of the votes for each State shall be determined by the members of the Board from that State.

(b) A majority of the Board members shall constitute a quorum and any action of the Board shall require a majority of concurring votes of those present and voting. At assembled meetings all votes shall be cast in person or by duly authorized proxy.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, or telephone. Any vote cast by telephone shall be confirmed promptly in writing.

[37 FR 5008, Mar. 9, 1972, as amended at 57 FR 40083, Sept. 2, 1992]

§ 1207.326 Compensation and reimbursement.

Members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as members of the Board.

§ 1207.327 Powers.

The Board shall have the following powers subject to § 1207.361:

(a) To administer the provisions of this plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this plan;

(c) To receive, investigate, and report to the Secretary complaints of violations of this plan; and

(d) To recommend to the Secretary amendments to this plan.

§ 1207.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet and organize and to select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of Board members to nominate the public member; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish advisory committees of persons other than Board members;

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) At the beginning of each fiscal period, to prepare and submit to the Secretary for his approval a budget on a fiscal period basis of the anticipated expenses in the administration of this plan including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(d) To develop programs and projects and to enter into contracts or agreements for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the

Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers, handlers, and importers;

(g) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(h) To act as intermediary between the Secretary and any producer, handler, or importer;

(i) To furnish the Secretary such information as he may request.

(j) To prepare and submit to the Secretary such reports from time to time as may be prescribed by the Secretary for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board; and

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 56 FR 40230, Aug. 14, 1991; 57 FR 40083, Sept. 2, 1992]

RESEARCH AND PROMOTION

§ 1207.335 Research and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for the advertising and promotion of potatoes and potato products: *Provided, however,* That any such program or project shall be directed toward increasing the general demand for potatoes and potato products;

(b) Establishing and carrying on research and development projects and studies to the end that the marketing and utilization of potatoes may be encouraged, expanded, improved, or made more efficient: *Provided,* That quality control, grade standards and supply management programs shall not be conducted under, or as a part of, this plan; and

(c) The development and expansion of potato and potato product sales in foreign markets.

(d) No advertising or promotion program shall make any reference to private brand names or use false or unwarranted claims in behalf of potatoes or their products or false or unwarranted statements with respect to the attributes or use of any competing products.

EXPENSES AND ASSESSMENTS

§ 1207.341 Budget and expenses.

(a) At the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1207.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of potatoes and potato products, such other expenses for the administration, maintenance, and functioning of the Board, and any referendum and administrative costs incurred by the Department of Agriculture as are approved pursuant to § 1207.361.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984]

§ 1207.342 Assessments.

(a) The funds to cover the Board's expenses shall be acquired by the levying of assessments upon handlers and importers as designated in regulations recommended by the Board and issued by the Secretary. Such assessments shall be levied at a rate fixed by the Secretary which shall not exceed one-half of one per centum of the immediate past ten calendar years United States average price received for potatoes by growers as reported by the Department of Agriculture and not more than one such assessment may be collected on any potatoes.

(b) Each designated handler, as specified in regulations, shall pay assessments to the Board on all potatoes handled by him, including potatoes he produced. Assessments shall be paid to the Board at such time and in such manner as the Board shall direct pursuant to regulations issued hereunder. The designated handler may collect the

assessments from the producer, or deduct such assessments from the proceeds paid to the producer on whose potatoes the assessments are made, provided he furnishes the producer with evidence of such payment.

(c) The importer of imported potatoes, potato products, or seed potatoes shall pay the assessment to the Board at the time of entry, or withdrawal, for consumption of such potatoes and potato products into the United States.

(d) The assessment on imported tablestock potatoes and frozen or processed potato products for ultimate consumption by humans and on seed potatoes shall be established by the Board so that the effective assessment shall be equal to that on domestic production.

(e) The Board may authorize other organizations to collect assessments in its behalf.

(f) The Board may exempt potatoes used for nonfood purposes, other than seed, from the provisions of this plan and shall establish adequate safeguards against improper use of such exemptions.

[37 FR 5008, Mar. 9, 1972, as amended at 49 FR 20806, May 17, 1984; 56 FR 40230, Aug. 14, 1991]

§ 1207.343 [Reserved]

§ 1207.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established: *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this part.

REPORTS, BOOKS, AND RECORDS

§ 1207.350 Reports.

(a) Each designated handler shall maintain a record with respect to each producer for whom he handled potatoes and for potatoes handled which he himself produced. He shall report to the Board at such times and in such manner as it may prescribe by regulations such information as may be necessary for the Board to perform its duties under this part. Such reports may include, but shall not be limited to, the following:

(1) Total quantity of potatoes handled for each producer and for himself, including those which are exempt under the plan;

(2) Total quantity of potatoes handled for each producer and for himself subject to the plan and assessments, and

(3) Name and address of each person from whom he collected an assessment, the amount collected from each person, and the date such collection was made.

(b) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40230, Aug. 14, 1991]

§ 1207.351 Books and records.

Each handler or importer subject to this part shall maintain and make available for inspection by authorized employees of the Board and the Secretary such books and records as are appropriate and necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be maintained for at least 2 years beyond the marketing year of their applicability.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40230, Aug. 14, 1991]

§ 1207.352 Confidential treatment.

All information obtained from books, records, or reports required pursuant to this part shall be kept confidential by all employees of the Department of Agriculture and of the Board, and by all contractors and agents retained by the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan. Nothing in this section shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this Plan, which statements do not identify the information furnished by any person; or

(b) The publication by direction of the Secretary of the name of any person violating this Plan, together with a statement of the particular provisions of this Plan violated by such person.

[56 FR 40230, Aug. 14, 1991]

MISCELLANEOUS

§ 1207.360 Influencing governmental action.

No funds collected by the Board under this plan shall in any matter be used for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this subpart.

§ 1207.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.362 Suspension or termination.

(a) The Secretary shall, whenever he finds that this plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the potato producers and importers to determine whether potato producers and importers favor termination or suspension of this plan. The Secretary shall suspend or terminate such plan at the end of the marketing year whenever the Secretary determines that its suspension or termination is favored by a majority of the potato producers and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of potatoes or potato products, and who produced or imported more than 50 percent of the volume of the potatoes or potato products produced or imported by the producers and importers voting in the referendum.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40230, Aug. 14, 1991]

§ 1207.363 Proceedings after termination.

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

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to this plan; (3) account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person or persons as the Secretary may direct; and (4) upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all of the funds, property, and claims vested in the Board of the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustee.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and importers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

[37 FR 5008, Mar. 9, 1972, as amended at 56 FR 40231, Aug. 14, 1991]

§ 1207.364 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this plan or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this plan or any regulation issued thereunder, or (b) release or extinguish any violation of this plan or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

§ 1207.365 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgments, mistakes, or other acts, either of commission or omission, as such member except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

§ 1207.366 Separability.

If any provision of this plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this plan or applicability thereof to other persons or circumstances shall not be affected thereby.

Subpart—Rules and Regulations

SOURCE: 37 FR 17379, Aug. 26, 1972, unless otherwise noted.

DEFINITIONS

§ 1207.500 Definitions.

(a) Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Potato Research and Promotion Plan.

(b) *Processor*. *Processor* means any person who commercially processes potatoes into potato products, including, but not restricted to, frozen, dehydrated, or canned potato products, potato chips and shoestrings, and flour.

(c) *Imported frozen or processed potatoes for ultimate consumption by humans*. *Imported frozen or processed potatoes for ultimate consumption by humans* means products which are imported into the United States which the Secretary determines contain a substantial amount of potato.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40231, Aug. 14, 1991; 57 FR 40083, Sept. 2, 1992]

GENERAL

§ 1207.501 Communications.

All communications in connection with the Potato Research and Promotion Plan shall be addressed to: National Potato Promotion Board, 7555 East Hampden Avenue, Suite 412, Denver, Colorado 80231.

[59 FR 44036, Aug. 26, 1994]

§ 1207.502 Determination of membership.

(a) Pursuant to § 1207.320 and the recommendation of the Board, annual producer memberships on the Board shall be determined on the basis of the average potato production of the 3 preceding years in each State as set forth in the Crop Production Annual Summary Reports issued by the Crop Reporting Board of the U.S. Department of Agriculture.

(b) Pursuant to § 1207.320 and the recommendation of the Board, annual importer memberships on the Board shall be determined on the basis of the average potato, potato product, and seed potato importation of the 3 preceding years as determined by the Board's records.

[56 FR 40231, Aug. 14, 1991]

§ 1207.503 Nominations.

(a) Pursuant to § 1207.322 of the plan, the Board shall assist producers in producing sections or States each year to nominate producer members for the Board. Such nominations may be conducted at meetings or by mail ballots. One individual shall be nominated for each position to become vacant. A list of nominees shall be submitted to the

Secretary for consideration by November 1 of each year.

(b) Pursuant to § 1207.322 of the plan, the Board shall assist importers each year to nominate importer members for the Board. Such nominations may be conducted at meetings or by mail ballots.

(c) Nomination meetings or mail balloting shall be well publicized with notice given to producers, importers, and the Secretary at least 10 days prior to each meeting or mailing of ballots.

(d) The public member shall be nominated by the producer and importer members of the Board.

[37 FR 17379, Aug. 26, 1972, as amended at 49 FR 2093, Jan. 18, 1984; 56 FR 40231, Aug. 14, 1991; 62 FR 46179, Sept. 2, 1997]

§ 1207.504 Term of office.

(a) The term of office of Board members shall be for three years and shall begin March 1 and end on the last day of February.

(b) Board members shall serve during the term of office for which they are selected and have qualified and until their successors are selected and have qualified.

[38 FR 7123, Mar. 16, 1973, as amended at 49 FR 2093, Jan. 18, 1984]

§ 1207.505 Procedure.

(a) The procedure for conducting the Board's meetings shall be in accordance with the bylaws adopted by the Board on June 7, 1972, and approved by the Secretary and any subsequent amendments adopted by the Board and approved by the Secretary.

(b) Each importer member shall be entitled to not less than one vote. Importer members shall also be entitled to one additional vote for each 1 million hundredweight, or major fraction thereof, on a fresh-weight basis, of imported tablestock potatoes, potato products, or seed potatoes, as determined by data on imports provided by the U.S. Department of Agriculture. The casting of such votes shall be determined by the importer members.

[62 FR 46179, Sept. 2, 1997]

§ 1207.506 Policy.

(a) It shall be the policy of the Board to carry out an effective and continuous coordinated program of marketing research, development, advertising, and promotion in order to help maintain and expand existing domestic and foreign markets for potatoes and to develop new or improved markets.

(b) It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the potato industry and no undue preference shall be given to any of the various industry segments.

§ 1207.507 Administrative Committee.

(a) The Board shall annually select from among its members an Administrative Committee composed of producer members as provided for in the Board's bylaws, one or more importer members, and the public member. Selection shall be made in such manner as the Board may prescribe: Except that such committee shall include the Chairperson and seven Vice-Chairpersons, one of whom shall also serve as the Secretary and Treasurer of the Board.

(b) The Administrative Committee shall act for the Board in implementing such marketing research, development, advertising, and/or promotion activities as directed by the Board, and shall, subject to such direction, be charged with developing and submitting to the Secretary for his approval specific programs or projects in the name of the Board. The Administrative Committee shall further act for the Board in authorizing contracts or agreements for the development and carrying out of such programs or projects and the payment of the costs thereof with funds collected pursuant to § 1207.342 of the plan.

(1) The Administrative Committee also shall act for the Board in contracting with cooperating agencies for the collection of assessments pursuant to § 1207.513(d).

(2) [Reserved]

(c) The Board may assign such other administrative powers and duties to the Administrative Committee as it shall determine, and the Administrative Committee shall act on behalf of

and in the name of the Board in all administrative matters.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 44 FR 25621, May 2, 1979; 50 FR 25199, June 18, 1985; 56 FR 40231, Aug. 14, 1991; 59 FR 44036, Aug. 26, 1994; 71 FR 76901, Dec. 22, 2006]

§ 1207.508 USDA costs.

Pursuant to § 1207.341 of the Plan the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Plan as are determined periodically by the Secretary. Payment shall be due promptly after billing for such costs.

[49 FR 26202, June 27, 1984]

ASSESSMENTS

§ 1207.510 Levy of assessments.

(a) *Domestic assessments*. (1) An assessment rate of 3 cents per hundredweight shall be levied on all potatoes produced within the 50 states of the United States.

(2) No assessment shall be levied on potatoes grown in the 50 States of the United States by producers of less than 5 acres of potatoes.

(b) *Assessments on imports*. (1) An assessment rate of 3 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption by humans and all seed potatoes imported into the United States. An assessment rate of 3 cents per hundredweight shall be levied on the fresh weight equivalents of imported frozen or processed potatoes for ultimate consumption by humans. The importer of imported tablestock potatoes, potato products, or seed potatoes shall pay the assessment to the board through the U.S. Customs Service and Border Protection at the time of entry or withdrawal for consumption of such potatoes and potato products into the United States.

(2) The following conversion factors shall be used to determine the fresh weight equivalents of frozen and processed potato products:

Frozen potato products	.50
Canned potatoes	.636
Potato chips and shoestring potatoes	.245
Dehydrated potato products	.14
Potato starch	.1111

(3) The Harmonized Tariff Schedule (HTS) categories and assessment rates on imported tablestock potatoes and frozen or processed potatoes for ultimate consumption by humans and on imported seed potatoes are as follows:

Tablestock potatoes, frozen or processed potatoes, and seed potatoes	Assessment	
	Cents/cwt	Cents/kg
0701.10.0020	3.0	0.066
0701.10.0040	3.0	0.066
0701.90.1000	3.0	0.066
0701.90.5010	3.0	0.066
0701.90.5020	3.0	0.066
0701.90.5030	3.0	0.066
0701.90.5040	3.0	0.066
0710.10.0000	6.0	0.132
2004.10.4000	6.0	0.132
2004.10.8020	6.0	0.132
2004.10.8040	6.0	0.132
2005.20.0070	4.716	0.104
0712.90.3000	21.429	0.472
1105.10.0000	21.429	0.472
1105.20.0000	21.429	0.472
2005.20.0040	21.429	0.472
2005.20.0020	12.240	0.27
1108.13.0010	27.0	0.595

(4) No assessments shall be levied on otherwise assessable potatoes which are contained in imported products wherein potatoes are not a principal ingredient.

(c) Potatoes and potato products used for nonhuman food purposes, other than seed, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of § 1207.515 of this subpart.

(d) No more than one such assessment shall be made on any potatoes or potato products.

[57 FR 40083, Sept. 2, 1992, as amended at 58 FR 3359, Jan. 8, 1993; 59 FR 44036, Aug. 26, 1994; 71 FR 11296, Mar. 7, 2006; 71 FR 50330, Aug. 25, 2006; 74 FR 63543, Dec. 4, 2009]

§ 1207.511 Determination of assessable quantity.

The assessable quantity of potatoes in any lot shall be determined on the basis of utilization. Assessments shall be due on the entire lot handled for human consumption, seed, or unspecified purposes if there is no accounting made on the basis of the utilization of such lot. However, if the accounting identifies all or portions of such lot on the basis of utilization, assessments shall be due only on that portion utilized for human consumption and seed.

§ 1207.512 Designated handler.

The assessment on each lot of potatoes produced in the 50 States of the United States and handled shall be paid by the designated handler as hereafter set forth.

(a) Unless otherwise provided in paragraphs (a)(8), (b), and (c) of this section, the designated handler shall be the first handler of such potatoes. The first handler is the person who initially performs a handler function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the potatoes in the channels of commerce. A producer who grades, packs, or otherwise performs handler functions thereby becomes a handler and as such assumes first handler responsibilities under this part. The following examples are provided to aid in identification of first handlers who are designated handlers:

(1) Producer delivers field-run potatoes of his own production to a handler for preparation for market. The handler in this instance is the designated handler, regardless of whether he subsequently handles such potatoes for his own account or for the account of the producer.

(2) Producer delivers field-run potatoes of his own production to a handler who takes title to such potatoes and places them in storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(3) Producer delivers field-run potatoes to a commercial storage facility for the purpose of holding such potatoes under his own account for later sale. There is no designated handler in this instance since such potatoes have not been handled as heretofore defined and no assessment is due. The designated handler of such potatoes would be identified on the basis of subsequent handling of such potatoes.

(4) Fresh shipper purchases a lot of potatoes from a producer, packs a portion of such potatoes for fresh market, and delivers the balance to a processor. The fresh shipper is the designated handler for all potatoes in the lot.

(5) Handler purchases potatoes from a producer's field or storage for the purpose of preparing such potatoes for market or for transporting such potatoes to storage for subsequent handling. The handler who purchases such potatoes from the producer is the designated handler.

(6) Producer packs and sells potatoes of his own production from the field, roadside stand, or storage to a consumer, itinerant trucker, or other buyer. In performing such handler functions the producer assumes the responsibility of designated handler.

(7) Processor utilizes potatoes of his own production in the manufacture of potato chips, frozen, dehydrated, or canned products for human consumption. In so handling potatoes, the processor assumes the responsibility of designated handler.

(8) Producer utilizes potatoes of his own production for seed in planting his subsequent crop. Such seed potatoes do not enter the current of commerce; there is no designated handler in this instance since the potatoes have not been handled as heretofore defined and no assessment is due. However, seed potatoes sold or shipped to other producers for planting or to other persons for subsequent disposition enter the current of commerce and are subject to assessment. The producer of seed potatoes shall be the designated handler of such potatoes shipped to other producers for planting and the assessment is due when he first sells or otherwise handles such potatoes. The first person who acquires seed potatoes from the producer thereof for subsequent disposition other than planting by said person shall be the designated handler of such potatoes. However, the seed producer will be the designated handler responsible for filing reports and making payments, unless he can show that the first person who obtained the potatoes from him disposed of them other than by planting. To show this the seed producer must submit to the Potato Board the name and address of the first person who obtained the potatoes from him and an invoice of sale or settlement sheet on which it is indicated that such person will be the designated handler and therefore will be responsible for the payment of the assessments. Only by showing this is the seed producer no longer considered the designated handler and therefore not liable for the assessments.

(b) Any person who handles potatoes for a producer thereof under oral or written contract or agreement providing for the sale thereof shall be the designated handler for such potatoes, notwithstanding the fact that the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes.

Examples. A cooperative marketing association, or other person, who makes an accounting to the producer, or pay the proceeds of the sale to the producer would be the designated handler responsible for the assessment.

(c) Any processor who purchases potatoes from the producer thereof shall be the designated handler even though the producer may have graded, packed, or otherwise handled such potatoes and thereby became the first handler of such potatoes.

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 4, 40 FR 7893, Feb. 24, 1975; Amdt. 7, 43 FR 9133, Mar. 6, 1978; Amdt. 8, 43 FR 51001, Nov. 2, 1978; 56 FR 40231, Aug. 14, 1991]

§ 1207.513 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced potatoes shall become due at the time a determination of assessable potatoes is made in the normal handling process, pursuant to § 1207.511. If no determination is made of the utilization of a lot, assessments shall be due on the entire lot when it enters the current of commerce. The assessment on imported potatoes, potato products, and seed potatoes shall become due at the time of entry, or withdrawal, for consumption into the United States.

(b) *Responsibility for payment.* (1) The designated handler is responsible for payment of the assessment on domestically produced potatoes. He may pay with no reimbursement from the producer. In the alternative, he may collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose potatoes the assessment is made, provided he furnishes the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable by the handler to the Board. Failure of the handler to collect or deduct such assessment does not relieve the handler of his obligation to remit the assessment to the Board.

(2) The Customs Service shall collect payment of assessment on imported potatoes, potato products, and seed potatoes from importers and forward such assessment per agreement between the Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessment directly to the Board of any assessment due but not collected by the Customs Service at the time of entry, or withdrawal, for consumption into the United States. An importer may apply to the Board for reimbursement of assessments paid on exempted products.

(c) *Payment directly to the Board.* (1) Except as provided in paragraphs (b) and (d) of this section, each designated handler or importer shall remit assessments directly to the Board by check, draft, or money order payable to the National Potato Promotion Board, or NPPB, not later than 10 days after the end of the month such assessment is due together with a report (preferably on Board forms) thereon.

(2) All designated handlers, including a designated handler whose own production is handled and assessments to the Board paid by another designated handler, shall report to the Board:

(i) Date of report (which is also date of payment to the Board).

(ii) The name and address of the designated handler;

(iii) The period potatoes were handled;

(iv) The total quantity of potatoes determined to be assessable during the period potatoes were handled, pursuant to § 1207.511.

(3) Designated handlers who collect assessments from producers or withhold assessments from their accounts or pay the assessment themselves shall also include a list of all such producers whose potatoes were handled during the period, their addresses and the total assessable quantities handled for each such producer.

(i) In lieu of such a list, the designated handler may substitute authentic copies of settlement sheets given to each producer provided such

settlement sheets contain all the information listed above.

(ii) The words ''final report'' shall be shown on the last report at the close of his marketing season or at the end of each fiscal period if such handler markets potatoes on a year-round basis.

(4) Prepayment of assessment: (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit designated handlers to make advance payments of their total estimated assessments for the season to the Board prior to their actual determination of assessable potatoes. Such procedure may be permitted when it is considered by the designated handler to be the more practical method of payment.

(ii) Persons using such procedure shall provide a final annual accounting of actual handling and assessments.

(iii) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board upon request.

(d) *Payment through cooperating agency*. The Board may authorize other organizations to collect assessments in its behalf. In any State or area in which the Board has negotiated an agreement to collect assessments with an agency such as a State Potato Commission or a Potato Association approved by the Secretary, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers; to qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided, it may acquire such evidence from individual designated handlers.

(1) All such agreements are subject to the requirement of § 1207.352 *Confidential treatment*, of the plan, the provisions of section 310(c) of the Act, and all applicable rules and regulations and financial safeguards in effect under the Act and the plan; and all affected persons shall agree to, and conduct their operations and activities in accordance with, such requirements.

(2) [Reserved]

[37 FR 17379, Aug. 26, 1972, as amended by Amdt. 6, 42 FR 55879, Oct. 20, 1977; 56 FR 40231, Aug. 14, 1991; 62 FR 46179, Sept. 2, 1997]

§ 1207.514 Exemption for organic potatoes.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells potatoes. The handler shall maintain records showing the exempt producer's

name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic potatoes, potato products, and seed potatoes—on a form provided by the Board—at any time initially and annually thereafter on or before July 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic potatoes, potato products, and seed potatoes bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2755, Jan. 14, 2005]

§ 1207.515 Safeguards.

The Board may require reports by designated handlers and importers on the handling, importation, and disposition of exempted potatoes. Also, authorized employees of the Board or the Secretary, may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40232, Aug. 14, 1991]

RECORDS

§ 1207.532 Retention period for records.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain such records for at least 2 years beyond the end of the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

[37 FR 17379, Aug. 26, 1972, as amended at 56 FR 40232, Aug. 14, 1991]

§ 1207.533 Availability of records.

(a) Each handler and importer required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

(b) Importers shall also maintain for 2 years records on the total quantities of potatoes imported and on the total quantities of potato products imported, and a record of each importation of potatoes, potato products, and seed potatoes including quantity, date, and port of entry, and shall make such records available for inspection by authorized employees of the Board or the Secretary during regular business hours.

[56 FR 40232, Aug. 14, 1991]

§ 1207.534 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management

and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control number 0581–0093.

[49 FR 23826, June 8, 1984]

CONFIDENTIAL INFORMATION

§ 1207.540 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handler and importers and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1207.352 of the Plan.

[56 FR 40232, Aug. 14, 1991]

§ 1207.545 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1207.546 Personal liability.

No member of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, except for acts of willful misconduct, gross negligence, or those which are criminal in nature.

PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

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AUTHORITY: 7 U.S.C. 6101–6112 and 7 U.S.C. 7401.

SOURCE: 57 FR 31951, July 20, 1992, unless otherwise noted.

Subpart A—Mushroom Promotion, Research, and Consumer Information Order

SOURCE: 58 FR 3449, Jan. 8, 1993, unless otherwise noted.

DEFINITIONS

§ 1209.1 Act.

Act means the Mushroom Promotion, Research, and Consumer Information Act of 1990, subtitle B of title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, 7 U.S.C. 6101–6112, and any amendments thereto.

§ 1209.2 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1209.3 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of mushrooms.

§ 1209.4 Council.

Council means the administrative body referred to as the Mushroom Council established under § 1209.30 of this subpart.

§ 1209.5 Department.

Department means the United States Department of Agriculture.

§ 1209.6 First handler.

First handler means any person who receives or otherwise acquires mushrooms from a producer and prepares for marketing or markets such mushrooms, or who prepares for marketing or markets mushrooms of that person's own production.

§ 1209.7 Fiscal year.

Fiscal year means the 12-month period from January 1 to December 31 each year, or such other period as recommended by the Council and approved by the Secretary.

§ 1209.8 Importer.

Importer means any person who imports, on average, over 500,000 pounds of mushrooms annually from outside the United States.

§ 1209.9 Industry information.

Industry information means information and programs that will lead to the development of new markets and marketing strategies, increased efficiency, and activities to enhance the image of the mushroom industry.

§ 1209.10 Marketing.

(a) *Marketing* means the sale or other disposition of mushrooms in any channel of commerce.

(b) *To market* means to sell or otherwise dispose of mushrooms in any channel of commerce.

§ 1209.11 Mushrooms.

Mushrooms means all varieties of cultivated mushrooms grown within the United States and marketed for the fresh market, or imported into the United States and marketed for the fresh market, except such term shall not include mushrooms that are commercially marinated, canned, frozen, cooked, blanched, dried, packaged in

brine, or otherwise processed in such manner as the Council, with the approval of the Secretary, may determine.

§ 1209.12 On average.

On average means a rolling average of production or imports during the last two fiscal years, or such other period as may be determined by the Secretary.

§ 1209.13 Part and subpart.

Part means this mushroom promotion and research order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the mushroom promotion and research order.

§ 1209.14 Person.

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

§ 1209.15 Producer.

Producer means any person engaged in the production of mushrooms who owns or shares the ownership and risk of loss of such mushrooms and who produces, on average, over 500,000 pounds of mushrooms per year.

§ 1209.16 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1209.17 Promotion.

Promotion means any action determined by the Secretary to enhance the image or desirability of mushrooms, including paid advertising.

§ 1209.18 Region.

Region means one of the described geographic subdivisions of the production areas described in § 1209.30 (b) or as later realigned or reapportioned pursuant thereto, or the import region described in § 1209.30(c).

§ 1209.19 Research.

Research means any type of study to advance the image, desirability, safety, marketability, production, product development, quality, or nutritional value of mushrooms.

§ 1209.20 Secretary.

Secretary means the Secretary of Agriculture of the United States 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.

§ 1209.21 State and United States.

(a) *State* means any of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(b) *United States* means collectively the several States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

MUSHROOM COUNCIL

§ 1209.30 Establishment and membership.

(a) There is hereby established a Mushroom Council of not less than four or more than nine members. The Council shall be composed of producers appointed by the Secretary under § 1209.33, except that, as provided in paragraph (c) of this section, importers shall be appointed by the Secretary to the Council under § 1209.33 once imports, on average, reach at least 50,000,000 pounds of mushrooms annually.

(b) For purposes of nominating and appointing producers to the Council, the United States shall be divided into three geographic regions and the number of Council members from each region shall be as follows:

(1) *Region 1:* All other States including the District of Columbia and the Commonwealth of Puerto Rico except for Pennsylvania and California—2 Members.

(2) *Region 2:* The State of Pennsylvania—4 Members.

(3) *Region 3:* The State of California—2 Members.

(c) Importers shall be represented by a single, separate region, referred to as Region 4, consisting of the United

States when imports, on average, equal or exceed 50,000,000 pounds of mushrooms annually.

(d) At least every five years, and not more than every three years, the Council shall review changes in the geographic distribution of mushroom production volume throughout the United States and import volume, using the average annual mushroom production and imports over the preceding four years, and, based on such review, shall recommend to the Secretary reapportionment of the regions established in paragraph (b) of this section, or modification of the number of members from such regions, as determined under the rules established in paragraph (e), of this section or both, as necessary to best reflect the geographic distribution of mushroom production volume in the United States and representation of imports, if applicable.

(e) Subject to the nine-member maximum limitation, the following procedure will be used to determine the number of members for each region to serve on the Council under paragraph (d) of this section:

(1) Each region that produces, on average, at least 50,000,000 pounds of mushrooms annually shall be entitled to one representative on the Council.

(2) As provided in paragraph (c) of this section, importers shall be represented by a single, separate region, which shall be entitled to one representative, if such region imports, on average, at least 50,000,000 pounds of mushrooms annually.

(3) If the annual production of a region is greater than 110,000,000 pounds, but less than or equal to 180,000,000 pounds, the region shall be represented by 1 additional member.

(4) If the annual production of a region is greater than 180,000,000 pounds, but less than or equal to 260,000,000 pounds, the region shall be represented by 2 additional members.

(5) If the annual production of a region is greater than 260,000,000 pounds, the region shall be represented by 3 additional members.

(6) Should, in the aggregate, regions be entitled to levels of representation under paragraphs (e)(1), (2), (3), (4) and (5) of this section that would exceed the nine-member limit on the Council under the Act, the seat or seats assigned shall be assigned to that region or those regions with greater on-average production or import volume than the other regions otherwise eligible at that increment level.

(f) In determining the volume of mushrooms produced in the United States or imported into the United States for purposes of this section, the Council and the Secretary shall:

(1) Only consider mushrooms produced or imported by producers and importers, respectively, as those terms are defined in §§ 1209.8 and 1209.15; and

(2) Use the information received by the Council under § 1209.60, and data published by the Department.

(g) For purposes of the provisions of this section relating to the appointment of producers and importers to serve on the Council, the term *producer* or *importer* refers to any individual who is a producer or importer, respectively, or if the producer or importer is an entity other than an individual, an individual who is an officer or employee of such producer or importer.

[58 FR 3449, Jan. 8, 1993, as amended at 74 FR 50919, Oct. 2, 2009]

§ 1209.31 Nominations.

All nominations for appointments to the Council under § 1209.33 shall be made as follows:

(a) As soon as practicable after this subpart becomes effective, nominations for appointment to the initial Council shall be obtained from producers by the Secretary. In any subsequent year in which an appointment to the Council is to be made, nominations for positions whose terms will expire at the end of that year shall be obtained from producers, and as appropriate, importers, and certified by the Council and submitted to the Secretary by August 1 of such year, or such other date as approved by the Secretary.

(b) Nominations shall be made at regional caucuses of producers or importers, or by mail ballot as provided in paragraph (e), in accordance with procedures prescribed in this section.

(c) Except for initial Council members, whose nomination process will be initiated by the Secretary, the Council shall issue a call for nominations by

February 1 of each year in which nominations for an appointment to the Council is to be made. The call shall include, at a minimum, the following information:

(1) A list by region of the vacancies for which nominees may be submitted and qualifications as to producers and importers.

(2) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3) A list of those States, by region, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Council, and national and State producer or importer associations, if known, and of the regional caucuses, if any.

(d)(1) Except as provided in paragraph (e), nominations for each position shall be made by regional caucus in the region entitled to nominate for such position. Notice of such caucus shall be publicized to all producers or importers within the region, and to the Secretary, at least 30 days prior to the caucus. The notice shall have attached to it the call for nominations from the Council and the Department's equal opportunity policy. Except with respect to nominations for the initial appointments to the Council, the responsibility for convening and publicizing the regional caucus shall be that of the Council.

(2) All producers or importers within the region may participate in the caucus. However, if a producer is engaged in the production of mushrooms in more than one region or is also an importer, such person's participation within a region shall be limited to one vote and shall only reflect the volume of such person's production or imports within the applicable region.

(3) The regional caucus shall conduct the selection process for the nominees in accordance with procedures to be adopted at the caucus subject to the following requirements:

(i) There shall be two individuals nominated for each open position.

(ii) Each nominee shall meet the qualifications set forth in the call.

(iii) If a producer nominee is engaged in the production of mushrooms in more than one region or is also an importer, such individual shall participate within the region that such individual so elects in writing to the Council and such election shall remain controlling until revoked in writing to the Council.

(e) After the regional caucuses for the initial Council, the Council may conduct the selection of nominees by mail ballot in lieu of a regional caucus.

(f) When producers or importers are voting for nominees to the Council, whether through a regional caucus or a mail ballot, the following conditions shall apply:

(1) Voting for any open position shall be on the basis of:

(i) One vote per eligible voter; and

(ii) Volume of on-average production or imports of the eligible voter within that region.

(2) Whenever the producers or importers in a region are choosing nominees for one open position on the Council, the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or importers voted shall be the nominees submitted to the Secretary. If a proposed nominee receives both the highest number of votes cast and the highest volume of production or imports voted, then the proposed nominee with the second highest number of votes cast shall be a nominee submitted to the Secretary along with such proposed nominee receiving both the highest number of votes cast and the highest volume of production or imports voted.

(3) Whenever the producers or importers in a region are choosing nominees for more than one open position on the Council at the same time, the number of the nominations submitted to the Secretary shall equal twice the number of such open positions, and for each open position shall consist of the proposed nominee with the highest number of votes cast and the proposed nominee with the highest volume of production or imports voted with respect to that position, subject to the rule set out in paragraph (f)(2). An individual shall only be nominated for one such open position.

(4) Voters shall certify on their ballots as to their on-average production or import volume within the region involved. Such certification may be subject to verification.

(g)(1) The Secretary may reject any nominee submitted. If there are insufficient nominees from which to appoint members to the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary under the procedures set out in this section.

(2) Whenever producers or importers in a region cannot agree on nominees for an open position on the Council under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Council, the Secretary may appoint members in such manner as the Secretary, by regulation, determines appropriate.

§ 1209.32 Acceptance.

Each individual nominated for membership on the Council shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1209.33 Appointment.

From the nominations made pursuant to § 1209.31, the Secretary shall appoint the members of the Council on the basis of representation provided for in § 1209.30, except that no more than one member may be appointed to the Council from nominations submitted by any one producer or importer.

§ 1209.34 Term of office.

(a) The members of the Council shall serve for terms of three years, except that the members appointed to the initial Council shall serve, proportionately, for terms of one, two, and three years.

(b) Members of the initial Council shall be designated for, and shall serve, terms as follows: One producer member each from regions 1, 2 and 3 shall be appointed for an initial term of one year; one producer member each from regions 1, 2, and 3 shall be appointed for an initial term of two years; and one producer member each from regions 2, 3, and 4 shall be appointed for an initial term of three years. Because current imports of fresh mushrooms are less than 35,000,000 pounds, the minimum established for representation on the Council, importers will not initially have a member appointed to the Council.

(c)(1) Except with respect to terms of office of the initial Council, the term of office for each member of the Council shall begin on January 1 or such other date that may be approved by the Secretary.

(2) The term of office for the initial Council shall begin immediately following appointment by the Secretary, except that time in the interim period from appointment until the following January 1, or such other date that is the generally applicable beginning date for terms under paragraph (c)(1) approved by the Secretary, shall not count toward the initial term of office.

(d) Council members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(e)(1) No member shall serve more than two successive three-year terms, except as provided in paragraph (e)(2)(ii).

(2)(i) Those members serving initial terms of two or three years may serve one successive three-year term.

(ii) Those members serving initial terms of one year may serve two successive three-year terms.

§ 1209.35 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Council, the Secretary may appoint a successor from the most recent nominations submitted for open positions on the Council assigned to the region that the vacant position represents, or the Secretary may obtain nominees to fill such vacancy in such manner as the Secretary, by regulation, deems appropriate. Each such successor appointment shall be for the remainder of the term vacated. A vacancy will not be required to be filled if the unexpired term is less than six months.

(b)(1) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Council, except as provided in paragraph (b)(2)(ii).

(2)(i) Any successor serving longer than one year may serve one successive three-year term.

(ii) Any successor serving one year or less may serve two successive three-year terms.

(c) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council is known to be engaged in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Council, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

§ 1209.36 Procedure.

(a) At a properly convened meeting of the Council, a majority of the members shall constitute a quorum.

(b) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Council, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph, or any other means of communication, but any such action shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All votes shall be recorded in Council minutes.

(d) Meetings of the Council may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has an opportunity to be present either physically or by electronic connection.

(e) The organization of the Council and the procedures for conducting meetings of the Council shall be in accordance with its bylaws,which shall be established by the Council and approved by the Secretary.

§ 1209.37 Compensation and reimbursement.

The members of the Council shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, including a reasonable per diem allowance, as approved by the Council and the Secretary, incurred by such members in the performance of their responsibilities under this subpart.

§ 1209.38 Powers.

The Council shall have the following powers:

(a) To receive and evaluate or, on its own initiative, develop and budget for proposed programs, plans, or projects to promote the use of mushrooms, as well as proposed programs, plans, or projects for research, consumer information, or industry information, and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(d) To make rules and regulations to effectuate the terms and provisions of this subpart;

(e) To receive, investigate, and report to the Secretary for action complaints of violations of the provisions of this subpart;

(f) To disseminate information to producers, importers, first handlers, or industry organizations through programs or by direct contact using the public postal system or other systems;

(g) To select committees and subcommittees of Council members, including an executive committee whose powers and membership shall be determined by the Council, subject to the approval of the Secretary, and to adopt

such bylaws and other rules for the conduct of its business as it may deem advisable;

(h) To establish committees which may include individuals other than Council members, and pay the necessary and reasonable expenses and fees for the members of such committees;

(i) To recommend to the Secretary amendments to this subpart;

(j) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State mushroom producer organizations, or other organizations or entities, for the development and conduct of programs, plans, or projects authorized under § 1209.40 and with such producer organizations for other services necessary for the implementation of this subpart, and for the payment of the cost thereof with funds collected and received pursuant to this subpart. The Council shall not contract with any producer or importer for the purpose of mushroom promotion or research. The Council may lease physical facilities from a producer or importer for such promotion or research, if such an arrangement is determined to be cost effective by the Council and approved by the Secretary. Any contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council 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) Any such program, plan, or project shall become effective upon approval of the Secretary;

(3) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Council of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Council may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

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

(k) With the approval of the Secretary, to invest, pending disbursement pursuant to a program, plan, or project, funds collected through assessments provided for in § 1209.51, and any other funds received by the Council in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(l) To develop and propose to the Secretary programs for good agricultural and good handling practices and related activities for mushrooms.

(m) Such other powers as may be approved by the Secretary; and

(n) To develop and propose to the Secretary voluntary quality and grade standards for mushrooms, if the Council determines that such quality and grade standards would benefit the promotion of mushrooms.

[58 FR 3449, Jan. 8, 1993, as amended at 74 FR 50920, Oct. 2, 2009]

§ 1209.39 Duties.

The Council shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans, or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 2109.50.

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books, and records that clearly reflect all the acts and transactions of the Council. Minutes of each Council meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any producer or importer;

(k) To follow the Department's equal opportunity/civil rights policies; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the mushroom industry's position in the marketplace, maintain and expand existing markets and uses for mushrooms, develop new markets and uses for mushrooms, and to carry out programs, plans, and projects designed to provide maximum benefits to the mushroom industry.

PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

§ 1209.40 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to mushrooms; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of mushrooms and mushroom products, and the creation of new products thereof, to the end that marketing and use of mushrooms may be encouraged, expanded, improved or made more acceptable. However, as prescribed by the Act, nothing in this subpart may be construed to authorize mandatory requirements for quality control, grade standards, supply management programs, or other programs that would control production or otherwise limit the right of individual producers to produce mushrooms.

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

(c) Each programs, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Council shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any mushrooms or mushroom product shall be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1209.50 Budget and expenses.

(a)(1) At least 60 days prior to the beginning of each fiscal year, and as may

be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. Each such budget shall include:

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

(ii) A summary of anticipated revenue, with comparative data for at least one preceding year;

(iii) A summary of proposed expenditures for each program, plan, or project; and

(iv) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

Each budget shall include a rate of assessment for such fiscal year calculated, subject to §1209.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (f). The Council may change such rate at any time, as provided in §1209.51(b)(5).

(2)(i) Subject to paragraph (a)(2)(ii), any amendment or addition to an approved budget must be approved by the Secretary, including shifting of funds from one program, plan, or project to another.

(ii) Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

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

(c) The Council shall not use funds collected or received under this subpart to reimburse, defray, or make payment of expenditures incurred in developing, drafting, studying, lobbying on or promoting the legislation authorizing this subpart. Such prohibition includes reimbursement, defrayment, or payment to mushroom industry associations or organizations, producers or importers, lawyers, law firms, or consultants.

(d) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use. The donor may recommend that the whole or a portion of the contribution be applied to an ongoing program, plan, or project.

(e) The Council shall reimburse the Secretary, from funds received by the Council, for administrative costs incurred by the Secretary in implementing and administering this subpart, except for the salaries of Department employees incurred in conducting referenda.

(f) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in the reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(g) With the approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council.

§ 1209.51 Assessments.

(a) Any first handler initially purchasing, or otherwise placing into the current of commerce, mushrooms produced in the United States shall, in the manner as prescribed by the Council and approved by the Secretary, collect an assessment based upon the number of pounds of mushrooms marketed in the United States for the account of the producer, and remit the assessment to the Council.

(b) The rate of assessment effective during any fiscal year shall be the rate specified in the budget for such fiscal year approved by the Secretary, except that:

(1) The rate of assessment during the first year this subpart is in effect shall be one-quarter of one cent per pound of mushrooms marketed, or the equivalent thereof.

(2) The rate of assessment during the second year this subpart is in effect shall not exceed one-third of one cent per pound of mushrooms marketed, or the equivalent thereof.

(3) The rate of assessment during the third year this subpart is in effect shall not exceed one-half of one cent per pound of mushrooms marketed, or the equivalent thereof.

(4) The rate of assessment during each of the fourth and following years this subpart is in effect shall not exceed one cent per pound of mushrooms marketed, or the equivalent thereof.

(5) The Council may change the rate of assessment for a fiscal year at any time with the approval of the Secretary as necessary to reflect changed circumstances, except that any such changed rate may not exceed the level of assessment specified in paragraphs (b)(1), (2), (3), or (4), whichever is applicable.

(c) Any person marketing mushrooms of that person's own production to consumers in the United States, either directly or through retail or wholesale outlets, shall be considered a first handler and shall remit to the Council an assessment on such mushrooms at the rate per-pound then in effect, and in such form and manner prescribed by the Council.

(d) Only one assessment shall be paid on each unit of mushrooms marketed.

(e)(1) Each importer of mushrooms shall pay an assessment to the Council on mushrooms imported for marketing in the United States, through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(2) The per-pound assessment rate for imported mushrooms shall be the same as the rate provided for mushrooms produced in the United States.

(3) The import assessment shall be uniformly applied to imported mushrooms that are identified by the numbers, 0709.51.01 and 0709.59 in the Harmonized Tariff Schedule of the United States or any other number used to identify fresh mushrooms.

(4) The assessments due on imported mushrooms shall be paid when the mushrooms are entered or withdrawn for consumption in the United States, or at such other time as may be established by rules and regulations prescribed by the Council and approved by the Secretary and under such procedures as are provided in such rules and regulations.

(5) Only one assessment shall be paid on each unit of mushrooms imported.

(f) The collection of assessments under this section shall commence on all mushrooms marketed in or imported into the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments until the Council is constituted, then remit such assessments to the Council.

(g)(1) Each person responsible for remitting assessments under paragraphs (a), (c), or (e) shall remit the amounts due from assessments to the Council on a monthly basis no later than the fifteenth day of the month following the month in which the mushrooms were marketed, in such manner as prescribed by the Council.

(2)(i) A late payment charge shall be imposed on any person that fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(ii) An additional charge shall be imposed on any person subject to a late payment charge, in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(3) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Council by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (g)(2)(i) and (g)(2)(ii) of this section shall be applicable.

(h) The Council, with the approval of the Secretary, may enter into agreements authorizing other organizations to collect assessments in its behalf. Any such organization shall be required to maintain the confidentiality of such information as is required by the Council for collection purposes. Any reimbursement by the Council for such services shall be based on reasonable charges for services rendered.

(i) The Council is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Council shall not be obligated to pay interest on any advance payment.

[58 FR 3449, Jan. 8, 1993, as amended at 72 FR 41427, July 30, 2007]

§ 1209.52 Exemption from assessment.

(a) The following persons shall be exempt from assessments under this part:

(1) A person who produces or imports, on average, 500,000 pounds or less of mushrooms annually; and

(2) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in §1209.252(a)(2)(vi); and is not a split operation; and

(3) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation.

(b) To claim such exemption, such persons shall apply to the Council, in the form and manner prescribed in the rules and regulations.

(c) Mushrooms produced in the United States that are exported are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

(d) Domestic and imported mushrooms used for processing are exempt from assessment and are subject to such safeguards as prescribed in rules and regulations to prevent improper use of this exemption.

[58 FR 3449, Jan. 8, 1993, as amended at 70 FR 2756, Jan. 14, 2005]

§ 1209.53 Influencing governmental action.

No funds received by the Council under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart, and to submit to the Secretary proposed voluntary grade and quality standards for mushrooms.

REPORTS, BOOKS AND RECORDS

§ 1209.60 Reports.

(a) Each producer marketing mushrooms of that person's own production directly to consumers, and each first handler responsible for the collection of assessments under §1209.51(a) shall be required to report monthly to the Council, on a form provided by the Council, such information as may be required under this subpart or any rules and regulations issued thereunder. Such information shall include, but not be limited to, the following:

(1) The first handler's name, address, and telephone number;

(2) Date of report, which is also the date of payment to the Council;

(3) Period covered by the report;

(4) The number of pounds of mushrooms purchased, initially transferred, or that in any other manner are subject to the collection of assessments, and a copy of a certificate of exemption, claiming exemption under §1209.52 from those who claim such exemptions;

(5) The amount of assessments remitted; and

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of mushrooms determined under paragraph (a)(4) multiplied by the applicable assessment rate.

(b) If determined necessary by the Council and approved by the Secretary, each importer shall file with the Council periodic reports, on a form provided by the Council, containing at least the following information:

(1) The importer's name, address, and telephone number;

(2) The quantity of mushrooms entered or withdrawn for consumption in the United States during the period covered by the report; and

(3) The amount of assessments paid to the U.S. Customs Service at the time of such entry or withdrawal.

(c) The words *final report* shall be shown on the last report at the end of each fiscal year.

§ 1209.61 Books and records.

Each persons who is subject to this subpart shall maintain and make available for inspection by the Council or the Secretary such books and records as are deemed necessary by the Council, with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1209.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the rules and regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of the Department, and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Council members, producers, importers, or first handlers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

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

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

MISCELLANEOUS

§ 1209.70 Right of the Secretary.

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

§ 1209.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b)(1) Five years after the date on which this subpart becomes effective, the Secretary shall conduct a referendum among producers and importers to determine whether they favor continuation, termination, or suspension of this subpart.

(2) Effective beginning three years after the date on which this subpart becomes effective, the Secretary, on request of a representative group comprising 30 percent or more of the number of mushroom producers and importers, may conduct a referendum to determine whether producers and importers favor termination or suspension of this subpart.

(3) Whenever the Secretary determines that suspension or termination of this subpart is favored by a majority of the mushroom producers and importers voting in a referendum under paragraphs (b) (1) or (2) who, during a representative period determined by the Secretary, have been engaged in

producing and importing mushrooms and who, on average, annually produced and imported more than 50 percent of the volume of mushrooms produced and imported by all those producers and importers voting in the referendum, the Secretary shall:

(i) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(ii) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(4) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1209.72 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of, or under the control of the Council, including any claims unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The trustees shall:

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

(2) Carry out the obligations of the Council under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Council and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Council or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information programs, plans, or projects authorized under this subpart.

§ 1209.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

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

§ 1209.74 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1209.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Council under this subpart shall be the property of the United States Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations

inure to the benefit of the Council and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council. Upon termination of this subpart, § 1209.72 shall apply to determine disposition of all such property.

§ 1209.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1209.77 Separability.

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

Subpart B—Rules and Regulations

SOURCE: 58 FR 8197, Feb. 11, 1993, unless otherwise noted.

DEFINITIONS

§ 1209.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Mushroom Promotion, Research, and Consumer Information Order of this part.

NOMINATION PROCEDURES

§ 1209.230 [Reserved]

§ 1209.231 Nominations.

Nominations shall be made at regional caucuses of producers or importers, or by mail ballot in accordance with the procedures prescribed in § 1209.31 of this part. Proxy voting by producers and importers shall not be permitted at a regional caucus or in a mail ballot. Each regional caucus and mail ballot shall be scheduled so as to ensure that the nominations for each position that will be open at the beginning of the following year are received by the Secretary by August 1, or such other date approved by the Secretary.

§ 1209.233 Regional caucus chairpersons.

(a) Regional caucus chairpersons shall be elected by a simple majority vote of eligible voters in attendance. Such elections shall be coordinated by the Council, except for the initial elections, which shall be coordinated by a representative of the Secretary.

(b) Regional caucus chairpersons will coordinate the entire nomination process. In conducting the nominations process, each regional caucus chairperson shall ensure that:

(1) Voting for producer nominees is limited to producers, and voting for importer nominees is limited to importers; and

(2) Producer candidates for nomination are producers, and importer candidates for nomination are importers.

(c) Within 14 days after completion of each regional caucus, each chairperson shall provide the Secretary with the following information:

(1) The identification of that region's two nominees for each open position on the Council; and

(2) A typed copy of the regional caucus's minutes.

(d) The chairperson of each regional caucus shall provide nominees with qualification statements and other specified information. Each nominee will be contacted by the chairperson and asked to forward such completed documentation to the Council within 14 days after completion of the regional caucus, except for the initial nominees, which shall be asked to forward such completed documentation to the Secretary.

(e) The tenure of the chairperson shall only be for the duration of the regional caucus and the preparation of required documentation.

§ 1209.235 Mail balloting.

(a) After the initial regional caucuses, the Council may conduct nominations of individuals as candidates for appointment to the Council by mail ballot in lieu of a regional caucus.

(b)(1) In the event of a mail ballot, all qualified individuals in a region interested in serving as a member on the

Council or persons who are interested in nominating an individual to serve on the Council shall submit to the Council in writing such information as name, mailing address, number of pounds of mushrooms produced or imported, or such other information as may be required, in order to place such individual on the ballot.

(2) Notice of mail balloting to nominate candidates for a position on the Council shall be publicized by the Council to producers or importers in the region involved, and to the Secretary, at least 120 days before the region's nominee ballot is issued.

(3) In proposing nominees for inclusion on a mail ballot, proposed nominations must be received by the Council at least 30 days before the region's nominee ballot is issued.

(c) Once proposed nominations have been submitted from the applicable region, the Council shall cause each proposed nomination, if the individual qualifies, to be placed on the region's nominee ballot. The Council then shall mail a ballot to each known producer or importer within the region.

(d) Distribution of ballots shall be announced by press releases, furnishing pertinent information on balloting, issued by the Council through newspapers and other publications having general circulation among producers in the mushroom producing areas involved or among mushroom importers.

(e) Each producer or importer shall cast a ballot for each open position on the Council assigned to the region in accordance with the procedures prescribed in §1209.31 of this part. The completed ballot must be returned to the Council or its designee within 30 days after the ballot is issued.

(f) Within 45 days after a mail ballot is issued, the Council shall validate the ballots cast, tabulate the votes, and provide the Secretary with the results of the vote and the identification of the region's two nominees for each open position on the Council.

(g) The Council shall provide nominees with qualification statements and other specified information. Each nominee selected in the mail ballot will be contacted by the Council and asked to forward such completed documentation to the Council within 14 days of such notification.

§ 1209.237 Appointment.

If an employee, partner, officer, or shareholder of a producer or importer is a current member of the Council, no nominee who is also an employee, partner, officer, or shareholder of such producer or importer shall be appointed to the Council. A Council member shall be disqualified from serving on the Council if such individual ceases to be affiliated with a producer or importer within the region the Council member represents.

GENERAL

§ 1209.239 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

ASSESSMENTS

§ 1209.251 Payment of assessments.

(a) Each first handler responsible for collecting assessments on domestic mushrooms shall collect the amounts assessed and remit such amounts to the Council on a monthly basis not later than the fifteenth day of the month following the month in which the mushrooms were marketed to or through the first handler.

(b) Each producer responsible for paying any assessment amount on the producer's own mushrooms shall remit such amount to the Council on a monthly basis not later than the fifteenth day of the month following the

month in which the mushrooms were marketed by the producer.

(c) Each importer shall be responsible for remittance to the Council of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Any such assessment amount shall be remitted to the Council on a monthly basis not later than the fifteenth day of the month following the month of entry or withdrawal for consumption into the United States. Any person who imports mushrooms, as principal or as an agent, broker, or consignee for any person who produces mushrooms outside the United States for marketing in the United States shall be considered an importer.

(d) Remittance shall be by check, draft, or money order payable to the Mushroom Council, and shall be accompanied by a report, on a form provided by the Council.

(e) A late payment charge shall be imposed on any first handler or importer who fails to make timely remittance to the Council of the total assessment amount for which the person is liable. Such late payment charge shall be imposed on any assessments not received by the last day of the month following the month in which the mushrooms involved were marketed or, in the case of imports, not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 15 days after the end of the month such assessments are due.

(f) In addition to the late payment charge, interest shall be charged at a rate of one and one-half percent per month on the outstanding balance, including the late payment charge and any accrued interest, of any account that remains delinquent beyond the last day of the second month following the month the mushrooms involved were marketed. However, first handlers paying their assessments, in accordance with paragraph (h)(2) of this section, will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (h)(2) of this section. In the case of imports, such a rate of interest will be charged to any account that remains delinquent on any assessments not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States. Such a rate of interest will continue to be charged monthly until the outstanding balance is paid to the Council.

(g) Any assessment determined by the Council at a date later than prescribed by this section, because of a person's failure to submit a report to the Council when due, shall be considered to have been payable by the date it would have been due if the report had been filed on time. A late payment charge and monthly interest charges on the outstanding balance shall be applicable to such unpaid assessment in accordance with paragraphs (e) and (f) of this section.

(h) In lieu of the monthly assessment payment and reporting requirements of § 1209.260 of this subpart and § 1209.60 of this part, the Council may permit a first handler to make advance payment of the total estimated assessment amount due to the Council for the ensuing fiscal year, or portion thereof, prior to the actual determination of assessable mushrooms.

(1) Each person shall provide an initial report estimating assessable mushrooms. The Council may request additional information on such estimate.

(2) Each person shall provide a final report of actual marketings during the period involved and remit any unpaid assessments not later than the fifteenth day of the month following the end of the period covered.

(3) Any person whose prepayment exceeds the amount paid shall be reimbursed for the amount of overpayment. The Council shall not, in any case, be obligated to pay interest on any advance payment.

§ 1209.252 Exemption procedures.

(a) *Types of exemptions and requirements.* (1) Any person who produces or imports, on average, 500,000 pounds or

less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year shall apply to the Council, on a form provided by the Council, for a Certificate of Exemption. The producer or importer shall certify that the person's production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. An average shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with the person's production or importation in the preceding fiscal year.

(2) To apply for an exemption for organic mushrooms:

(i) An eligible mushroom producer shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(ii) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Council and with the approval of the Secretary.

(iii) If the producer complies with the requirements of §1209.52 (a)(2), the Council will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Council will have 60 days to approve the exemption request; after August 15, 2005, the Council will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(iv) An eligible importer may submit documentation to the Council and request an exemption from assessment on 100 percent organic mushrooms—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic mushrooms bearing this HTS classification assigned by the Council will not be subject to assessments.

(v) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(vi) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(b) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council then will issue, if deemed appropriate, a certificate of exemption to each person that is eligible to receive one. Each person who is exempt from assessment must provide an exemption number to the first handler in order not to be subject to collection of an assessment on mushrooms. First handlers and importers, except as otherwise authorized by the Council, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council. Importers who

are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Council for reimbursement of such assessments paid.

(c) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(d) The Council may require persons receiving an exemption from assessments to provide to the Council reports on the disposition of exempt mushrooms.

[58 FR 3449, Jan. 8, 1993, as amended at 70 FR 2756, Jan. 14, 2005]

REPORTS

§ 1209.260 Reports.

Each first handler shall be required to report monthly to the Council such information as may be required under § 1209.60(a) of this part. In addition, each first handler shall be required to provide the tax identification number or social security number of each producer the first handler has dealt with during the time period covered by the report.

[58 FR 8197, Feb. 11, 1993, as amended at 60 FR 13614, Mar. 14, 1995]

MISCELLANEOUS

§ 1209.280 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* is OMB control number 0581–0093, except for the Council nominee background statement form which is assigned OMB control number 0505–0001.

Subpart C—Procedure for the Conduct of Referenda in Connection With the Mushroom Promotion, Research, and Consumer Information Order

SOURCE: 62 FR 66975, Dec. 23, 1997, unless otherwise noted.

§ 1209.300 General.

A referendum to determine whether eligible producers and importers favor the amendment, continuation, suspension, or termination of the Mushroom Promotion, Research, and Consumer Information Order shall be conducted in accordance with these procedures.

[74 FR 18464, Apr. 23, 2009]

§ 1209.301 Definitions.

Unless otherwise defined below, the definition of terms used in these procedures shall have the same meaning as the definitions in the Order.

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

(b) *Order* means the Mushroom Promotion, Research, and Consumer Information Order, including an amendment to the Order.

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

(d) *Representative period* means the period designated by the Secretary.

(e) *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 wife who have title to, or leasehold interest in, mushroom production facilities and equipment 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 the agreement, informal or otherwise, contributed capital and others contributed labor, management, equipment, or other services, or any variation of such contributions by two or more parties so that it results in the production or importation of fresh mushrooms and the authority to transfer title to the mushrooms so produced or imported.

(f) *Eligible producer* means any person or entity defined as a producer who

produces, on average, over 500,000 pounds annually of fresh mushrooms during the representative period and who:

(1) Owns or shares in the ownership of mushroom production facilities and equipment resulting in the ownership of the mushrooms produced;

(2) Rents mushroom production facilities and equipment resulting in the ownership of all or a portion of the mushrooms produced;

(3) Owns mushroom production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the mushrooms produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms who share the risk of loss and receive a share of the mushrooms produced. No other acquisition of legal title to mushrooms shall be deemed to result in persons becoming eligible producers.

(g) *Eligible importer* means any person or entity defined as an importer who imports, on average, over 500,000 pounds annually of fresh mushrooms during the representative period. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced mushrooms immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of mushrooms from the U.S. Customs Service when such mushrooms are entered or withdrawn for consumption in the United States.

§ 1209.302 Voting.

(a) Each person who is an eligible producer or importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce mushrooms, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee of an eligible producing or importing entity may cast a ballot on behalf of such producer or importer entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer or importer, or an administrator, executor, or trustee of an eligible producing or importing 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) Ballots are to be cast by mail or fax.

§ 1209.303 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the time of commencement and termination of the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. Ballot material shall provide for recording essential information including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter;

(2) The total volume of mushrooms produced by the voting producer during the representative period; and

(3) The total volume of mushrooms imported by the voting importer during the representative period.

(c) Give reasonable advance public notice of the referendum:

(1) By utilizing 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) Mail to eligible producers and importers, whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) Collect and safeguard ballots received by fax.

(f) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results.

(g) Prepare a report on the referendum.

(h) Prepare an announcement of the results for the public.

§ 1209.304 Subagents.

The referendum agent may appoint any individual or individuals deemed necessary or desirable to assist the agent in performing such agent's functions hereunder. 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.

§ 1209.305 Ballots.

The referendum agent and subagents shall accept all ballots cast; but, should they, or any of them, deem 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 invalid under this subpart shall not be counted.

§ 1209.306 Referendum report.

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

§ 1209.307 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the identity or vote of any person covered under the Act shall be held confidential and shall not be disclosed.

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

Subpart A—Watermelon Research and Promotion Plan

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AUTHORITY: 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

SOURCE: 53 FR 51091, Dec. 20, 1988, unless otherwise noted.

Subpart A—Watermelon Research and Promotion Plan

SOURCE: 54 FR 24545, June 8, 1989, unless otherwise noted.

DEFINITIONS

§ 1210.301 Secretary.

Secretary means the Secretary of Agriculture of the United States 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.

§ 1210.302 Act.

Act means the Watermelon Research and Promotion Act of 1985 (Title XVI, Subtitle C of Pub. L. 99–198, 99th Congress, effective January 1, 1986, 99 Stat. 1622), as amended.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.303 Plan.

Plan means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

Board means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

Watermelon means all varieties of the Family Curcubitaceae; Genus and Species; Citrullus Lanatus, popularly referred to as watermelon grown by producers in the United States or imported into the United States.

[60 FR 10797, Feb. 28, 1995]

§ 1210.306 Producer.

Producer means any person engaged in the growing of 10 acres or more of watermelons including any person who

owns or shares the ownership and risk of loss of such watermelon crop.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.307 Handle.

Handle means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.308 Handler.

Handler means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of this subpart, the term ''handler'' means the ''first'' person who performs the handling functions.

§ 1210.309 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.310 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12 month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

Programs and *projects* mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

Promotion means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

Research means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

§ 1210.314 Importer.

Importer means any person who imports watermelons into the United States as a principal or as an agent, broker, or consignee for any person who produces watermelons outside of the United States for sale in the United States.

[60 FR 10797, Feb. 28, 1995]

§ 1210.315 United States.

United States means each of the several States and the District of Columbia.

[60 FR 10797, Feb. 28, 1995]

NATIONAL WATERMELON PROMOTION BOARD

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the ''Board.'' The Board shall be composed of producers, handlers, importers, and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The Board shall also include one or more representatives of importers, who shall be nominated in such manner as may be prescribed by the Secretary. The public representative shall be nominated by the Board members in such manner as may be prescribed by the Secretary. If producers, handlers, and importers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for

each of seven districts in the contiguous States of the United States. Such districts as hereby established have approximately equal production volume according to the three-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.
District #2—North Florida including all areas north of State Highway 50.
District #3—The States of Alabama and Georgia.
District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.
District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.
District #6—The State of Texas.
District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

(d) Importer representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board.

(e) Not later than 5 years after the date that importers are subject to the Plan, and every 5 years thereafter, the Secretary shall evaluate the average annual percentage of assessments paid by importers during the 3-year period preceding the date of the evaluation and adjust, to the extent practicable, the number of importer representatives on the Board.

(f) The Board consists of 14 producers, 14 handlers, at least one importer, and one public member appointed by the Secretary.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10797, Feb. 28, 1995]

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) There shall be two individuals nominated for each vacant position.

(b) The Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district and to importers nationally for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States, by district, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, importers, and district conventions, if any.

(c) Nominations for producer and handler positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(d) Nominations for importers positions that become vacant may be made

by mail ballot, nomination conventions, or by other means prescribed by the Secretary. The Board shall provide notice of such vacancies and the nomination process to all importers through press releases and any other available means as well as direct mailing to known importers. All importers may participate in the nomination process: *Provided*, That a person who both imports and handles watermelons may vote for importer members and serve as an importer member if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

(e) All producers and handlers within the district may participate in the convention: *Provided*, That a person that produces and handles watermelons may vote for handler members only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(f) The district convention chairperson shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to requirements set in § 1210.321(e).

(1) No State in Districts 3, 4, 5, and 7 as currently constituted shall have more than three producers and handlers representatives concurrently on the Board.

(2) Each State represented at the district convention shall have one vote for each producer position and one vote for each handler position from the District on the Board, which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports; *Provided*, That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years.

(b) Except in the case of mid-term vacancies, the term of office shall begin on January 1, or such other date as may be recommended by the Board and approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No person shall serve more than two successive terms of office.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995; 60 FR 13515, Mar. 13, 1995]

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of

the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) A simple majority of Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication; *Provided*, That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this Plan;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish working committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds received pursuant to this Plan;

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate

accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds received pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers, handlers, and importers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public, and make available to producers, handlers, and importers reports of its activities carried out.

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer, handler, or importer;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers, handlers, and importers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers, importers, and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

RESEARCH AND PROMOTION

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and coordinated program of research, development, advertising, and promotion in order to:

(a) Strengthen watermelons' competitive position in the marketplace,

(b) Maintain and expand existing domestic and foreign markets, and

(c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient: *Provided*, That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to

the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

EXPENSES AND ASSESSMENTS

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan, including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments received pursuant to § 1210.341.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and first handled in the United States and all watermelons imported into the United States for consumption as human food. No more than one assessment on a producer, handler, or importer shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions on any same lot of watermelons, both assessments shall be paid by such person. In the case of an importer, the assessment shall be equal to the combined rate for domestic producers and handlers and shall be paid by the importer at the time of entry of the watermelons into the United States.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f) of the Act. No assessments shall be levied on watermelons grown by producers of less than 10 acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Each importer shall be responsible for payment of the assessment to the Board on watermelons imported into the United States through the U.S. Customs Service or in such other manner as may be established by rules and regulations approved by the Secretary.

(e) Producer-handlers and handlers shall pay assessments to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued under this part. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices

or procedures used in any State or production area.

(f) There shall be a late payment charge imposed on any handler or importer who fails to remit to the Board the total amount for which any such handler or importer is liable on or before the payment due date established by the Board under paragraph (e) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(g) There shall also be imposed on any handler or importer subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler or importer is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(h) The Board is hereby authorized to accept advance payment of assessments by handlers and importers that shall be credited toward any amount for which the handlers and importers may become liable. The Board shall not be obligated to pay interest on any advance payment.

(i) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

(j) The Board may authorize other organizations to collect assessments in its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10798, Feb. 28, 1995]

§ 1210.342 Exemption from assessment.

(a) The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

(b) Importers of less than 150,000 pounds of watermelons per year shall be entitled to apply for a refund that is equal to the rate of assessment paid by domestic producers.

(c) The Secretary may adjust the quantity of the weight exemption specified in paragraph (b) of this section on the recommendation of the Board after an opportunity for public notice and comment to reflect significant changes in the 5-year average yield per acre of watermelons produced in the United States.

(d) The Board shall have the authority to establish rules, with the approval of the Secretary, for certifying whether a person meets the definition of a producer under section 1210.306.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.343 [Reserved]

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; *Provided,* That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1210.350 Reports.

(a) Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(1) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(2) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

(3) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(4) Name and address of each person claiming exemption from assessment

and a copy of each such person's claim of exemption.

(b) Each importer of watermelons shall maintain a separate record that includes a record of:

(1) The total quantity of watermelons imported into the United States that are included under the terms of this Plan;

(2) The total quantity of watermelons that are exempt from the Plan; and

(3) Such other information as may be prescribed by the Board.

(c) Each importer shall report to the Board at such times and in such manner as it may prescribe such information as may be necessary for the Board to perform its duties under this part.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.351 Books and records.

Each handler and importer subject to this Plan shall maintain, and during normal business hours make available for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for 2 years beyond the fiscal period of their applicability.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers or importers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of confidential information by any employee of the Board, except as required by law, shall be considered willful misconduct.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

MISCELLANEOUS

§ 1210.360 Right of the Secretary.

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

§ 1210.361 Personal liability.

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

§ 1210.362 Influencing government action.

No funds received by the Board under this Plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making recommendations to the Secretary as provided in this subpart.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time and shall hold a referendum on request of the Board or at least 10 percent of the combined total of the watermelon producers,

handlers, and importers to determine if watermelon producers, handlers, and importers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers, handlers, and importers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production, handling, or importing of watermelons and who produced, handled, or imported more than 50 percent of the combined total of the volume of watermelons produced, handled, or imported by those producers, handlers, and importers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production. *Provided*, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person. Any such referendum shall be conducted by mail ballot.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.364 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers, handlers and importers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers, handlers and importers such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

[54 FR 24545, June 8, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.365 Effect of termination or amendment.

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

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

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder; or

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

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1210.364 shall apply to determine the disposition of all such property.

Subpart B—Nominating Procedures

SOURCE: 54 FR 38205, Sept. 15, 1989, unless otherwise noted.

PRODUCER AND HANDLER MEMBERS

§ 1210.400 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart—Watermelon Research and Promotion Plan.

§ 1210.401 District conventions.

(a) Except for the initial district convention in each district, which will be called and opened by a representative of the Secretary, the Board shall call and open all district conventions.

(b) District conventions are to be held to nominate producers and handlers as candidates for membership on the National Watermelon Promotion Board. Each district, as defined in § 1210.501, is entitled to two producer and two handler members on the Board.

(c) There shall be two individuals nominated for each vacant position. In multi-State districts, no one State shall have nominees for more than three of the four district positions on the Board.

(d) All producers and handlers within each district may participate in that district's convention: *Provided*, That they meet the eligibility provisions set forth in § 1210.402 of this subpart.

(e) The convention chairperson shall be elected as provided in § 1210.403(b) of this subpart.

(f) The Board member nomination process shall be conducted by the chairperson in conformance with the provisions of § 1210.321 of the Plan and § 1210.403 of this subpart. At the conclusion of the district convention for the initial term of office, the chairperson will provide the Secretary with:

(1) The identification of that district's two nominees for each producer and handler position on the Board, and

(2) A typed copy of the district convention's minutes.

This information must be provided by the chairperson to the Board staff in a manner that will ensure receipt, at the address specified in the call for the district convention, within 14 calendar days of the district convention's completion, but not later than July 8 for appointments to become effective on the following January 1. The Board staff must forward such information to the Secretary, in a manner that will ensure receipt, within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1. Further, the chairperson will immediately arrange for completion of qualification statements and other specified information by each nominee, and each nominee shall qualify by forwarding such information to the Board's office within 14 calendar days of completion of the district convention, but not later than July 8 for appointments to become effective on the following January 1. The Board staff must forward the completed qualification statements and

other specified information to the Secretary, in a manner that will ensure receipt within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1.

[54 FR 38205, Sept. 15, 1989, as amended at 58 FR 3355, Jan. 8, 1993; 59 FR 18948, Apr. 21, 1994; 60 FR 10799, Feb. 28, 1995]

§ 1210.402 Voter and board member nominee eligibility.

(a) All producers and handlers within a district may participate in their district convention for the purpose of nominating candidates for appointment to the Board: *Provided*, That a producer who both produces and handles watermelons may vote for handler member nominees and serve as a handler member nominee only if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production or the combined total volume of watermelons handled by the producer from the producer's own production and purchases from other producer's production is more than 50 percent of the producer's own production; and *Provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board. For the purpose of participation in initial nominating conventions, such election shall be made in writing, at the address provided, to the Department official identified in the call for a district convention.

(b) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in § 1210.403 and § 1210.404 of this subpart.

(c) All producers and handlers attending their district conventions may be candidates for one or more of the positions of State spokesperson, district convention chairperson, and producer or handler nominee.

[54 FR 38205, Sept. 15, 1989, as amended at 60 FR 10799, Feb. 28, 1995]

§ 1210.403 Voting procedures.

(a) Proxy voting by producers and handlers for producer and handler nominees shall be permitted at all district conventions: *Provided*, That producers may cast proxy votes for producers only, and handlers may cast proxy votes for handlers only. In non-multi-State districts, proxy voting shall be permitted for all producer and handler nominee balloting to determine the districts' nominees. In multi-State districts, proxy voting shall be permitted for all producers and handlers participating in a State's balloting to determine the State's nominees. No other proxy voting, such as for district convention chairperson, shall be allowed. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(1) The proxy voter's name, address, and telephone number;

(2) Signature and date signed;

(3) A certification identifying the proxy voter as a producer or a handler; and

(4) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

All proxy documentation must be received by the Board at its headquarters address at least two weeks before the district convention is scheduled to convene. For the purpose of the initial district convention, all proxy documentation must be forwarded to the Department representative identified in the call for the district convention in a manner that will ensure receipt, at the address specified in the call, at least 72 hours before the district convention is scheduled to convene. The Board, or in the case of the initial conventions the Department representative identified in the call or other representative of the Department, may challenge any

proxy vote and disqualify any challenged vote for cause. In the case of duplicate proxy authorizations by any person, only the first authorization, determined by date will be allowed. In the case of duplicate dates, the proxy which is received first will be allowed.

(b) In non-multi-State districts, convention chairpersons shall be elected by a majority vote of the eligible voters in attendance. In multi-State districts, the election shall be by majority vote of all States present with each State's vote(s) determined by a majority vote of the eligible voters of that State in attendance. Each such State is entitled to one vote, plus one additional vote for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided*, That for the first two conventions, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

(c) In multi-State districts 3, 4, 5 and 7, the convention chairperson will direct the eligible producer voters and handler voters from each State to caucus separately for the purpose of electing a State spokesperson for each group. Election of each State spokesperson shall be by simple majority of all individual voters in attendance. In lieu of written ballots, a State spokesperson may be elected by voice vote or a show of hands. The role of the State spokesperson is to coordinate State voting and to cast all State votes.

(d) Convention chairpersons will coordinate the entire producer and handler nomination process. In conducting the nomination process, each convention chairperson will ensure that:

(1) Voting for producer nominees is limited to producers, and voting for handler nominees is limited to handlers; and

(2) Producer candidates for nomination are producers, and handler candidates for nomination are handlers.

(e) Voting, for producer and handler nominees, in non-multi-State districts shall be on the basis of one vote per person, except that persons authorized to cast proxy votes shall be allowed to cast all proxy votes not disallowed by the Board or the Department. Election of nominees shall be on the basis of a simple majority of all eligible votes cast.

(f) Voting for producer and handler nominees in multi-State districts shall be on a State by State basis. Producers and handlers from each State shall caucus separately, at the district convention, for the purpose of determining which nominees shall receive their State's vote(s) for membership on the Board. Each State's vote(s) shall be based on a simple majority of all votes (including proxy votes) cast by producers or handlers voting in their State's caucus. Each State represented at a multi-State district convention shall have one vote for each producer position and one vote for each handler position from the district on the Board. Each State shall further have an additional vote toward each position for each 500,000 hundredweight volume of production in the State as determined by the three-year average annual crop production summary reports of the Department or, if such reports are not published, then the three-year average of the Board's assessment reports: *Provided*, That for the first two calls for nominees, the Department's Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes. Each State spokesperson will cast the State's vote(s) for each nominee position. Election of nominees shall be on the basis of a simple majority of all State votes cast.

(g) During the voting for convention chairperson, State spokesperson, and Board member nominee, should no candidate receive the required simple majority on the first ballot, the number of candidates may be reduced by dropping one or more of the lowest vote recipients from the list of candidates. The balloting will be repeated until the position is filled.

(h) Two nominees shall be elected for each of the producer and handler positions from each district on the Board. The two nominees for each position shall be elected simultaneously. The convention chairperson will open the

floor to the nomination of candidates for possible election as a Board member nominee for each available position. Each position will be dealt with separately (*i.e.*, candidates for one position will be nominated and then elected before the convention moves on to the next available position). Each eligible voter may vote for two of the nominees on one ballot. The two nominees receiving the greatest number of votes and at least a simple majority of the votes cast will be elected as the district's Board member nominees for the position. No individual elected as a nominee for Board membership may be a candidate on subsequent Board member nominee ballots (*i.e.*, two different producer names and two different handler names must be submitted as nominees for each producer and handler position from each district to the Secretary of Agriculture). There shall be no designation of first and second choice nominees.

[54 FR 38205, Sept. 15, 1989, as amended at 58 FR 3355, Jan. 8, 1993]

IMPORTER MEMBERS

§ 1210.404 Importer member nomination and selection.

(a) The Board shall include one or more representatives of importers, who shall be appointed by the Secretary from nominations submitted by watermelon importers. Importers' representation on the Board shall be proportionate to the percentage of assessments paid by importers to the Board, except that at least one representative of importers shall serve on the Board if importers are subject to the Plan. Nominations for importer positions that become vacant shall be made by importers at nomination conventions or by mail ballot.

(b) The initial nomination of importer members shall be made not later than 90 days after the Plan is amended.

(c) There shall be two individuals nominated for each vacant position. The importer receiving the highest number of votes for a vacancy shall be the first choice nominee, and the importer receiving the second highest number of votes shall be the second choice nominee submitted to the Secretary.

(d) Any individual, group of individuals, partnership, corporation, association, cooperative or any other entity which is engaged in the production, first handling or importing of watermelons is considered a person and as such is entitled to only one vote, except that such person may cast proxy votes as provided in paragraph (e)(1) of this section.

(e) *Nomination Conventions.* If nominations are made by nomination conventions, the Board shall widely publicize such conventions and provide importers and the Secretary at least 10 days notice prior to each convention.

(1) Proxy voting by importers shall be permitted at all conventions. Any person wanting to cast proxy votes must demonstrate authorization to do so. Authority to cast a proxy vote on behalf of another person shall be demonstrated through documentation containing:

(i) The proxy voter's name, address, and telephone number;

(ii) Signature and date signed;

(iii) A certification identifying the proxy voter as an importer; and

(iv) A statement identifying the person being given authority by the proxy voter to cast the proxy vote.

(2) The Board shall provide to the Secretary a typed copy of each convention's minutes and shall arrange for completion of qualification statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of completion of a convention.

(f) *Mail balloting.* If nominations are conducted by mail ballot, the Board shall request importers to submit nominations of eligible importers. It is the importer's responsibility to prove the individual's eligibility. After the names of nominees are received, the Board shall print ballots and ask eligible importers to vote to nominate their candidates. After the vote is received, the Board shall tabulate the results and shall send to the Department the nominees in order of preference. The Board shall provide the Secretary with a report on the results, number of importers participating in the vote, and the volume of imports, and shall arrange for completion of qualification

statements and other specified information by each nominee and forward such to the Secretary within 14 calendar days of receiving the ballots.

(g) Any individual who both imports and handles watermelons will be considered an importer if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

[60 FR 10800, Feb. 28, 1995]

PUBLIC MEMBER

§ 1210.405 Public member nominations and selection.

(a) The public member shall be nominated by the other members of the Board. The public member shall have no direct financial interest in the commercial production or marketing of watermelons except as a consumer and shall not be a director, stockholder, officer or employee of any firm so engaged. The Board shall nominate two individuals for the public member position. Voting for public member nominees shall require a quorum of the Board and shall be on the basis of one vote per Board member. Election of nominees shall be on the basis of a simple majority of those present and voting. Such election shall be held prior to August 1, 1990, and every third August first thereafter. The Board may prescribe such additional qualifications, administrative rules and procedures for selection and voting for public member nominees as it deems necessary and the Secretary approves.

(b) Each person nominated for the position of public member on the Board shall qualify by filing a written acceptance with the Secretary within 14 calendar days of completion of the Board meeting at which public member nominees were selected.

[55 FR 13256, Apr. 10, 1990. Redesignated and amended at 60 FR 10800, Feb. 28, 1995]

Subpart C—Rules and Regulations

SOURCE: 55 FR 13256, Apr. 10, 1990, unless otherwise noted.

DEFINITIONS

§ 1210.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in subpart—Watermelon Research and Promotion Plan.

GENERAL

§ 1210.501 Realignment of districts.

Pursuant to §1210.320(c) of the Plan, the districts shall be as follows:

District 1—The Florida counties of Brevard, Broward, Charlotte, Citrus, Collier, Dade, DeSoto, Flagler, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Marion, Monroe, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia.

District 2—The Florida counties of Alachua, Baker, Bay, Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau, Okaloosa, Santa Rosa, Suwannee, Taylor, Union, Wakulla, Walton, Washington, and the Georgia counties Early, Baker, Miller, Mitchell, Colquitt, Thomas, Grady, Decatur, Seminole, and the states of Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Oklahoma, Tennessee, and Virginia.

District 3—The Georgia counties not included in District two and the state of South Carolina.

District 4—The States of North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Illinois, Missouri, Michigan, Indiana, Ohio, Kentucky, West Virginia, Maryland, New Hampshire, Maine, New Jersey, New York, Pennsylvania, Massachusetts, Rhode Island, Delaware, Vermont, Wisconsin, Connecticut, and Washington, DC.

District 5—The States of Alaska, Hawaii, Nevada, Oregon, and Washington and all of the counties in the state of California except for those California counties included in District Seven.

District 6—The counties in the state of Texas, except for those counties in Texas included in District Seven.

District 7—The counties in the state of Texas; Dallam, Sherman, Hanaford, Ochiltree, Lipscomb, Hartely, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall, Childness, Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockely, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, the states of New Mexico, Arizona, Utah, Colorado, Idaho, Montana, and Wyoming, and the following counties in California; San Bernardino, Riverside, San Diego, and Imperial.

[71 FR 34234, June 14, 2006]

§ 1210.502 [Reserved]

§ 1210.504 Contracts.

The Board, with the approval of the Secretary, may enter into contracts or make agreements with persons for the development and submission to it of programs or projects authorized by the Plan and for carrying out such programs or projects. Contractors shall agree to comply with the provisions of this part. Subcontractors who enter into contracts or agreements with a Board contractor and who receive or otherwise utilize funds allocated by the Board shall be subject to the provisions of this part. All records of contractors and subcontractors applicable to contracts entered into by the Board are subject to audit by the Secretary.

§ 1210.505 Department of Agriculture costs.

Pursuant to § 1210.340, the Board shall reimburse the Department of Agriculture for referendum and administrative costs incurred by the Department with respect to the Plan. The Board shall pay those costs incurred by the Department for the conduct of Department duties under the Plan as determined periodically by the Secretary. The Department will bill the Board monthly and payment shall be due promptly after the billing of such costs. Funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10800 Feb. 28, 1995]

ASSESSMENTS

§ 1210.515 Levy of assessments.

(a) An assessment of three cents per hundredweight shall be levied on all watermelons produced for ultimate consumption as human food, and an assessment of three cents per hundredweight shall be levied on all watermelons first handled for ultimate consumption as human food. An assessment of six cents per hundredweight shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.11.30 and 0807.11.40 in the Harmonized Tariff Scheudle of the United States of any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service (USCS) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between USCS and USDA. Any importer or agent who is exempt from payment of assessments may submit the Board adequate proof of the volume handled by such importer for the exemption to be granted.

(c) Watermelons used for non-human food purposes are exempt from assessment requirements but are subject to the safeguard provisions of § 1210.521.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10800, Feb. 28, 1995; 72 FR 41428, July 30, 2007; 72 FR 61051, Oct. 29, 2007]

§ 1210.516 Exemption for organic watermelons.

(a) A producer who produces only products that are eligible to be labeled as 100 percent organic under the National Organic Program (NOP) (7 CFR part 205), except as provided for in paragraph (h) of this section, or a handler who handles only products that are eligible to be labeled as 100 percent organic under the NOP; and who operates under an approved NOP system

plan, and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for this exemption, the producer or handler shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer or handler continues to be eligible for the exemption.

(c) The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer or handler complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer or handler. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells watermelons. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic watermelons. The importer may request the exemption—on a form provided by the Board—at any time initially and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers and handlers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic watermelons bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2756, Jan. 14, 2005]

§ 1210.517 Determination of handler.

The producer and handler assessments on each lot of watermelons handled shall be paid by the handler. Unless otherwise provided in this section, the handler responsible for payment of assessments shall be the first handler of such watermelons. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the watermelons in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells watermelons of own production to a handler. In this instance, it is the handler, not the producer, who places the watermelons in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells watermelons of that producer's own production from the field, roadside stand, or storage to a consumer, trucker, retail or wholesales outlet, or other buyer who is not a handler of watermelons. The producer places the watermelons in the current of commerce and is the first handler.

(3) Producer purchases watermelons from another producer. The producer purchasing the watermelons is the first handler.

(4) Producer delivers field-run watermelons of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such watermelons for the account of the handler or for the account of the producer.

(5) Producer delivers field-run watermelons of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such watermelons to a handler.

(6) Producer delivers watermelons of own production to a handler who takes title to such watermelons. The handler who purchases such watermelons from the producer is the first handler.

(7) Producer supplies watermelons to a cooperative marketing association which sells or markets the watermelons and makes an accounting to the producer, or pays the proceeds of the sale to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery to such cooperative.

(8) Handler purchases watermelons from a producer's field for the purpose of preparing such watermelons for market or for transporting such watermelons to storage for subsequent handling. The handler who purchases such watermelons from the producer is the first handler.

(9) Broker/Commission House receives watermelons from a producer and sells such watermelons in the Broker's/Commission House's name. In this instance, the Broker/Commission House is the first handler, regardless of whether the Broker/ Commission House took title to such watermelons.

(10) Broker/Commission House, without taking title or possession of watermelons, sells such watermelons in the name of the producer. In this instance, the producer is the first handler.

(11) Processor utilizes watermelons of own production in the manufacture of rind pickles, frozen, dehydrated, extracted, or canned products for human consumption. In so handling watermelons the processor is the first handler.

(12) Processor purchases watermelons from the producer thereof. In this instance, the processor is the first handler even though the producer may have graded, packed, or otherwise handled such watermelons.

(b) In the event of a handler's death, bankruptcy, receivership, or incapacity to act, the representative of the handler or the handler's estate shall be considered the handler of the watermelons for the purpose of this subpart.

[55 FR 13256, Apr. 10, 1990, as amended at 58 FR 3356, Jan. 8, 1993]

§ 1210.518 Payment of assessments.

(a) *Time of payment.* The assessment on domestically produced watermelons shall become due at the time the first handler handles the watermelons for non-exempt purposes. The assessment on imported watermelons shall become due at the time of entry, or withdrawal, into the United States.

(b) *Responsibility for payment.* (1) The first handler is responsible for payment of both the producer's and the handler's assessment. The handler may collect the producer's assessment from the producer or deduct such producer's assessment from the proceeds paid to the producer on whose watermelons the producer assessment is made. Any such collection or deduction of producer assessment shall be made not later than

the time when the first handler handles the watermelons.

(2) The U.S. Customs Service shall collect assessments on imported watermelons from importers and forward such assessments under an agreement between the U.S. Customs Service and the U.S. Department of Agriculture. Importers shall be responsible for payment of assessments directly to the Board of any assessments due but not collected by the U.S. Customs Service at the time of entry, or withdrawal, on watermelons imported into the United States for human consumption.

(c) *Payment direct to the Board.* (1) Except as provided in paragraph (b) and (e) of this section, each handler and importer shall remit the required producer and handler assessments, pursuant to §1210.341 of the Plan, directly to the Board not later than 30 days after the end of the month such assessments are due. Remittance shall be by check, draft, or money order payable to the National Watermelon Promotion Board, or NWPB, and shall be accompanied by a report, preferably on Board forms, pursuant to §1210.350. To avoid late payment charges, the assessments must be mailed to the Board and postmarked within 30 days after the end of the month such assessments are due.

(2) Pursuant to §1210.350 of the Plan, each handler shall file with the Board a report for each month that assessable watermelons were handled. All handler reports shall contain at least the following information:

(i) The handler's name, address, and telephone number;

(ii) Date of report (which is also the date of payment to the Board);

(iii) Period covered by the report;

(iv) Total quantity of watermelons handled during the reporting period;

(v) Date of last report remitting assessments to the Board; and

(vi) Listing of all persons for whom the handler handled watermelons, their addresses, hundredweight handled, and total assessments remitted for each producer. In lieu of such a list, the handler may substitute copies of settlement sheets given to each person or computer generated reports, provided such settlement sheets or computer reports contain all the information listed above.

(vii) Name, address, and hundredweight handled for each person claiming exemption for assessment.

(viii) If the handler handled watermelons for persons engaged in the growing of less than 10 acres of watermelons, the report shall indicate the name and address of such person and the quantity of watermelons handled for such person.

(3) The words ''final report'' shall be shown on the last report at the close of the handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(4) *Prepayment of assessments.* (i) In lieu of the monthly assessment and reporting requirements of paragraph (b) of this section, the Board may permit handlers to make an advance payment of their total estimated assessments for the crop year to the Board prior to their actual determination of assessable watermelons. The Board shall not be obligated to pay interest on any advance payment.

(ii) Handlers using such procedures shall provide a final annual report of actual handling and remit any unpaid assessments not later than 30 days after the end of the last month of the designated handler's marketing season or at the end of each fiscal period if such handler markets assessable watermelons on a year-round basis.

(iii) Handlers using such procedures shall, after filing a final annual report, receive a reimbursement of any overpayment of assessments.

(iv) Handlers using such procedures shall, at the request of the Board to verify a producer's refund claim, provide the Board with a handling report on any and all producers for whom the handler has provided handling services but has not yet filed a handling report with the Board.

(v) Specific requirements, instructions, and forms for making such advance payments shall be provided by the Board on request.

(d) *Late payment charges and interest.* (1) A late payment charge shall be imposed on any handler and importer who fails to make timely remittance to the Board of the total producer and handler and importer assessments for which any such handler and importer is

liable. Such late payment shall be imposed on any assessments not received before the fortieth day after the end of the month such assessments are due. This one-time late payment charge shall be 10 percent of the assessments due before interest charges have accrued. The late payment charge will not be applied to any late payments postmarked within 30 days after the end of the month such assessments are due.

(2) In addition to the late payment charge, one and one-half percent per month interest on the outstanding balance, including the late payment charge and any accrued interest, will be added to any accounts for which payment has not been received by the last day of the second month following the month of handling; *Provided*, that, handlers paying their assessments in accordance with paragraph (c)(4)(ii), will not be subject to the one and one-half percent per month interest under this paragraph until the last day of the second month after such assessments are due under paragraph (c)(4)(ii). Such interest will continue monthly until the outstanding balance is paid to the Board.

(e) *Payment through cooperating agency*. The Board may enter into agreements, subject to approval of the Secretary, authorizing other organizations, such as a regional watermelon association or State watermelon board, to collect assessments in its behalf. In any State or area in which the Board has entered into such an agreement, the designated handler shall pay the assessment to such agency in the time and manner, and with such identifying information as specified in such agreement. Such an agreement shall not provide any cooperating agency with authority to collect confidential information from handlers or producers. To qualify, the cooperating agency must on its own accord have access to all information required by the Board for collection purposes. If the Board requires further evidence of payment than provided by the cooperating agency, it may acquire such evidence from individual handlers. All such agreements are subject to the requirements of the Act, Plan, and all applicable rules and regulations under the Act and the Plan.

[55 FR 13256, Apr. 10, 1990; 55 FR 20443, May 17, 1990, as amended at 56 FR 15808, Apr. 18, 1991; 60 FR 10801, Feb. 28, 1995]

§ 1210.519 Failure to report and remit.

Any handler and importer who fails to submit reports and remittances according to the provisions of § 1210.518 shall be subject to appropriate action by the Board which may include one or more of the following actions:

(a) Audit of the handler's and importer's books and records to determine the amount owed the Board.

(b) Establishment of an escrow account for the deposit of assessments collected. Frequency and schedule of deposits and withdrawals from the escrow account shall be determined by the Board with the approval of the Secretary.

(c) Referral to the Secretary for appropriate enforcement action.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.520 Refunds.

Each importer of less than 150,000 pounds of watermelons during any calendar year shall be entitled to apply for a refund of the assessments paid in an amount equal to the amount paid by domestic producers.

(a) *Application form*. The Board shall make available to all importers a refund application form.

(b) *Submission of refund application to the Board*. The refund application form shall be submitted to the Board within 90 days of the last day of the year the watermelons were actually imported. The refund application form shall contain the following information:

(1) Importer's name and address;

(2) Number of hundredweight of watermelon on which refund is requested;

(3) Total amount to be refunded;

(4) Proof of payment as described below; and

(5) Importer's signature.

(c) *Proof of payment of assessment*. Evidence of payment of assessments satisfactory to the Board shall accompany the importer's refund application. An importer must submit a copy of the importer's report or a cancelled check.

Evidence submitted with a refund application shall not be returned to the applicant.

(d) *Payment of refund.* Immediately after receiving the properly executed application for refund, the Board shall make remittance to the applicant.

[60 FR 10801, Feb. 28, 1995]

§ 1210.521 Reports of disposition of exempted watermelons.

The Board may require reports by handlers or importers on the handling/importing and disposition of exempted watermelons and/or on the handling of watermelons for persons engaged in growing less than 10 acres of watermelons or in the case of importers, the importing of less than 150,000 pounds per year. Authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

[60 FR 10801, Feb. 28, 1995]

RECORDS

§ 1210.530 Retention period for records.

Each handler and importer required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board; and

(b) Such records as are necessary to verify such reports.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.531 Availability of records.

Each handler and importer required to make reports pursuant to this subpart shall make available for inspection and copying by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10801, Feb. 28, 1995]

§ 1210.532 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers and importers and all information with respect to refunds of assessments made to importers shall be kept confidential in the manner and to the extent provided for in § 1210.352.

[60 FR 10801, Feb. 28, 1995]

MISCELLANEOUS

§ 1210.540 OMB assigned numbers.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Control Number 0581–0093, except that Board member nominee background information sheets are assigned OMB Control Number 0505–0001.

[58 FR 3356, Jan. 8, 1993]

Subpart D—Referendum Procedures

SOURCE: 66 FR 56388, Nov. 7, 2001; 67 FR 17907, Apr. 12, 2002, unless otherwise noted.

§ 1210.600 General.

Referenda to determine whether eligible producers, handlers, and importers favor the continuation, suspension, termination, or amendment of the Watermelon Research and Promotion Plan shall be conducted in accordance with this subpart.

§ 1210.601 Definitions.

Unless otherwise defined in this section, the definition of terms used in these procedures shall have the same meaning as the definitions in the Plan.

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

(b) *Department* means the United States Department of Agriculture.

(c) *Eligible handler* means any person (except a common contract carrier of

watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production, subject to the provisions of § 1210.602(a) of this chapter, who handles watermelons as a person performing a handling function and either:

(1) Takes title or possession of watermelons from a producer and directs the grading, packing, transporting, and selling of the watermelons in the current of commerce;

(2) Purchases watermelons from producers;

(3) Purchases watermelons from handlers;

(4) Purchases watermelons from importers; or

(5) Arranges the sale or transfer of watermelons from one party to another and takes title or possesssion of the watermelons: *Provided*, That harvest crews and common carriers who collect and transport watermelons from the field to a handler are not handlers and that retailers, wholesale retailers, foodservice distributors, and foodservice operators are not handlers.

(d) *Eligible importer* means any person who imports 150,000 pounds or more watermelons annually into the United States as principal or as an agent, broker, or consignee for any person who produces watermelons outside the United States for sale in the United States. An importer who imports less than 150,000 pounds of watermelons annually and did not apply for and receive reimbursement of assessments is also an eligible importer.

(e) *Eligible producer* means any person who is engaged in the growing of 10 or more acres of watermelons, including any person who owns or shares the ownership and risk of loss of such watermelon crop. A person who shares the ownership and risk of loss includes a person who:

(1) Owns and farms land, resulting in ownership, by said producer, of the watermelons produced thereon;

(2) Rents and farms land, resulting in ownership, by said producer, of all or a portion of the watermelons produced thereon; or

(3) Owns land which said producer does not farm and, as rental for such land, obtains the ownership of a portion of the watermelons produced thereon. Ownership of, or leasehold interest in land, and the acquisition, in any manner other than set forth in this subpart, of legal title to the watermelons grown on said land, shall not be deemed to result in such owners or lessees becoming producers. Persons who produce watermelons for non-food uses are not producers for the purposes of this subpart.

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

(1) A husband and wife who have title to, or leasehold interest in, land 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 the agreement, informal or otherwise, contributed land and others contributed 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 watermelons for market and the authority to transfer title to the watermelons so produced, handled, or imported.

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

(h) *Representative period* means the period designated by the Secretary pursuant to the Act.

§ 1210.602 Voting.

(a) Each person who is an eligible producer, handler, or importer as defined in this subpart, at the time of the referendum and who also was a producer, handler, or importer during the representative period, shall be entitled to one vote in the referendum: *Provided*, That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce watermelons in which more than one of the parties is a producer, shall be entitled to one vote in

the referendum covering only that producer's share of the ownership: *Provided further*, That the vote of a person who both produces and handles watermelons will be counted as a handler vote if the producer purchased watermelons from other producers, in a combined total volume that is equal to 25 percent or more of the producer's own production; or the combined total volume of watermelon handled by the producer from the producer's own production and purchased from other producer's production is more than 50 percent of the producer's own production: *Provided further*, That the vote of a person who both imports and handles watermelons will be counted as an importer vote if that person imports 50 percent or more of the combined total volume of watermelons handled and imported by that person.

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

(c) *Casting of ballots*. All ballots are to be cast as instructed by the Secretary.

§ 1210.603 Instructions.

The referendum agent shall conduct the referendum, in the manner provided in this section, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions in this section, 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 eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period, 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 said agent may deem advisable.

(d) Mail to eligible producers; importers; and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent; the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot. However, such persons may be required to submit evidence of their eligibility.

(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.

(g) Announce the results to the public.

§ 1210.604 Subagents.

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. 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.

§ 1210.605 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made

with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

§ 1210.606 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 analysis of the referendum and its results.

§ 1210.607 Confidential information.

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of watermelons shall be held strictly confidential and shall not be disclosed.

PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

Subpart A—Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order

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AUTHORITY: 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

SOURCE: 73 FR 11472, Mar. 3, 2008.

Subpart A—Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order

SOURCE: 73 FR 29397, May 21, 2008, unless otherwise noted.

DEFINITIONS

§ 1212.1 Act.

''Act'' means the Commodity Promotion, Research, and Information Act of 1996, (7 U.S.C. 7411–7425), and any amendments to that Act.

§ 1212.2 Board.

''Board'' or ''Honey Packers and Importers Board'' means the administrative body established pursuant to § 1212.40, or such other name as recommended by the Board and approved by the Department.

§ 1212.3 Conflict of interest.

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

§ 1212.4 Department.

''Department'' means the United States 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.

§ 1212.5 Exporter.

''Exporter'' means any person who exports honey or honey products from the United States.

§ 1212.6 First handler.

''First handler'' means the first person who buys or takes possession of honey or honey products from a producer for marketing. If a producer markets honey or honey products directly to consumers, that producer shall be considered to be the first handler with respect to the honey produced by the producer.

§ 1212.7 Fiscal period.

''Fiscal period'' means a calendar year from January 1 through December 31, or such other period as recommended by the Board and approved by the Secretary.

§ 1212.8 Handle.

''Handle'' means to process, package, sell, transport, purchase or in any other way place honey or honey products, or causes them to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer.

§ 1212.9 Honey.

''Honey'' means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

§ 1212.10 Honey products.

''Honey products'' mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient if the product contains at least 50% honey by weight.

§ 1212.11 Importer.

''Importer'' means any person who imports for sale honey or honey products into the United States as a principal or as an agent, broker, or consignee of any person who produces honey or honey 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 honey or honey products.

§ 1212.12 Importer-Handler Representative.

''Importer-Handler Representative'' means any person who is an importer and first handler, who must import at least 75 percent of the honey they market in the United States and must handle at least 250,000 pounds annually.

§ 1212.13 Information.

''Information'' means activities or programs designed to develop new and existing markets, new and existing marketing strategies and increased efficiency and activities to enhance the image of honey and honey products. These include:

(a) Consumer education, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of honey and honey products; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the honey industry, and activities to enhance the image of the honey industry.

§ 1212.14 Market or marketing.

(a) ''Marketing'' means the sale or other disposition of honey or honey products in any channel of commerce.

(b) ''Market'' means to sell or otherwise dispose of honey or honey products in interstate, foreign, or intrastate commerce.

§ 1212.15 Order.

''Order'' means the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

§ 1212.16 Part and subpart.

''Part'' means the Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order (Order) and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1212.17 Person.

''Person'' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1212.18 Plans and programs.

''Plans and programs'' mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

§ 1212.19 Producer.

''Producer'' means any person who is engaged in the production and sale of honey in any State and who owns, or shares the ownership and risk of loss of the production of honey or a person who is engaged in the business of producing, or causing to be produced, honey beyond personal use and having value at first point of sale.

§ 1212.20 Promotion.

''Promotion'' means any action, including paid advertising and public relations that presents a favorable image for honey or honey products to the public and food industry with the intent of improving the perception and competitive position of honey and stimulating sales of honey or honey products.

§ 1212.21 Qualified national organization representing first handler interests.

''Qualified national organization representing first handler interests'' means an organization that the Secretary certifies as being eligible to nominate first handler and alternate first handler members of the Board under § 1212.42.

§ 1212.22 Qualified national organization representing importer interests.

''Qualified national organization representing importer interests'' means an organization that the Secretary certifies as being eligible to nominate importer, importer-handler, and alternate importer and importer-handler members of the Board under § 1212.42.

§ 1212.23 Qualified national organization representing producer interests.

''Qualified national organization representing producer interests'' means an organization that the Secretary certifies as being eligible to nominate producer and alternate producer members of the Board under § 1212.42.

§ 1212.24 Qualified national organization representing cooperative interests.

''Qualified national organization representing cooperative interests'' means an organization that the Secretary certifies as being eligible to nominate cooperative and alternate cooperative members of the Board under § 1212.42.

§ 1212.25 Referendum.

''Referendum'' means a referendum to be conducted by the Secretary pursuant to the Act whereby first handlers and importers shall be given the opportunity to vote to determine whether the implementation of or continuance of this part is favored by a majority of eligible persons voting in the referendum and a majority of volume voted in the referendum.

§ 1212.26 Research.

''Research'' means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of honey and honey products, including research relating to nutritional value, cost of production, new product development, testing the effectiveness of market development and promotion efforts. Such term shall also include studies on bees to advance the cost effectiveness, competitiveness, efficiency, pest and disease control, and other management aspects of beekeeping, honey production, and honey bees.

§ 1212.27 Secretary.

''Secretary'' means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority the Secretary delegated the authority to act on his or her behalf.

§ 1212.28 Suspend.

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

§ 1212.29 State.

''State'' means any of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1212.30 Terminate.

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

§ 1212.31 United States.

''United States'' means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

§ 1212.32 United States Customs Service.

''United States Customs Service'' or ''Customs'' means the United States Customs and Border Protection, an agency of the Department of Homeland Security.

HONEY PACKERS AND IMPORTERS BOARD

§ 1212.40 Establishment and membership.

The Honey Packers and Importers Board is established to administer the terms and provisions of this part. The Board shall have ten members, composed of three first handler representatives, two importer representatives, one importer-handler representative, three producer representatives, and one marketing cooperative representative. The importer-handler representative must import at least 75 percent of the honey or honey products they market in the United States and handle at least 250,000 pounds annually. In addition, the producer representatives must produce a minimum of 150,000 pounds of honey in the United States annually based on the best three-year

average of the most recent five calendar years, as certified by producers. The Secretary will appoint members to the Board from nominees submitted in accordance with § 1212.42. The Secretary shall also appoint an alternate for each member.

§ 1212.41 Term of office.

With the exception of the initial Board, each Board member and alternate will serve a three-year term or until the Secretary selects his or her successor. No member or alternate may serve more than two consecutive terms, excluding any initial two-year term of office. The terms of the initial Board members shall be staggered for two-, three-, and four-year terms. For the initial Board, one producer, one first handler, one importer, and the representative of a national honey cooperative will serve a two-year term of office. One producer, one first handler, and the importer-handler representative, will serve a three-year term of office. One producer, one first handler, and one importer will serve a four-year term of office. Determination of which of the initial members and their alternates shall serve two-year, three-year or four-year terms, shall be designated by the Secretary. Thereafter, each of these positions will carry a full three-year term. Members serving initial terms of two or four years will be eligible to serve a second term of three years. Each term of office will end on December 31, with new terms of office beginning on January 1. If this part becomes effective on a date such that the initial period is less than six months in duration, then the tolling of time for purposes of this subsection shall not begin until the beginning of the first 12-month fiscal period.

§ 1212.42 Nominations and appointments.

All nominations to the Board will be made as follows:

(a) All qualified national organizations representing first handler interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for the first handler positions and the alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing first handler interests, individual first handlers who have paid assessments to the Board in the most recent fiscal period may submit nominations. For the initial Board, persons that meet the definition of first handlers as defined in this subpart will certify their qualification and upon certification, if qualified, may submit nominations.

(b) All qualified national organizations representing importer interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for importer positions, for the importer-handler position and for the alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing importer interests, individual importers who have paid assessments to the Board in the most recent fiscal period may submit nominations. For the initial Board, persons that meet the definition of importer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations.

(c) All qualified national organizations representing producer interests will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary for the producer positions and the producer alternate positions on the Board. If the Secretary determines that there are no qualified national organizations representing producer interests, individual producers may submit nominations to the Secretary. For the initial Board, persons that meet the definition of producer as defined in this subpart will certify such qualification and upon certification, if qualified, may submit nominations.

(d) For the purposes of this subpart, a national honey-marketing cooperative means any entity that is organized under the Capper-Volstead Act (7 U.S.C. 291) or state law as a cooperative and markets honey or honey products in at least 20 states. All national

honey-marketing cooperatives that are first handlers will have the opportunity to participate in a nomination caucus and will, to the extent practical, submit as a group a single slate of nominations to the Secretary of persons who serve as an officer, director, or employee of a national honey marketing cooperative for the cooperative position and the alternate position on the Board.

(e) Eligible organizations, cooperatives, producers, first handlers or importers must submit nominations to the Secretary six months before the new Board term begins. At least two nominees for each position to be filled must be submitted.

(f) Qualified national organization representing first handler interests. To be certified by the Secretary as a qualified national organization representing first handler interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's voting membership must be comprised primarily of first handlers of honey or honey products;

(2) The organization must represent a substantial number of first handlers who market a substantial volume of honey or honey products in at least 20 states;

(3) The organization has a history of stability and permanency and has been in existence for more than one year;

(4) The organization must have as a primary purpose promoting honey first handlers' economic welfare;

(5) The organization must derive a portion of its operating funds from first handlers; and

(6) The organization must demonstrate it is willing and able to further the Act's purposes.

(g) Qualified national organization representing importer interests. To be certified as a qualified national organization representing importer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's importer membership must represent at least a majority of the volume of honey or honey products imported into the United States;

(2) The organization has a history of stability and permanency and has been in existence for more than one year;

(3) The organization must have as a primary purpose promoting honey importers' economic welfare;

(4) The organization must derive a portion of its operating funds from importers; and

(5) The organization must demonstrate it is willing and able to further the Act's purposes.

(h) Qualified national organization representing producer interests. To be certified by the Secretary as a qualified national organization representing producer interests, an organization must meet the following criteria, as evidenced by a report submitted by the organization to the Secretary:

(1) The organization's membership must be comprised primarily of honey producers;

(2) The organization must represent a substantial number of producers who produce a substantial volume of honey in at least 20 states;

(3) The organization has a history of stability and permanency and has been in existence for more than one year;

(4) The organization must have as one of its primary purposes promoting honey producers' economic welfare;

(5) The organization must derive a portion of its operating funds from producers; and

(6) The organization must demonstrate it is willing and able to further the Act's purposes.

(i) To be certified by the Secretary as a qualified national organization representing first handler, producer or importer interests, an organization must agree to:

(1) Take reasonable steps to publicize to non-members the availability of open Board first handler, producer or importer positions; and

(2) Consider nominating a non-member first handler, producer or importer, if he or she expresses an interest in serving on the Board.

(j) National honey-marketing cooperative. The Secretary can certify that an entity qualifies as a national honey-marketing cooperative, as defined in §1212.42(d). Such an entity shall not be

eligible for certification as a qualified national organization representing producer interests.

§ 1212.43 Removal and vacancies.

(a) In the event that any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall become vacant.

(b) The Board may recommend to the Secretary that a member be removed from office if the member consistently refuses to perform his or her duties or engages in dishonest acts or willful misconduct. The Secretary may remove the member if he or she finds that the Board's recommendation shows adequate cause.

(c) A vacancy for any reason will be filled as follows:

(1) If a member position becomes vacant, the alternate for that position will serve the remainder of the member's term. In accordance with § 1212.42, the Secretary will request nominations for a replacement alternate and will appoint a nominee to serve the remainder of the term. The Secretary does not have to appoint a replacement if the unexpired term is less than six months.

(2) If both a member position and an alternate position become vacant, in accordance with § 1212.42, the Secretary will request nominations for replacements and appoint a member and alternate to serve the remainder of the term. The Secretary does not have to appoint a new member or alternate if the unexpired term for the position is less than six months.

(3) No successor appointed to a vacated term of office shall serve more than two successive three-year terms on the Board.

§ 1212.44 Procedure.

(a) A majority of the Board members will constitute a quorum so long as at least one of the members present is an importer member and one of the members present is a first handler member. An alternate will be counted for the purpose of determining a quorum only if a member from his or her membership class is absent or disqualified from participating. Any Board action will require the concurring votes of a majority of those present and voting; with the exception of the two-thirds vote requirement in § 1212.52(f). All votes at meetings will be cast in person. The Board must give timely notice of all Board and committee meetings to members and alternates.

(b) The Board may take action by any means of communication when, in the opinion of the Board chairperson, an emergency requires that action must be taken before a meeting can be called. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) Each proposition is explained accurately, fully, and substantially identically to each member;

(3) With the exception of the two-thirds vote requirement in § 1212.52(f), a majority of the members vote in favor of the action; and

(4) All votes are promptly confirmed in writing and recorded in the Board minutes.

§ 1212.45 Reimbursement and attendance.

Board members and alternates, when acting as members, will serve without compensation but will be reimbursed for reasonable travel expenses, as approved by the Board, that they incur when performing Board business. The Board may request that alternates attend any meeting even if their respective members are expected to attend or actually attend the meeting.

§ 1212.46 Powers.

The Board shall have the following powers subject to § 1212.80:

(a) Administer this subpart in accordance with its terms and provisions of the Act;

(b) Require its employees to receive, investigate, and report to the Secretary complaints of violations of this part;

(c) Recommend adjustments to the assessments as provided in this part;

(d) Recommend to the Secretary amendments to this part;

(e) Establish, issue, and administer appropriate programs and enter into contracts or agreements with the approval of the Secretary for promotion,

research, and information programs and plans including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products; and

(f) 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.

§ 1212.47 Duties.

The Board shall have, among other things, the following duties:

(a) To meet and organize, and to select from among its members a chairperson and such other officers as may be necessary; to select committees and subcommittees from its membership and other industry representatives; and to develop and recommend such rules, regulations, and by-laws to the Secretary for approval to conduct its business as it may deem advisable;

(b) To employ or contract with such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit to the Secretary for approval 60 days in advance of the beginning of a fiscal period, a budget of anticipated expenses in the administration of this part including the probable costs of all programs and plans and to recommend a rate of assessment with respect thereto.

(d) To investigate violations of this part and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of this part.

(e) To establish, issue, and administer appropriate programs and enter into contracts or agreements with the approval of the Secretary for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products.

(f) To maintain minutes, books, and records and prepare and submit to the Secretary such reports from time to time as may be required for appropriate accounting with respect to the receipt and disbursement of funds entrusted to it.

(g) To periodically prepare and make public and to make available to first handlers, producers, and importers reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended.

(h) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary.

(i) To submit to the Secretary such information pertaining to this part or subpart as he or she may request.

(j) To give the Secretary the same notice of Board meetings and committee meetings that is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting to the Secretary.

(k) To notify first handlers, importers, and producers of all Board meetings through press releases or other means.

(l) To appoint and convene, from time to time, working committees or subcommittees that may include first handlers, importers, exporters, producers, members of the wholesale or retail outlets for honey, or other members of the honey industry and the public to assist in the development of research, promotion, advertising, and information programs for honey and honey products.

(m) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans or activities to effectuate the declared purpose of the Act.

(n) To provide any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing,

franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department.

§ 1212.48 Reapportionment of Board membership.

At least once in each 5-year period, but not more frequently than once in each 3-year period, the Board shall:

(a) Review, based on a three-year average, the geographical distribution in the United States of the production of honey and the quantity or value of the honey and honey products imported into the United States; and

(b) If warranted, recommend to the Secretary the reapportionment of the Board membership to reflect changes in the geographical distribution of the production of honey and the quantity or value of the honey and honey products imported into the United States.

EXPENSES AND ASSESSMENTS

§ 1212.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal period, and as may be necessary thereafter; the Board shall prepare and submit to the Department a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. The budget shall allocate five percent (5%) of the Board's anticipated revenue from assessments each fiscal period for production research and research relating to the production of honey.

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 or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

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

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

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

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

(e) With approval of the Department, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Voluntary contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

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

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any calendar year an amount that exceeds 15 percent of the assessments and other income received by the Board for that calendar year. Reimbursements to the Department required under paragraph (g) of

this section, are excluded from this limitation on spending.

(i) The Board may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

§ 1212.51 Financial statements.

(a) The Board shall prepare and submit financial statements to the Department on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

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

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

§ 1212.52 Assessments.

(a) The Board will cover its expenses by levying in a manner prescribed by the Secretary an assessment on first handlers and importers.

(b) Each first handler shall pay an assessment to the Board at the rate of $0.01 per pound of domestically produced honey or honey products the first handler handles. A producer shall pay the Board the assessment on all honey or honey products for which the producer is the first handler.

(c) Each first handler responsible for remitting assessments under paragraph (b) of this section shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed.

(d) Each importer shall pay an assessment to the Board at the rate of $0.01 per pound of honey or honey products the importer imports into the United States. An importer shall pay the assessment to the Board through the United States Customs Service (Customs) when the honey or honey products being assessed enters the United States. If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The import assessment recommended by the Board and approved by the Secretary shall be uniformly applied to imported honey or honey products that are identified as HTS heading numbers 0409.00.00 and 2106.90.9988 by the Harmonized Tariff Schedule of the United States.

(f) The Board may recommend to the Secretary an increase or decrease in the assessment as it deems appropriate by at least a two-thirds vote of members present at a meeting of the Board. The Board may not recommend an increase in the assessment of more than $0.02 per pound of honey or honey products and may not increase the assessment by more than $0.0025 in any single fiscal year.

(g) In situations of late payment:

(1) The Board shall impose a late payment charge on any first handler or importer who fails to remit to the Board the total amount for which the first handler or importer is liable on or before the payment due date the Board recommends. The amount of the late payment charge shall be prescribed by the Department.

(2) The Board shall require any first handler or importer subject to a late payment charge to pay interest on the unpaid assessments for which the first handler or importer is liable. The rate of interest shall be prescribed by the Department.

(3) First handlers or importers who fail to remit total assessments in a timely manner may also be subject to actions under federal debt collection procedures.

(h) Advance payment. The Board may accept advance payment of assessments from first handlers or importers that will be credited toward any amount for which the first handlers or importers may become liable. The Board does not have to pay interest on any advance payment.

(i) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and

shall pay such assessments and any interest earned to the Board when it is formed.

§ 1212.53 Exemption from assessment.

(a) A first handler who handles less than 250,000 pounds of honey or honey products per calendar year or an importer who imports less than 250,000 pounds of honey or honey products per calendar year is exempt from paying assessments.

(b) A first handler who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, handles only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, shall be exempt from the payment of assessments. An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, shall be exempt from the payment of assessments.

(c) A first handler or importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. A first handler shall certify that the first handler will handle less than 250,000 of honey and honey products for the calendar year for which the exemption is claimed. An importer shall certify that the importer will import less than 250,000 pounds of honey and honey products during the calendar year for which the exemption is claimed.

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(e) Exempt importers shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessment paid. No interest will be paid on the assessment collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the honey or honey products were imported.

(f) If a person has been exempt from paying assessments for any calendar year under this section and no longer meets the requirements for an exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and begin to pay the assessment on all honey or honey products handled or imported.

(g) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(h) The Board may recommend to the Secretary that honey and honey products exported from the United States be exempt from this subpart and recommend procedures for refunding assessments paid on exported honey and honey products and any necessary safeguards to prevent improper use of this exemption.

§ 1212.54 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: Provided that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Department, such reserve funds may be used to defray any expenses authorized under this part.

§ 1212.55 Prohibition on use of funds.

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

(1) Any action that is a conflict of interest;

(2) Except as otherwise provided in paragraph (b) of this section, 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, other than recommending to the Secretary amendments to the Order.

(3) A program, plan or project conducted pursuant to this subpart that includes false or misleading claims on behalf of honey or honey products.

(4) Any advertising, including promotion, research and information activities authorized that may be false or

misleading or disparaging to another agricultural commodity.

(b) The prohibition in paragraph (a)(2) of this section shall not apply:

(1) To the development and recommendation of amendments to this subpart; or

(2) To the communication to appropriate government officials, in response to a request made by the officials, of information relating to the conduct, implementation, or results of promotion, research, consumer information, education, industry information, or producer information activities authorized under this subpart.

PROMOTION, RESEARCH, AND INFORMATION

§ 1212.60 Programs, plans and projects.

(a) Scope of activities. The Board must develop and submit to the Secretary for approval plans and programs authorized by this section. The plans and programs may provide for:

(1) Establishing, issuing, and administering appropriate programs for promotion, research, and information including consumer and industry information, and advertising designed to strengthen the honey industry's position in the marketplace and to maintain, develop, and expand domestic and foreign markets for honey and honey products;

(2) Establishing and conducting research and development activities to encourage and expand the acquisition of knowledge about honey and honey products, their consumption and use, or to encourage, expand or improve the quality, marketing, and utilization of honey and honey products;

(3) Conducting activities that may lead to developing new markets or marketing strategies for honey and honey products;

(4) Conducting activities related to production issues or bee research activities; and

(5) Conducting activities designed to make the honey industry more efficient, to improve the quality of honey or to enhance the image of honey and honey products and the honey industry.

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

(c) The Board must periodically evaluate each plan and program authorized under this part to ensure that it contributes to an effective and coordinated program of research, promotion and information. The Board must submit the evaluations to the Secretary. If the Board and the Secretary find that a plan or program does not further the purposes of the Act, then such plan or program should be terminated.

§ 1212.61 Independent evaluation.

The Board must authorize and fund not less than once every five years an independent evaluation of the effectiveness of this subpart and the plans and programs conducted by the Board under the Act. The Board must submit this independent evaluation to the Secretary and make the results available to the public.

§ 1212.62 Patents, copyrights, inventions, product formulations, and publications.

Except for a reasonable royalty paid by the Board to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Department. Upon termination of this Order, § 1212.83 shall apply to determine disposition of all such property.

REPORTS, BOOKS, AND RECORDS

§ 1212.70 Reports.

(a) Each first handler or importer subject to this part must report to the Board, at the time and in the manner it prescribes, and subject to the approval of the Secretary, the information the Board deems necessary to perform its duties.

(b) First handlers must report:

(1) The total quantity of honey and honey products acquired during the reporting period;

(2) The total quantity of honey and honey products handled during the period;

(3) The quantity of honey processed for sale from the first handler's own production;

(4) The quantity of honey and honey products purchased from a first handler or importer responsible for paying the assessment due pursuant to this Order;

(5) The date that assessment payments were made on honey and honey products handled; and

(6) The first handler's tax identification number.

(c) Unless provided by Customs, importers must report:

(1) The total quantity of honey and honey products imported during the reporting period;

(2) A record of each lot of honey or honey products imported during such period, including the quantity, date, country of origin, and port of entry; and

(3) The importer of record's tax identification number.

(d) The Board may request any other information from first handlers and importers that it deems necessary to perform its duties under this subpart, subject to the approval of the Secretary.

(e) The Board, with the Secretary's approval, may request that persons claiming an exemption from assessments under § 1212.52(b) or (d) must provide it with any information it deems necessary about the exemption, including, without limitation, the disposition of exempted honey or honey products.

§ 1212.71 Books and records.

Each first handler and importer, including those who are exempt under this subpart, must maintain any books and records necessary to carry out the provisions of this part, and any regulations issued under this part, including the books and records necessary to verify any required reports. Books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A first handler or importer must maintain the books and records for two years beyond the fiscal period to which they apply.

§ 1212.72 Confidential treatment.

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

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

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

MISCELLANEOUS

§ 1212.80 Right of the Secretary.

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

§ 1212.81 Referenda.

(a) After the initial referendum, the Secretary shall conduct subsequent referenda;

(1) Every seven years, to determine whether first handlers and importers of honey or honey products favor the continuation, suspension, or termination of the Order. The Order shall continue if it is favored by a majority of first handlers and importers voting in the referendum and a majority of volume voting in the referendum who, during a representative period determined by the Secretary, have been engaged in the handling or importation of honey or honey products;

(2) At the request of the Board established in this Order;

(3) At the request of ten (10) percent or more of the number of persons eligible to vote under the Order; or

(4) Whenever the Department deems that a referendum is necessary.

(b) *Approval of order*. Approval in a referendum shall be established by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum who are first handlers or importers during the representative period by those voting as established by the Secretary.

(c) *Manner of conducting referenda*. A referendum conducted under this section shall be conducted in the manner determined by the Secretary to be appropriate.

§ 1212.82 Suspension or termination.

The Secretary shall suspend or terminate the operation of this part or subpart or any provision thereof, if the Secretary finds that this part or subpart or the provision obstructs or does not tend to effectuate the declared policy of the Act.

§ 1212.83 Proceedings after termination.

(a) If this subpart terminates, the Board shall recommend to the Secretary up to five of its members to serve as trustees for the purpose of liquidating the Board's affairs. Such persons, upon designation by the Secretary, will become trustees of any funds and property the Board possesses or controls at that time and any existing claims it has, including, without limitation, claims for any unpaid or undelivered funds or property.

(b) The trustees will:

(1) Serve until discharged by the Secretary;

(2) Carry out the Board's obligations under any contracts or agreements entered into pursuant to the Order;

(3) Account from time to time for all receipts and disbursements and deliver all property on hand, together with all the Board's and trustees' books and records to any person the Secretary directs; and

(4) Execute at the Secretary's direction any assignments or other instruments necessary or appropriate to vest in any person full title and right to all of the funds, property, and claims owned by the Board or the trustees under this subpart.

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Department to be disposed of, to the extent practical, to one or more honey industry organizations in the interest of continuing honey promotion, research, and information programs.

§ 1212.84 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, terminating or amending this subpart or any regulation issued under it will not:

(a) Affect or waive any right, duty, obligation, or liability that arose or may arise in connection with any provision of this part;

(b) Release or extinguish any violation of this part; or

(c) Affect or impair any rights or remedies of the United States or any person with respect to any violation.

§ 1212.85 Personal liability.

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

§ 1212.86 Separability.

If any provision of this subpart is declared invalid or the applicability of it to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability of it to other persons or circumstances will not be affected.

§ 1212.87 Amendments.

Amendments to this Order may be proposed from time to time by the Board or any interested person affected by the provisions of the Act, including the Department.

§ 1212.88 OMB control number.

The control number assigned to the information collection requirements in this part 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 0505–0001, and OMB control number 0581–[NEW, to be assigned by OMB].

Subpart B—Referendum Procedures

§ 1212.100 General.

Referenda to determine whether eligible first handlers and importers of honey and honey products favor the issuance, continuance, amendment, suspension, or termination of the Honey Packers and Importers Research, Promotion, Consumer Education, and Industry Information Order shall be conducted in accordance with this subpart.

§ 1212.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to re-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) *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.

(c) *Eligible first handler* means any person (excluding a common or contract carrier) who handled 250,000 or more pounds of domestic honey and honey products during the representative period, who first buys or takes possession of honey or honey products from a producer for marketing. If a producer markets the honey directly to consumers, the producer shall be considered the first handler with respect to the honey produced by the producer.

(d) *Eligible importer* means any person who imports 250,000 or more pounds of honey and honey products into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0409.00.00 and 2106.90.9988, during the representative period. Importation occurs when honey or honey products originating outside of the United States are released from custody by the United States Customs and Border Protection, referred to as the U.S. Customs Service, and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign produced honey or honey products immediately upon release by the U.S. Customs Service, as well as any persons who acts on behalf of others, as agents or brokers, to secure the release of honey or honey products from the U.S. Customs Service when such honey or honey products

are entered or withdrawn for consumption in the United States.

(e) *Handle* means to process, package, sell, transport, purchase or in any other way place honey or honey products, or cause them to be placed, in commerce. This term includes selling unprocessed honey that will be consumed without further processing or packaging. This term does not include the transportation of unprocessed honey by the producer to a handler or transportation by a commercial carrier of honey, whether processed or unprocessed for the account of the first handler or producer.

(f) *Honey* means the nectar and saccharine exudations of plants that are gathered, modified, and stored in the comb by honeybees, including comb honey.

(g) *Honey products* mean products where honey is a principal ingredient. For purposes of this subpart, a product shall be considered to have honey as a principal ingredient, if the product contains at least 50 percent honey by weight.

(h) *Order* means the Honey Packers and Importers Research, Promotion, Consumer Education and Industry Information Order.

(i) *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, honey bee colonies or beekeeping equipment 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 and others contributed 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 honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

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

(k) *Representative period* means the period designated by the Department.

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

§ 1212.102 Voting.

(a) Each eligible first handler and eligible importer of honey or honey products shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible 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 eligible entity, or an administrator, executive, or trustee of an eligible 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) All ballots are to be cast by mail, as instructed by the Department.

§ 1212.103 Instructions.

(a) *Referenda.* The Order shall not become effective unless the Department determines that the Order is consistent with and will effectuate the purposes of the Act; and for initial and subsequent referenda the Order is favored by a majority of eligible persons voting in the referendum and a majority of volume voting in the referendum who, during a representative period determined by the Department, have been engaged in the handling or importation of honey or honey products and are subject to assessments under this Order and excluding those exempt from assessment under the Order.

(b) 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, not inconsistent

with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(1) Determine the period during which ballots may be cast.

(2) 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.

(3) Give reasonable public notice of the referendum:

(i) By utilizing 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

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

(4) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(5) 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.

(6) Prepare a report on the referendum.

(7) Announce the results to the public.

§ 1212.104 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.

§ 1212.105 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 invalid under this subpart shall not be counted.

§ 1212.106 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.

§ 1212.107 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.

§ 1212.108 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 0505–0001, OMB control number 0581–0217, and OMB control number 0581-[NEW, to be assigned by OMB].

PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

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AUTHORITY: 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

SOURCE: 62 FR 39389, July 22, 1997, unless otherwise noted.

Subpart A—Popcorn Promotion, Research, and Consumer Information Order

DEFINITIONS

§ 1215.1 Act.

Act means the Popcorn Promotion, Research, and Consumer Information Act of 1995, Subtitle E of Title V of the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, 7 U.S.C. 7481–7491, and any amendments thereto.

§ 1215.2 Board.

Board means the Popcorn Board established under section 575(b) of the Act.

§ 1215.3 Board member.

Board member means an officer or employee of a processor appointed by the Secretary to serve on the Popcorn Board as a representative of that processor.

§ 1215.4 Commerce.

Commerce means interstate, foreign, or intrastate commerce.

§ 1215.5 Consumer information.

Consumer information means information and programs that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of popcorn.

§ 1215.6 Department.

Department means the United States Department of Agriculture.

§ 1215.7 Fiscal year.

Fiscal year means the 12-month period from January 1 through December 31 each year, or such other period as recommended by the Board and approved by the Secretary.

§ 1215.8 Industry information.

Industry information means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the popcorn industry, or activities to enhance the image of the popcorn industry.

§ 1215.9 Marketing.

Marketing means the sale or other disposition of unpopped popcorn for human consumption in a channel of commerce but shall not include sales or disposition to or between processors.

§ 1215.10 Part and subpart.

Part means the Popcorn Promotion, Research, and Consumer Information Order and all rules and regulations and supplemental orders issued thereunder, and the term *subpart* means the Popcorn Promotion, Research, and Consumer Information Order.

§ 1215.11 Person.

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

§ 1215.12 Popcorn.

Popcorn means unpopped popcorn (Zea Mays L) that is commercially grown, processed in the United States by shelling, cleaning, or drying, and introduced into a channel of commerce.

§ 1215.13 Process.

Process means to shell, clean, dry, and prepare popcorn for the market, but does not include packaging popcorn for the market without also engaging in another activity described in this paragraph.

§ 1215.14 Processor.

Processor means a person engaged in the preparation of unpopped popcorn for the market who owns or who shares the ownership and risk of loss of such popcorn and who processes and distributes over 4 million pounds of popcorn in the market per year.

§ 1215.15 Programs, plans, and projects.

Programs, plans, and projects means promotion, research, consumer information, and industry information plans, studies, projects, or programs conducted pursuant to this part.

§ 1215.16 Promotion.

Promotion means any action, including paid advertising, to enhance the image or desirability of popcorn.

§ 1215.17 Research.

Research means any type of study to advance the image, desirability, marketability, production, product development, quality, or nutritional value of popcorn.

§ 1215.18 Secretary.

Secretary means the Secretary of Agriculture of the United States 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.

§ 1215.19 State.

State means each of the 50 States and the District of Columbia.

§ 1215.20 United States.

United States means all of the States.

POPCORN BOARD

§ 1215.21 Establishment and membership.

(a) There is hereby established a Popcorn Board of nine members. The number of members on the Board may be changed by regulation: *Provided,* That the Board consist of not fewer than four members and not more than nine members. The Board shall be composed of popcorn processors appointed by the Secretary under § 1215.24.

(b) For purposes of nominating and appointing processors to the Board, the Secretary shall, to the extent practicable, take into account the geographic distribution of popcorn production.

(c) No more than one officer or employee of a processor may serve as a Board member at the same time.

§ 1215.22 Nominations and appointment.

(a) All nominations for appointments to the Board established under § 1215.21 shall be made as follows:

(1) As soon as practicable after the effective date of this subpart, nominations for appointment to the initial Board shall be obtained from processors by the Secretary. In any subsequent year in which an appointment to the Board is to be made, nominations for positions for which the term will

expire at the end of that year shall be obtained from processors at least six months prior to the expiration of terms.

(2) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue a call for nominations in each year for which an appointment to the Board is to be made. The call shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration to be in compliance with paragraph (a) of this section.

(3)(i) Nominations for each position shall be made by processors. Notice shall be publicized to all processors.

(ii) All processors may participate in submitting nominations.

(4) Two nominees must be submitted for each vacancy. If processors fail to nominate a sufficient number of nominees, additional nominees shall be obtained in a manner prescribed by the Secretary.

(b) The Secretary shall appoint the members of the Board from nominations made in accordance with paragraph (a).

(1) The Secretary may reject any nominee submitted. If there is an insufficient number of nominees from whom to appoint members to the Board as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever processors cannot agree on nominees for a position on the Board under the preceding provisions of this section, or whenever they fail to nominate individuals for appointment to the Board, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

(3) If a processor nominates more than one officer or employee, only one may be appointed to the Board by the Secretary.

§ 1215.23 Acceptance.

Each individual nominated for membership of the Board shall qualify by filing a written acceptance with the Secretary at the time of nomination.

§ 1215.24 Term of office.

(a) The members of the Board shall serve for terms of three years, except that members appointed to the initial Board shall serve, to the extent practicable, proportionately for terms of two, three, and four years.

(b)(1) Except with respect to terms of office of the initial Board, the term of office for each Board member shall begin on the date the member is seated at the Board's annual meeting or such other date that may be approved by the Secretary.

(2) The term of office for the initial Board member shall begin immediately following the appointment by the Secretary.

(c) Board members shall serve during the term of office for which they are appointed and have qualified, and until their successors are appointed and have qualified.

(d) No Board member may serve more than two consecutive three-year terms, except as provided in § 1215.25(d). Initial members serving two- or four-year terms may serve one successive three-year term.

§ 1215.25 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary may appoint a successor from the most recent nominations submitted for positions on the Board or the Secretary may obtain nominees to fill such vacancy in such a manner as the Secretary deems appropriate.

(b) Each such successor appointment shall be for the remainder of the term vacated.

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

(d) If an unexpired term is less than 1.5 years, serving the term shall not prevent the appointee from serving two successive three-year terms.

(e) A Board member shall be disqualified from serving on the Board if such individual ceases to be affiliated with the processor the member represents.

§ 1215.26 Removal.

If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board is known to be engaged in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service will be detrimental to the achievement of the purposes of the Act.

§ 1215.27 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of those voting. At assembled meetings of the Board, all votes will be cast in person.

(c) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes by a majority of its members by mail, telephone, facsimile, or any other means of communication. If appropriate, any such action shall be confirmed promptly in writing. In that event, all members must be given prior notice and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in Board minutes.

(d) Meetings of the Board may be conducted by electronic communications, provided that each member is given prior notice of the meeting and has the opportunity to be present either physically or by electronic connection.

(e) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1215.28 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by such members in the performance of their responsibilities under this subpart.

§ 1215.29 Powers.

The Board shall have the following powers:

(a) To administer the Order in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of the Order;

(c) To select committees and subcommittees of Board members, including an executive committee, and to adopt such bylaws and other rules for the conduct of its business as it may deem advisable;

(d) To appoint or employ such individuals as it may deem necessary, define the duties, and determine the compensation of such individuals;

(e) To disseminate information to processors or industry organizations through programs or by direct contact using the public postal system or other systems;

(f) To propose, receive, evaluate and approve budgets, plans and projects of popcorn promotion, research, consumer information and industry information, as well as to contract with the approval of the Secretary with appropriate persons to implement plans and projects;

(g) To receive, investigate, and report to the Secretary for action any complaints of violations of the Order;

(h) To recommend to the Secretary amendments to the order;

(i) To accept or receive voluntary contributions;

(j) To invest, pending disbursement pursuant to a program, plan or project, funds collected through assessments authorized under this Act provided for in § 1215.51, and any other funds received by the Board in, and only in, obligations of the United States or any agency thereof, in general obligations

of any State or any political subdivision thereof, in any interest bearing account or certificate of deposit or a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States;

(k) With the approval of the Secretary, to enter into contracts or agreements with national, regional, or State popcorn processor organizations, or other organizations or entities, for the development and conduct of programs, plans or projects authorized under § 1215.40 and for the payment of the cost of such programs with assessments received pursuant to this subpart; and

(l) Such other powers as may be approved by the Secretary.

§ 1215.30 Duties.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson and such other officers as may be necessary;

(b) To evaluate or develop, and submit to the Secretary for approval, promotion, research, consumer information, and industry information programs, plans or projects;

(c) To prepare for each fiscal year, and submit to the Secretary for approval at least 60 days prior to the beginning of each fiscal year, a budget of its anticipated expenses and disbursements in the administration of this subpart, as provided in § 1215.50;

(d) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(e) To prepare and make public, at least annually, a report of its activities carried out, and an accounting for funds received and expended;

(f) To cause its financial statements to be prepared in conformity with generally accepted accounting principles and to be audited by an independent certified public accountant in accordance with generally accepted auditing standards at least once each fiscal year and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(g) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(h) To submit to the Secretary such information as may be requested pursuant to this subpart;

(i) To keep minutes, books and records that clearly reflect all the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(j) To act as intermediary between the Secretary and any processor;

(k) To investigate violations of the Act, order, and regulations issued under the order, conduct audits, and report the results of such investigations and audits to the Secretary for appropriate action to enforce the provisions of the Act, order, and regulations; and

(l) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the popcorn industry's position in the marketplace, maintain and expand existing markets and uses for popcorn, develop new markets and uses for popcorn, and to carry out programs, plans, and projects designed to provide maximum benefits to the popcorn industry.

PROMOTION, RESEARCH, CONSUMER INFORMATION, AND INDUSTRY INFORMATION

§ 1215.40 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan or project authorized under this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, consumer information, and industry information with respect to popcorn; and

(2) The establishment and conduct of research with respect to the sale, distribution, marketing, and use of popcorn, and the creation of new uses thereof, to the end that the marketing and use of popcorn may be encouraged, expanded, improved, or made more acceptable.

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

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, consumer information, or industry information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, consumer information, or industry information, then the Board shall terminate such program, plan, or project.

(d) In carrying out any program, plan, or project, no reference to a brand name, trade name, or State or regional identification of any popcorn will be made. In addition, no program, plan, or project shall make use of unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product.

§ 1215.41 Contracts.

The Board shall not contract with any processor for the purpose of promotion or research. The Board may lease physical facilities from a processor for such promotion or research, if such an arrangement is determined to be cost effective by the Board and approved by the Secretary. Any contract or agreement shall provide that:

(a) 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;

(b) Any such program, plan, or project shall become effective upon approval by the Secretary;

(c) The contracting or agreeing party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted, submit accountings for funds received and expended, and make such other reports as the Secretary or the Board may require; and the Secretary may audit the records of the contracting or agreeing party periodically; and

(d) 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.

EXPENSES AND ASSESSMENTS

§ 1215.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart.

(b) Each budget shall include:

(1) A rate of assessment for such fiscal year calculated, subject to § 1215.51(b), to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in paragraph (g) of this section;

(2) A statement of the objectives and strategy for each program, plan, or project;

(3) A summary of anticipated revenue, with comparative data for at least one preceding year;

(4) A summary of proposed expenditures for each program, plan, or project; and

(5) Staff and administrative expense breakdowns, with comparative data for at least one preceding year.

(c) In budgeting plans and projects of promotion, research, consumer information, and industry information, the Board shall expend assessment and contribution funds on:

(1) Plans and projects for popcorn marketed in the United States or Canada in proportion to the amount of assessments projected to be collected on domestically marketed popcorn (including Canada); and

(2) Plans and projects for exported popcorn in proportion to the amount of assessments projected to be collected

on exported popcorn (excluding Canada).

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

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects approved by the Secretary. Such contributions shall be free from any encumbrances by the donor and the Board shall retain complete control of their use. The Board may also receive funds provided through the Foreign Agricultural Service of the United States Department of Agriculture for foreign marketing activities.

(f) As stated in section 75(f)(4)(A)(ii) of the Act, the Board shall reimburse the Secretary, from funds received by the Board, for costs incurred by the Secretary in implementing and administering this subpart: *Provided,* That the costs incurred by the Secretary to be reimbursed by the Board, excluding legal costs to defend and enforce the order, shall not exceed 15 percent of the projected annual revenues of the Board.

(g) The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established, except that the funds in this reserve shall not exceed approximately one fiscal year's expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

(h) With the approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board during its first year of operation only.

§ 1215.51 Assessments.

(a) Any processor marketing popcorn in the United States or for export shall pay an assessment on such popcorn at the time of introduction to market at a rate as established in § 1215.51(c) and shall remit such assessment to the Board in such form and manner as prescribed by the Board.

(b) Any person marketing popcorn of that person's own production to consumers in the United States either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such popcorn at the rate set forth in paragraph § 1215.51(c), and in such form and manner as prescribed by the Board.

(c) Except as otherwise provided, the rate of assessment shall be 5 cents per hundredweight of popcorn. The rate of assessment may be raised or lowered as recommended by the Board and approved by the Secretary, but shall not exceed 8 cents per hundredweight in any fiscal year.

(d) The collection of assessments under this section shall commence on all popcorn processed in the United States on or after the date established by the Secretary, and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments until the Board is constituted, then remit such assessments to the Board.

(e) Each person responsible for remitting assessments under paragraphs (a) and (b) of this section shall remit the amounts due from assessments to the Board on a quarterly basis no later than the last day of the month following the last month in the previous quarter in which the popcorn was marketed, in such manner as prescribed by the Board.

(f) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The amount of the late payment charge shall be prescribed in rules and regulations as approved by the Secretary.

(g) The Board shall impose an additional charge on any person subject to a late payment charge, in the form of interest on the outstanding portion of

any amount for which the person is liable. The rate of interest shall be prescribed in rules and regulations as approved by the Secretary.

(h) In addition, persons failing to remit total assessments due in a timely manner may also be subject to penalties and actions under federal debt collection procedures as set forth in 7 CFR 3.1 through 3.36.

(i) Any assessment that is determined to be owing at a date later than the payment due established under this section, due to a person's failure to submit a report to the Board by the payment due date, shall be considered to have been payable on the payment due date. Under such a situation, paragraphs (f), (g), and (h) of this section shall be applicable.

(j) The Board, with the approval of the Secretary, may enter into agreements authorizing other organizations or entities to collect assessments on its behalf. Any such organization or entity shall be required to maintain the confidentiality of such information as is required by the Board for collection purposes. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

(k) The Board is hereby authorized to accept advance payment of assessments for the fiscal year by any person, that shall be credited toward any amount for which such person may become liable. The Board shall not be obligated to pay interest on any advance payment.

§ 1215.52 Exemption from assessment.

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) Persons that operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan; process only products that are eligible to be labeled as 100 percent organic under the NOP; and are not split operations shall be exempt from the payment of assessments.

(c) To claim an exemption, persons shall apply to the Board, in the form and manner prescribed in the rules and regulations.

[70 FR 2757, Jan. 14, 2005]

§ 1215.53 Influencing governmental action.

No funds received by the Board under this subpart shall in any manner be used for the purpose of influencing legislation or governmental policy or action, except to develop and recommend to the Secretary amendments to this subpart.

REPORTS, BOOKS, AND RECORDS

§ 1215.60 Reports.

(a) Each processor marketing popcorn directly to consumers, and each processor responsible for the remittance of assessments under § 1215.51, shall be required to report quarterly to the Board, on a form provided by the Board, such information as may be required under this subpart or any rule and regulations issued thereunder. Such information shall be subject to § 1215.62 and include, but not be limited to, the following:

(1) The processor's name, address, telephone number, and Social Security Number or Employer Identification Number;

(2) The date of report, which is also the date of payment to the Board;

(3) The period covered by the report;

(4) The number of pounds of popcorn marketed or in any other manner are subject to the collection of assessments;

(5) The amount of assessments remitted;

(6) The basis, if necessary, to show why the remittance is less than the number of pounds of popcorn divided by 100 and multiplied by the applicable assessment rate; and

(7) The amount of assessments remitted on exports (not including Canada).

(b) The words ''final report'' shall be shown on the last report at the end of each fiscal year.

§ 1215.61 Books and records.

Each person who is subject to this subpart shall maintain and make available for inspection by the Board or the Secretary such books and records as are deemed necessary by the Board,

with the approval of the Secretary, to carry out the provisions of this subpart and any rules and regulations issued hereunder, including such books and records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal year of their applicability.

§ 1215.62 Confidential treatment.

(a) All information obtained from books, records, or reports under the Act, this subpart, and the rule and regulations issued thereunder shall be kept confidential by all persons, including all employees, agents, and former employees and agents of the Board; all officers, employees, agents, and former officers, employees, and agents of the Department; and all officers, employees, agents, and former officers, employees, and agents of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board members or processors. Only those persons having a specific need for such information to administer effectively the provisions of this part shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this part.

(b) No information obtained under the authority of this part may be made available to any agency or officer of the Federal Government for any purpose other than the implementation of the Act and any investigatory or enforcement action necessary for the implementation of the Act.

(c) Nothing in paragraph (a) of this section may be deemed to prohibit:

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

(2) The publication, by direction of the Secretary, of the name of any person who has violated this part, together with a statement of the particular provisions of this part violated by such person.

(d) Any person who knowingly violated the provisions of this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, or if the person is an officer, employee, or agent of the Board or the Department, that person shall be removed from office or terminated from employment as applicable.

MISCELLANEOUS

§ 1215.70 Right of the Secretary.

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

§ 1215.71 Suspension or termination.

(a) Whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this subpart or such provision thereof.

(b) The Secretary may conduct additional referenda to determine whether processors favor termination or suspension of this subpart three years after the effective date, on the request of a representative group comprising 30 percent or more of the number of processors who have been engaged in processing during a representative period as determined by the Secretary.

(c) Whenever the Secretary determines that suspension or termination of this subpart is favored by two-thirds or more of the popcorn processors voting in a referendum under paragraph (b) of this section who, during a representative period determined by the Secretary, have been engaged in the processing, the Secretary shall:

(1) Suspend or terminate, as appropriate, collection of assessments within six months after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

(d) Referenda conducted under this subsection shall be conducted in such manner as the Secretary may prescribe.

§ 1215.72 Proceedings after termination.

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

(b) The trustees shall:

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

(2) Carry out the obligations of the Board under any contract or agreement entered into by it under this subpart;

(3) From time to time account for all receipts and disbursements, and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such other persons full title and right to all of the funds, property, and claims vested in the Board or the trustees under this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered under this subpart shall be subject to the same obligations imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information programs, plans, or projects authorized under this subpart.

§ 1215.73 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule and regulation issued under this subpart, or the issuance of any amendment to such provisions, shall not:

(a) Affect or waive any right, duty, obligation, or liability that shall have arisen or may hereafter arise in connection with any provision of this subpart or any such rules or regulations;

(b) Release or extinguish any violation of this subpart or any such rules or regulations; or

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

§ 1215.74 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission of such member or employee under this subpart, except for acts of dishonesty or willful misconduct.

§ 1215.75 Patents, copyrights, inventions, publications, and product formulations.

Any patents, copyrights, inventions, publications, or product formulations developed through the use of funds received by the Board under this subpart shall be the property of the United States Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, publications, or product formulations inure to the benefit of the Board and be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1215.72 shall apply to determine disposition of all such property.

§ 1215.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1215.77 Separability.

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

Subpart B—Rules and Regulations

DEFINITIONS

§ 1215.100 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions in Subpart A—Popcorn Promotion, Research, and Consumer Information Order of this part.

EXEMPTION PROCEDURES

§ 1215.300 Exemption procedures.

(a) Any processor who markets 4 million pounds or less of popcorn annually and who desires to claim an exemption from assessments during a fiscal year as provided in § 1214.52 of this part shall apply to the Board, on a form provided by the Board, for a certificate of exemption. Such processor shall certify that the processor's marketing of popcorn during the previous fiscal year was 4 million pounds or less.

(b) Persons that process solely 100 percent organic products and that do not process any conventional or non-organic products as provided in § 1215.52 paragraph (b) of this part may apply for an exemption by submitting a request for exemption to the Board on a form provided by the Board at any time initially. The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(d) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board by January 1 of that year.

(e) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt popcorn.

[62 FR 39389, July 22, 1997, as amended at 70 FR 2757, Jan. 14, 2005]

MISCELLANEOUS

§ 1215.400 OMB control numbers.

The control number assigned to the information collection requirements 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 0581–0093, except for the Promotion Board nominee background statement form which is assigned OMB control number 0505–0001.

PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Peanut Promotion, Research, and Information Order

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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 64 FR 20105, Apr. 23, 1999, unless otherwise noted.

Subpart A—Peanut Promotion, Research, and Information Order

SOURCE: 64 FR 41256, July 29, 1999, unless otherwise noted.

DEFINITIONS

§ 1216.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Public Law 104–127, 110 Stat. 1029), or any amendments thereto.

§§ 1216.2–1216.3 [Reserved]

§ 1216.4 Board.

Board means the administrative body referred to as the National Peanut Board established pursuant to § 1216.40.

§ 1216.5 Conflict of interest.

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

§ 1216.6 [Reserved]

§ 1216.7 Department.

Department means the U.S. Department of Agriculture.

§ 1216.8 Farm Service Agency.

Farm Service Agency or FSA means the U.S. Department of Agriculture's Farm Service Agency.

§ 1216.9 Farmers stock peanuts.

Farmers stock peanuts means picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, loose shelled kernels and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any loose shelled kernels that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

§ 1216.10 First handler.

First handler means any person who handles peanuts in a capacity other than that of a custom cleaner or dryer, an assembler, a warehouseman, or other intermediary between the producer and the person handling.

§ 1216.11 Fiscal year.

Fiscal year is synonymous with crop year and means the 12-month period beginning with August 1 of any year and ending with July 31 of the following year, or such other period as determined by the Board and approved by the Secretary.

§ 1216.12 Handle.

Handle means to engage in the receiving or acquiring, cleaning and shelling, cleaning in-shell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned in-shell or shelled peanuts, or other activity causing peanuts to enter the current of commerce: *Provided*, that this term does not include sales or deliveries of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handler(s) and: *Provided further*, that this term does not include sales or deliveries of peanuts by such intermediary person(s) to a handler.

§ 1216.13 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of peanuts on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of peanuts; and

(b) *Producer information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the peanut industry, and activities to enhance the image of the peanut industry.

§ 1216.14 Market.

Market means to sell or otherwise dispose of peanuts into interstate, foreign, or intrastate commerce by buying, marketing, distributing, or otherwise placing peanuts into commerce.

§ 1216.15 Minor peanut-producing states.

Minor peanut-producing states means all peanut-producing states with the exception of Alabama, Florida, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia.

[73 FR 14921, Mar. 20, 2008]

§ 1216.16 Order.

Order means an Order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1216.17 Part and subpart.

Part means the Peanut Promotion, Research, and Information Order and all rules, regulations, and supplemental Orders issued pursuant to the Act and the Order. The Order shall be a ''subpart'' of such part.

§ 1216.18 Peanuts.

Peanuts means the seeds of the legume *arachis hypogaea* and includes both in-shell and shelled peanuts other than those marketed by the producer in

green form for consumption as boiled peanuts.

§ 1216.19 Peanut producer organization.

Peanut producer organization means a state-legislated peanut promotion, research, and education commission or organization. For states without a state-legislated peanut promotion, research, and education commission or organization, ''peanut producer organization'' means any organization which has the primary purpose of representing peanut producers and has peanut producers as members.

§ 1216.20 Person.

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

§ 1216.21 Primary peanut-producing states.

Primary peanut-producing states means Alabama, Florida, Georgia, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Texas, and Virginia, *Provided*, these states maintain three-year average production of at least 10,000 tons of peanuts.

[73 FR 14921, Mar. 20, 2008]

§ 1216.22 Producer.

Producer means any person engaged in the production and sale of peanuts and who owns, or shares the ownership and risk of loss of the crop. This does not include quota holders who do not share in the risk of loss of the crop.

§ 1216.23 Promotion.

Promotion means any action taken by the Board under this Order, including paid advertising, to present a favorable image of peanuts to the public to improve the competitive position of peanuts in the marketplace, including domestic and international markets, and to stimulate sales of peanuts.

§ 1216.24 [Reserved]

§ 1216.25 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of peanuts, including research relating to nutritional value and cost of production.

§ 1216.26 Secretary.

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

§ 1216.27 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, to temporarily prevent the operation of an Order, or part thereof, during a particular period of time specified in the rule.

§ 1216.28 State.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 1216.29 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, to cancel permanently the operation of an Order, or part thereof, beginning on a date certain specified in the rule.

§ 1216.30 United States.

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

NATIONAL PEANUT BOARD

§ 1216.40 Establishment and membership.

(a) *Establishment of a National Peanut Board*. There is hereby established a National Peanut Board, hereinafter called the Board, composed of no more than 11 peanut producers and alternates, appointed by the Secretary from nominations as follows:

(1) *Ten members and alternates*. One member and one alternate shall be appointed from each primary peanut-producing state, who are producers and

whose nominations have been submitted by certified peanut producer organizations within a primary peanut-producing state.

(2) The minor peanut-producing states shall collectively have one at-large member and one alternate, who are producers, to be appointed by the Secretary from nominations submitted by certified peanut producer organizations within minor peanut-producing states or from other certified farm organizations that include peanut producers as part of their membership.

(b) *Adjustment of membership.* At least once in each five-year period, but not more frequently than once in each three-year period, the Board, or a person or agency designated by the Board, shall review the geographical distribution of peanuts in the United States and make recommendation(s) to the Secretary to continue without change, or whether changes should be made in the number of representatives on the Board to reflect changes in the geographical distribution of the production of peanuts.

[64 FR 41256, July 29, 1999, as amended at 73 FR 14921, Mar. 20, 2008]

§ 1216.41 Nominations.

(a) All nominations authorized under § 1216.40 shall be made within such a period of time as the Secretary shall prescribe. Eligible peanut producer organizations within each state as certified pursuant to § 1216.70 shall nominate two qualified persons for each member and each alternate member. The nominees shall be elected at an open meeting among peanut producers eligible to serve on the Board. Any certified peanut producer organization representing a minor peanut-producing state may nominate two eligible persons for each member and two eligible persons for each alternate member.

(b) As soon as practicable after this subpart becomes effective, the Secretary shall obtain nominations for appointment to the initial promotion Board from certified nominating organizations. In any subsequent year in which an appointment to the Board is to be made, nominations for positions whose terms will expire shall be obtained from certified nominating organizations by the Board's staff and submitted to the Secretary by May 1 of such year, or other such date as approved by the Secretary.

(c) Except for initial Board members, whose nomination process will be initiated by the Secretary, the Board shall issue the call for nominations by March 1 of each year.

(d) The nomination meeting shall be announced 30 days in advance:

(1) By utilizing 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 deemed advisable.

(e) At nominations meetings, Department personnel will be present to oversee and to verify eligibility and count ballots.

§ 1216.42 Selection.

From the nominations, the Secretary shall select the members of the Board and alternates for each primary peanut-producing state. The Secretary shall select one member and one alternate from all nominations submitted by certified peanut producer organizations representing minor peanut-producing states.

§ 1216.43 Term of office.

All members and alternates of the Board shall each serve for terms of three years, except that the members and alternates appointed to the initial Board shall serve proportionately for two-, three-, and four-year terms, with the length of the terms determined at random. No member or alternate may serve more than two consecutive three-year terms. An alternate, after serving two consecutive three-year terms, may serve as a member for an additional two consecutive three-year terms. A member, after serving two consecutive three-year terms, may serve as an alternate for an additional two consecutive three-year terms. Each member and alternate shall continue to serve until a successor is selected and has qualified.

(a) Those members serving initial terms of two or four years may serve one successive three-year term.

(b) Any successor serving one year or less may serve two consecutive three-year terms.

§ 1216.44 Vacancies.

To fill any vacancy resulting from the failure to qualify of any person selected as a member or as an alternate member of the Board, or in the event of death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in § 1216.40.

§ 1216.45 Alternate members.

An alternate member of the Board, during the absence of the member for the primary peanut-producing state or at-large member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that state or at-large member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

§ 1216.46 Procedure.

(a) A majority of the members of the Board, including alternate members acting for members, shall constitute a quorum.

(b) At assembled meetings, all votes shall be cast in person. Board actions shall be weighted by value of production as determined by a primary peanut-producing state's three-year running average of total gross farm income derived from all peanut sales. The at-large Board member's vote shall be weighted by the collective value of production from all minor peanut-producing states' three-year running average of total gross farm income derived from all peanut sales. Any Board action shall require the concurring votes of members or alternates from states representing more than 50 percent of total U.S. gross farm income derived from all peanut sales, plus an additional two votes from any other Board members, provided a minimum of five votes concur.

(c) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not time to call an assembled meeting of the Board, the Board may also take action as prescribed in this section by mail, facsimile, telephone, or any telecommunication method appropriate for the conduct of business, but any such action shall be confirmed in writing within 30 days.

(d) There shall be no voting by proxy.

(e) The chairperson shall be a voting member.

§ 1216.47 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board members.

§ 1216.48 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

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

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

(d) To employ persons, other than the 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 such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any 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 show the estimated cost to be incurred for such program, plan, or project;

(2) 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;

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

(4) 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;

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1216.50;

(g) To maintain such records and books 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;

(h) To cause its books to be audited by a competent 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;

(i) To give the Secretary the same notice of meetings of the Board as is given to members in order 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;

(j) To act as intermediary between the Secretary and any producer or first handler;

(k) To furnish to the Secretary any information or records that the Secretary may request;

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

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the peanut industry's position in the marketplace; maintain and expand existing markets and uses for peanuts; and to carry out programs, plans, and projects designed to provide maximum benefits to the peanut industry.

§ 1216.49 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, including local, state, national, and international, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order, that is false or misleading or disparaging to another agricultural commodity.

EXPENSES AND ASSESSMENTS

§ 1216.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. 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 year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

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

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

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Board's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

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

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

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

(h) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

(i) The Board shall allocate, to the extent practicable, no less than 80 percent of the assessments collected on all peanuts available for any fiscal year on national and regional promotion, research, and information activities. The Board shall allocate, to the extent practicable, no more than 20 percent of assessments collected on all peanuts available for any fiscal year for use in state or regional research programs. Specific percentages and amounts shall be determined annually by the Board, with the approval of the Secretary.

(j) Certified peanut producer organizations may submit requests for funding for research and/or generic promotion projects. Amounts approved for each state shall not exceed the pro rata Share of funds available for that State as determined by the Board and approved by the Secretary. Amounts allocated by the Board for state research or promotion activities will be based on requests submitted to the Board when it is determined that they meet the goals and objectives stated in the Order.

(k) Assessments collected, less pro rata administrative expenses, from the gross sales of contract export additional peanuts shall be allocated by the

Board for the promotion and related research of export peanuts.

(l) The Board shall determine annually how total funds shall be allocated pursuant to paragraphs (i), (j), and (k) of this section, with the approval of the Secretary.

§ 1216.51 Assessments.

(a) The funds necessary to pay for programs and other costs authorized by this part shall be acquired by the levying of assessments upon producers in a manner prescribed by the Secretary.

(b) Each first handler, at such times and in such manner as prescribed by the Secretary, shall collect from each producer or first purchaser/handler and pay assessments to the Board on all peanuts handled, including peanuts produced by the first handler, no later than 60 days after the last day of the month in which the peanuts were marketed.

(c) Such assessments shall be levied at a rate of one (1%) percent of the price paid for all farmers stock peanuts sold. Price paid is one (1%) percent of loan value.

(d) For peanuts placed under a marketing assistance loan with the Department's Commodity Credit Corporation, the Commodity Credit Corporation, or any entity determined by the Commodity Credit Corporation shall deduct and remit to the Board, from the proceeds of the loan paid to the producer, one (1%) percent of the loan value of the peanuts as determined by the warehouse receipt accompanying such peanuts, no more than 60 days after the last day of the month in which the peanuts were placed under a marketing assistance loan.

(e) If a producer places peanuts under a marketing assistance loan and subsequently redeems and sells such peanuts at a price greater than the loan amount, the producer shall pay the difference between the sales price and the loan value of the peanuts multiplied by one (1%) percent to the Board within sixty (60) days after the final day of the loan availability period.

(f) All assessments collected under this section are to be used for expenses and expenditures pursuant to this Order and for the establishment of an operating reserve as prescribed in the Order.

(g) The Board shall impose a late payment charge on any person who fails to remit to the Board the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(h) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(i) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(j) The assessment rate may not be increased unless the new rate is approved by a referendum among eligible producers.

[70 FR 55226, Sept. 21, 2005]

§ 1216.52 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to peanuts; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of peanuts and peanut products, and the creation of new products thereof, to the end that marketing and use of peanuts may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of peanuts.

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

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or consumer information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or consumer information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project shall make any false claims on behalf of peanuts or use unfair or deceptive acts or practices with respect to the quality, value, or use of any competing product. Peanuts of all domestic origins shall be treated equally.

§ 1216.53 Independent evaluation.

The Board shall, not less often than every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other 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.

§ 1216.54 Operating reserve.

The Board shall establish an operating monetary reserve and may carry over to subsequent fiscal years excess funds in a reserve so established; *Provided*, that funds in the reserve shall not exceed any fiscal year's anticipated expenses.

§ 1216.55 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any state or any political subdivision of a state; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

§ 1216.56 Exemption for organic peanuts.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) In order to apply for this exemption, an eligible peanut producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before August 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for approval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells peanuts. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(g) Agricultural commodities produced and marketed under an organic

system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2757, Jan. 14, 2005]

REPORTS, BOOKS, AND RECORDS

§ 1216.60 Reports.

(a) Each producer and first handler subject to this part shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(1) Number of pounds of peanuts produced or handled;

(2) Price paid to producers (entry in value of segment section on the FSA 1007 form); and

(3) Total assessments collected.

(b) First Handlers shall submit monthly reports to the Board. These reports shall accompany the payment of the collected assessments and shall be due 60 days after the last day of the month in which the peanuts were marketed.

§ 1216.61 Books and records.

Each first handler and producer subject to this subpart shall maintain and make available for inspection by the Secretary and employees and agents of the Board such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall include but are not limited to the following: copies of FSA 1007 forms, the names and address of producers, and the date the assessments were collected. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1216.62 Confidential treatment.

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

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

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

CERTIFICATION OF PEANUT PRODUCER ORGANIZATIONS

§ 1216.70 Certification.

(a) Organizations receiving certification from the Secretary will be entitled to submit nominations for Board membership to the Secretary for appointment and to submit requests for funding to the Board.

(b) For major peanut-producing states, state-legislated peanut promotion, research, and information organizations may request certification, provided the state-legislated promotion program submits a factual report that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(c) If a state-legislated peanut promotion, research and information organization in a major peanut-producing state does not elect to seek certification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any peanut producer organization whose primary purpose is to represent peanut producers within a primary peanut-producing state, or any other organization which has peanut producers as part of its membership, may request certification. Certification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination pursuant to paragraph (e) of this section.

(d) For minor peanut-producing states, any organization that has peanut producers as part of its membership may request certification.

(e) The information required for certification by the Secretary may include, but is not limited to, the following:

(1) The geographic distribution within the state covered by the organization's active membership;

(2) The nature and size of the organization's active membership in the state, proportion of the organization's active membership accounted for by producers, a map showing the peanut-producing counties in the state in which the organization has members, the volume of peanuts produced in each county, the number of peanut producers in each county, and the size of the organization's active peanut producer membership in each county;

(3) The extent to which the peanut producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization;

(7) The organization's ability and willingness to further the aims and objectives of the Act and Order; and,

(8) Demonstrated experience administering generic state promotion and research programs.

(f) The Secretary's determination as to eligibility or certification of an organization shall be final.

MISCELLANEOUS

§ 1216.80 Right of the Secretary.

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

§ 1216.81 Implementation of the Order.

The Order shall not become effective unless:

(a) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(b) The Order is approved by a simple majority of the peanut producers as defined in § 1216.21 voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

§ 1216.82 Suspension and termination.

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

(b) Every five years, the Secretary shall hold a referendum to determine whether peanut producers favor the continuation of the Order. The Secretary will also conduct a referendum if 10 percent or more of all eligible peanut producers request the Secretary to hold a referendum. In addition, the

Secretary may hold a referendum at any time.

(c) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a simple majority of the producers voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the production of peanuts.

(d) If, as a result of the referendum conducted under paragraph (b) of this section, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

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

§ 1216.83 Proceedings after termination.

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

(b) The said trustees shall:

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

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

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

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the peanut producer organizations, certified pursuant to § 1216.70, in the interest of continuing peanut promotion, research, and information programs.

§ 1216.84 Effect of termination or amendment.

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

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

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

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

§ 1216.85 Personal liability.

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

§ 1216.86 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances

is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1216.87 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1216.88 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1216.82 shall apply to determine disposition of all such property.

Subpart B—Procedure for the Conduct of Referenda in Connection With the Peanut Promotion, Research, and Information Order

§ 1216.100 General.

Referenda to determine whether eligible peanut producers favor the issuance, amendment, suspension, or termination of a Peanut Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1216.101 Definitions.

The following definitions apply to this subpart:

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

(b) *Order* means the Peanut Promotion, Research, and Information Order.

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

(d) *Representative period* means the period designated by the Secretary.

(e) *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, a peanut farm 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 and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(f) *Eligible producer* means any person who is engaged in the production and sale of peanuts in the United States and who:

(1) Owns, or shares the ownership and risk of loss of, the crop. This does not include quota holders who do not share in the risk of loss of the crop;

(2) Rents peanut production facilities and equipment resulting in the ownership of all or a portion of the peanuts produced;

(3) Owns peanut production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the peanuts produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts who share the risk of loss and receive a share of the peanuts produced. No other acquisition of legal

title to peanuts shall be deemed to result in persons becoming eligible producers.

§ 1216.102 Voting.

(a) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce peanuts, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer, or an administrator, executor, or trustee or an eligible producing entity may cast a ballot on behalf of such producer. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible producer, or an administrator, executive, or trustee of an eligible producing 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) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1216.103 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, not inconsistent with the provisions hereof, 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 eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing 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) Mail to eligible producers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the Peanut Promotion, Research, and Information Order. No person who claims to be eligible to vote 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.

(g) Announce the results to the public.

§ 1216.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions under 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.

§ 1216.105 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 therefor, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1216.106 Referendum report.

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

§ 1216.107 Confidential information.

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

PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Blueberry Promotion, Research, and Information Order

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AUTHORITY: 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

SOURCE: 65 FR 7654, Feb. 15, 2000, unless otherwise noted.

Subpart A—Blueberry Promotion, Research, and Information Order

SOURCE: 65 FR 43963, July 17, 2000, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 1218 appear at 66 FR 37118, 37119, July 17, 2001.

EDITORIAL NOTE: Nomenclature changes to part 1218 appear at 71 FR 77245, Dec. 26, 2006.

DEFINITIONS

§ 1218.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Pub. L. 104–

127; 110 Stat. 1029), or any amendments thereto.

§ 1218.2 Blueberries.

Blueberries means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei*, including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium*.

§ 1218.3 Conflict of interest.

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

[65 FR 43963, July 17, 2000, as amended at 66 FR 37118, July 17, 2001; 71 FR 44554, Aug. 7, 2006]

§ 1218.4 Crop year.

Crop year means the 12-month period from November 1 through October 31 of the following year or such other period approved by the Secretary.

§ 1218.5 Department.

Department means the U.S. Department of Agriculture.

§ 1218.6 Exporter.

Exporter means a person involved in exporting blueberries from another country to the United States.

§ 1218.7 First handler.

First handler means any person, (excluding a common or contract carrier), receiving blueberries from producers and who as owner, agent, or otherwise ships or causes blueberries to be shipped as specified in the Order. This definition includes those engaged in the business of buying, selling and/or offering for sale; receiving; packing; grading; marketing; or distributing blueberries in commercial quantities. This definition includes a retailer, except a retailer who purchases or acquires from, or handles on behalf of any producer, blueberries. The term first handler includes a producer who handles or markets blueberries of the producer's own production.

§ 1218.8 Fiscal period.

Fiscal period means a calendar year from January 1 through December 31, or such other period as approved by the Secretary.

§ 1218.9 Importer.

Importer means any person who imports fresh or processed blueberries into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles fresh or processed blueberries outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such blueberries.

§ 1218.10 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increase market efficiency, and activities that are designed to enhance the image of blueberries on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of blueberries; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the blueberry industry, and activities to enhance the image of the blueberry industry.

§ 1218.11 Market or marketing.

(a) *Marketing* means the sale or other disposition of blueberries in any channel of commerce.

(b) To *market* means to sell or otherwise dispose of blueberries in interstate, foreign, or intrastate commerce.

§ 1218.12 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1218.13 Part and subpart.

Part means the Blueberry Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a *subpart* of such part.

§ 1218.14 Person.

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

§ 1218.15 Processed blueberries.

Processed blueberries means blueberries which have been frozen, dried, pureed, or made into juice.

§ 1218.16 Producer.

Producer means any person who grows blueberries in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, blueberries beyond the person's own family use and having value at first point of sale.

§ 1218.17 Promotion.

Promotion means any action taken to present a favorable image of blueberries to the general public and the food industry for the purpose of improving the competitive position of blueberries both in the United States and abroad and stimulating the sale of blueberries. This includes paid advertising and public relations.

§ 1218.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of blueberries, including research relating to nutritional value, cost of production, new product development, varietal development, nutritional value, health research, and marketing of blueberries.

§ 1218.19 Secretary.

Secretary means the Secretary of Agriculture of the United States, 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.

§ 1218.20 Suspend.

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

§ 1218.21 Terminate.

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

§ 1218.22 United States.

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

§ 1218.23 U.S. Highbush Blueberry Council.

U.S. Highbush Blueberry Council or the *Council* means the administrative body established pursuant to § 1218.40.

[71 FR 44554, Aug. 7, 2006]

U.S. HIGHBUSH BLUEBERRY COUNCIL

§ 1218.40 Establishment and membership.

(a) *Establishment of the U.S. Highbush Blueberry Council.* There is hereby established a U.S. Highbush Blueberry Council, hereinafter called the Council, composed of no more than 14 members and alternates, appointed by the Secretary from nominations as follows:

(1) One producer member and alternate from each of the following regions:

(i) Region #1 Western Region (all states from the Pacific east to the Rockies): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(ii) Region #2 Midwest Region (all states east of the Rockies to the Great Lakes and south to the Kansas/Missouri/Kentucky state line): Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin.

(iii) Region #3 Northeast Region (all states east of the Great Lakes and North of the North Carolina/Tennessee state line): Connecticut, Delaware, New York, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Pennsylvania, Rhode Island, Virginia, Vermont, Washington, D.C., and West Virginia.

(iv) Region #4 Southern Region (all states south of the Virginia/Kentucky/Missouri/Kansas state line and east of the Rockies): Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, and Texas.

(2) One producer member and alternate from each of the top six blueberry producing states, based upon the average of the total tons produced over the previous three years. Average tonnage will be based upon production and assessment figures generated by the Council.

(3) One importer and alternate.

(4) One exporter and alternate shall be filled by foreign blueberry producers currently shipping blueberries into the United States from the largest foreign blueberry production area, based on a three-year average.

(5) One first handler member and alternate shall be filled by a United States based independent or cooperative organization which is a producer/shipper of domestic blueberries.

(6) One public member and alternate.

(b) *Adjustment of membership.* At least once every five years, the Council will review the geographical distribution of United States production of blueberries and the quantity of imports. The review will be conducted through an audit of state crop production figures and Council assessment records. If warranted, the Council will recommend to the Secretary that the membership on the Council be altered to reflect any changes in the geographical distribution of domestic blueberry production and the quantity of imports. If the level of imports increases, importer members and alternates may be added to the Council.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001; 71 FR 44554, Aug. 7, 2006]

§ 1218.41 Nominations and appointments.

(a) Voting for regional and state representatives will be made by mail ballot.

(b) When a state has a state blueberry commission or marketing order in place, the state commission or committee will nominate members to serve on the Council. At least two nominees shall be submitted to the Secretary for each member and each alternate.

(c) Nomination and election of regional and state representatives where no commission or order is in place will be handled by the Council staff. The Council staff will seek nominations for members and alternates from the specific states and/or regions. Nominations will be returned to the Council office and placed on a ballot which will then be sent to producers in the state and/or region for a vote. The final nominee for member will have received the highest number of votes cast. The person with the second highest number of votes cast will be the final nominee for alternate. The persons with the third and fourth highest number of votes cast will be designated as additional nominees for consideration by the Secretary.

(d) Nominations for the importer, exporter, first handler, and public member positions will be made by the Council. Two nominees for each member and each alternate position will be submitted to the Secretary for consideration.

(e) From the nominations, the Secretary shall select the members and alternate members of the Council.

[71 FR 44555, Aug. 7, 2006]

§ 1218.42 Term of office.

Council members and alternates will serve for a term of three years and be able to serve a maximum of two consecutive terms. A Council member may serve as an alternate during the years the member is ineligible for a member position. When the Council is first established, the state representatives, first handler member, and their respected alternates will be assigned initial terms of three years. Regional representatives, the importer member, the exporter member, public member, and

their alternates will serve an initial term of two years. Thereafter, each of these positions will carry a full three-year term. Council nominations and appointments will take place in two out of every three years. Each term of office will end on December 31, with new terms of office beginning on January 1.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.43 Vacancies.

(a) In the event that any member of the Council ceases to be a member of the category of members from which the member was appointed to the Council, such position shall automatically become vacant.

(b) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council engages in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office.

(c) Should any member position become vacant, the alternate of that member shall automatically assume the position of said member. Should the positions of both a member and such member's alternate become vacant, successors for the unexpired terms of such member and alternate shall be appointed in the manner specified in § 1218.40 and § 1218.41, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.44 Alternate members.

An alternate member of the Council, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a producer member of the Council and the alternate are unable to attend a meeting, the Council may not designate any other alternate to serve in such member's or alternate's place and stead for such a meeting.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.45 Procedure.

(a) At a Council meeting, it will be considered a quorum when a minimum of seven members, or their alternates serving in the absence, are present.

(b) At the start of each fiscal period, the Council will select a chairperson and vice chairperson who will conduct meetings throughout that period.

(c) All Council members and alternates will receive a minimum of 10 days advance notice of all Council and committee meetings.

(d) Each member of the Council will be entitled to one vote on any matter put to the Council, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Council members present.

(e) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present. Alternates may also be assigned to committees as necessary. Committees may also consist of individuals other than Council members and such individuals may vote in committee meetings. These committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Council such action is considered necessary, the Council may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or any other means of communication, and all telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Council. All

votes shall be recorded in Council minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting member.

(i) The organization of the Council and the procedures for the conducting of meetings of the Council shall be in accordance with its bylaws, which shall be established by the Council and approved by the Secretary.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.46 Compensation and reimbursement.

The members of the Council, and alternates when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council, incurred by them in the performance of their duties as Council members.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.47 Powers and duties.

The Council shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

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

(c) To meet, organize, and select from among the members of the Council a chairperson, other officers, committees, and subcommittees, as the Council determines to be appropriate;

(d) To employ persons, other than the members, as the Council considers necessary to assist the Council in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Council shall develop and submit to the Council a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Council of activities conducted under the contract or agreement; and make such other reports available as the Council or the Secretary considers relevant. Any contract or agreement shall provide that:

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

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

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

(f) To prepare and submit for approval of the Secretary fiscal year budgets in accordance with § 1218.50;

(g) To maintain such records and books 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 Council;

(h) To cause its books to be audited by a competent 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;

(i) To give the Secretary the same notice of meetings of the Council as is given to members in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Council to the Secretary;

(j) To act as intermediary between the Secretary and any producer, first handler, importer, or exporter;

(k) To furnish to the Secretary any information or records that the Secretary may request;

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

(m) To recommend to the Secretary such amendments to the Order as the Council considers appropriate; and

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the blueberry industry's position in the marketplace; maintain and expand existing markets and uses for blueberries; and to carry out programs, plans, and projects designed to provide maximum benefits to the blueberry industry.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.48 Prohibited activities.

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

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

(b) Using funds collected by the Council 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, other than recommending to the Secretary amendments to the Order.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

EXPENSES AND ASSESSMENTS

§ 1218.50 Budget and expenses.

(a) At least 60 days prior to the beginning of each fiscal year, and as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering this subpart. 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 or at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

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

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

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws need not have prior approval by the Secretary.

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

(e) With approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council. Any funds borrowed by the Council shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Council.

(f) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Council shall retain complete control of their use.

(g) The Council may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(h) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(i) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (h) are excluded from this limitation on spending.

(j) The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided* that the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.51 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a periodic basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.52 Assessments.

(a) The funds to cover the Council's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board including those collected pursuant to § 1218.56 and subject to the limitations contained therein.

(b) The collection of assessments on domestic blueberries will be the responsibility of the first handler receiving the blueberries. In the case of the producer acting as its own first handler, the producer will be required to collect and remit its individual assessments.

(c) Such assessments shall be levied at a rate of $12 per ton on all blueberries. The assessment rate will be reviewed, and may be modified with the approval of the Secretary, after the first referendum is conducted as stated in § 1218.71(b).

(d) Each importer of fresh and processed blueberries shall pay an assessment to the Council on blueberries imported for marketing in the United States, through the U.S. Customs Service.

(1) The assessment rate for imported fresh and processed blueberries shall be the same or equivalent to the rate for fresh blueberries produced in the United States.

(2) The import assessment shall be uniformly applied to imported fresh and frozen blueberries that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Assessments on other types of imported processed blueberries, such as dried blueberries, puree, and juice, may be added at the recommendation of the Council with the approval of the Secretary.

(3) The assessments due on imported fresh and processed blueberries shall be paid when they enter or are withdrawn for consumption in the United States.

(e) All assessment payments and reports will be submitted to the office of the Council. All final payments for a crop year are to be received no later than November 30 of that year. A late

payment charge shall be imposed on any handler who fails to remit to the Council, the total amount for which any such handler is liable on or before the due date established by the Council. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(f) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(g) The Council may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.53 Exemption procedures.

(a) Any producer who produces less than 2,000 pounds of blueberries annually shall be exempt from the payment of assessments. Such producer may apply to the Council—on a form provided by the Council—for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed.

(b) Any importer who imports less than 2,000 pounds of fresh and frozen blueberries annually shall be exempt from the payment of assessments. Such importer may apply to the Council—on a form provided by the Council—for a certificate of exemption. Such importer shall certify that the importer's importation of fresh and frozen blueberries shall not exceed 2,000 pounds for the fiscal year for which the exemption is claimed.

(c) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(d) To apply for this exemption, a producer shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: The producer's name and address, with a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 CFR part 205), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary. If a producer complies with the requirements in paragraph (c) of this section, the Council will grant an assessment exemption and issue a certification of exemption to the producer. For exemption requests received on or before August 15, 2005, the Council will have 60 days to approve the exemption request; after August 15, 2005, the Council will have 30 days to approve the exemption request. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic fresh and frozen blueberries—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (d) of this section. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line

item entry of 100 percent organic fresh and frozen blueberries bearing this HTS classification assigned by the Council will not be subject to assessments.

(f) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(h) On receipt of an application, the Council shall determine whether an exemption may be granted. The Council then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. Each producer who is exempt from assessment must provide an exemption number to the first handler in order to be exempt from the collection of an assessment on blueberries. First handlers and importers, except as otherwise authorized by the Council, shall maintain records showing the exemptee's name and address along with the exemption number assigned by the Council.

(i) Importers who are exempt from assessment shall be eligible for reimbursement of assessments collected by the U.S. Customs Service and shall apply to the Council for reimbursement of such assessments paid. No interest will be paid on assessments collected by the U.S. Customs Service. Requests for reimbursement shall be submitted to the Council within 90 days of the last day of the year the blueberries were actually imported.

(j) Any person who desires an exemption from assessments for a subsequent fiscal year shall reapply to the Council, on a form provided by the Council, for a certificate of exemption.

(k) The Council may require persons receiving an exemption from assessments to provide to the Council reports on the disposition of exempt blueberries and, in the case of importers, proof of payment of assessments.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001; 70 FR 2758, Jan. 14, 2005]

§ 1218.54 Programs, plans, and projects.

(a) The Council shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including producer and consumer information, with respect to fresh and processed blueberries; and

(2) The establishment and conduct of research with respect to the use, nutritional value, sale, distribution, and marketing of fresh and processed blueberries, and the creation of new products thereof, to the end that the marketing and use of blueberries may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of fresh and processed blueberries.

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

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Council shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or

misleading or disparaging another agricultural commodity. Blueberries of all origins shall be treated equally.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.55 Independent evaluation.

The Council shall, not less often than every five years, authorize and fund, from funds otherwise available to the Council, an independent evaluation of the effectiveness of the Order and other programs conducted by the Council pursuant to the Act. The Council shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.56 Patents, copyrights, trademarks, information, publications, and product formulations.

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Council under this subpart shall be the property of the U.S. Government as represented by the Council and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Council; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1218.73 shall apply to determine disposition of all such property.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

REPORTS, BOOKS, AND RECORDS

§ 1218.60 Reports.

(a) Each first handler subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds handled;

(2) Number of pounds on which an assessment was collected;

(3) Name and address of person from whom the first handler has collected the assessments on each pound handled; and

(4) Date collection was made on each pound handled. All reports are due to the Council 30 days after the end of the crop year.

(b) Each producer and importer subject to this subpart may be required to provide to the Council periodically such information as may be required by the Council, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of pounds produced;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the producer;

(4) Date collection was made on each pound produced. All reports are due to the Council 30 days after the end of the crop year.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.61 Books and records.

Each first handler, producer, and importer subject to this subpart shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

§ 1218.62 Confidential treatment.

All information obtained from books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential by all persons, including all employees and former employees of the Council, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Council members, producers, importers, exporters, or first handlers. Only those persons having a specific need for such information to

effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

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

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

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

MISCELLANEOUS

§ 1218.70 Right of the Secretary.

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

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.71 Referenda.

(a) *Initial referendum.* The Order shall not become effective unless:

(1) The Secretary determines that the Order is consistent with and will effectuate the purposes of the Act; and

(2) The Order is approved by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

(b) *Subsequent referenda.* Every five years, the Secretary shall hold a referendum to determine whether blueberry producers and importers favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries. The Secretary will also conduct a referendum if 10 percent or more of all eligible blueberry producers and importers request the Secretary to hold a referendum. In addition, the Secretary may hold a referendum at any time.

§ 1218.72 Suspension and termination.

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

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers voting for approval who also represent a majority of the volume of blueberries represented in the referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of blueberries.

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

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

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

§ 1218.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend not more than three of its members to the

Secretary to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Council, including claims for any funds unpaid or property not delivered, or any other claim existing at the time of such termination.

(b) The said trustees shall:

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

(2) Carry out the obligations of the Council under any contracts or agreements entered into pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and the trustees, to such person or persons as the Secretary may direct; and

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, to the blueberry producer organizations in the interest of continuing blueberry promotion, research, and information programs.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.74 Effect of termination or amendment.

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

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

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

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

§ 1218.75 Personal liability.

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

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.76 Separability.

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

§ 1218.77 Amendments.

Amendments to this subpart may be proposed from time to time by the Council or by any interested person affected by the provisions of the Act, including the Secretary.

[65 FR 43963, July 17, 2000, as amended at 66 FR 37119, July 17, 2001]

§ 1218.78 OMB control numbers.

The control number assigned to the information collection requirements 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 0581–0093, except for the Council nominee background statement form which is assigned OMB control number 0505–001.

Subpart B—Procedure for the Conduct of Referenda in Connection with the Blueberry Promotion, Research, and Information Order

§ 1218.100 General.

Referenda to determine whether eligible blueberry producers and importers favor the issuance, amendment, suspension, or termination of the Blueberry Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1218.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, 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) *Blueberries* means cultivated blueberries grown in or imported into the United States of the genus Vaccinium *Corymbosum* and *Ashei,* including the northern highbush, southern highbush, rabbit eye varieties, and any hybrid, and excluding the lowbush (native) blueberry Vaccinium *Angustifolium.*

(c) *Eligible importer* means any person who imported 2,000 pounds or more of fresh or processed blueberries, that are identified by the numbers 0810.40.0028 and 0811.90.2028, respectively, in the Harmonized Tariff Schedule of the United States or any other numbers used to identify fresh and frozen blueberries. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced blueberries immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of blueberries from the U.S. Customs Service when such blueberries are entered or withdrawn for consumption in the United States.

(d) *Eligible producer* means any person who produced 2,000 pounds or more of blueberries in the United States during the representative period who:

(1) Owns, or shares the ownership and risk of loss of, the crop;

(2) Rents blueberry production facilities and equipment resulting in the ownership of all or a portion of the blueberries produced;

(3) Owns blueberry production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the blueberries produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries who share the risk of loss and receive a share of the blueberries produced. No other acquisition of legal title to blueberries shall be deemed to result in persons becoming eligible producers.

(e) *Order* means the Blueberry Promotion, Research, and Information Order.

(f) *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, a blueberry farm 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 and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(g) *Processed blueberries* means blueberries which have been frozen, dried, pureed, or made into juice.

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

(i) *Representative period* means the period designated by the Secretary.

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

§ 1218.102 Voting.

(a) Each person who is an eligible producer or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce blueberries, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible 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 eligible entity, or an administrator, executive, or trustee of an eligible 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) All ballots are to be cast by mail or by facsimile, as instructed by the Secretary.

§ 1218.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, 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 eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing 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) Mail to eligible producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote 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.

(g) Announce the results to the public.

§ 1218.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. 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.

§ 1218.105 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 invalid under this subpart shall not be counted.

§ 1218.106 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.

§ 1218.107 Confidential information.

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

PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION

Subpart A—Hass Avocado Promotion, Research, and Information Order

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AUTHORITY: 7 U.S.C. 7801–7813 and 7 U.S.C. 7401.

SOURCE: 67 FR 7264, Feb. 19, 2002, unless otherwise noted.

Subpart A—Hass Avocado Promotion, Research, and Information Order

SOURCE: 67 FR 56897, Sept. 6, 2002, unless otherwise noted.

DEFINITIONS

§ 1219.1 Act.

Act means the Hass Avocado Promotion, Research, and Information Act of 2000, Public Law 106–387, 7 U.S.C. 7801–7813, and any amendments thereto.

§ 1219.2 Association.

Association means an avocado organization established by State statute in a State with the majority of Hass avocado production in the United States.

§ 1219.3 Conflict of interest.

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

§ 1219.4 Consumer information.

Consumer information means any action or program that disseminates or otherwise provides information to consumers and other persons, on the use, nutritional attributes, and other information that will assist consumers and other persons in the United States in making evaluations and decisions regarding the purchase, preparation, and use of Hass avocados.

§ 1219.5 Crop year.

Crop year means the period from November 1 of one year through October 31 of the following year, or such other one-year period recommended by the Board and approved by the Secretary.

§ 1219.6 Customs.

Customs means the United States Customs Service.

§ 1219.7 Department.

Department means the United States Department of Agriculture.

§ 1219.8 Exempt handler.

Exempt handler means a person who would otherwise be considered a first handler, except that all Hass avocados purchased by the person have already been subject to assessments under the Order. A person who handles both Hass avocados that have already been subject to assessments under the Order and Hass avocados that have not been subject to assessments under the Order is a first handler.

§ 1219.9 First handler.

First handler means a person operating in the Hass avocado marketing system that sells domestic or imported Hass avocados for consumption in the United States and who is responsible for remitting assessments to the Board. For the purposes of the Order, the term means the first person who handles Hass avocados for sale (except a common or contract carrier of Hass avocados owned by another person), including a producer who handles Hass avocados for sale of the producer's own production.

§ 1219.10 Fiscal period or marketing year.

Fiscal period or *marketing year* means the period beginning on November 1 of any year and extending through the last day of October of the following year, or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1219.11 Handle.

Handle means to pack, process, transport, purchase, or in any other way to place or cause Hass avocados to which one has title or possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of Hass avocados by the producer thereof to a handler.

§ 1219.12 Hass avocado.

Hass avocado means the fruit grown in or imported into the United States of the species *Persea americana* Mill., or other type of avocados that, in the determination of the Board, with approval of the Secretary, is so similar to

the Hass variety avocado as to be indistinguishable to consumers in fresh form. The term shall include all fruit in fresh, frozen, or any other processed form.

§ 1219.13 Hass Avocado Board.

Hass Avocado Board or *the Board* means the administrative body established pursuant to § 1219.40.

§ 1219.14 Importer.

Importer means any person who imports Hass avocados into the United States. The term includes a person who holds title to Hass avocados produced outside of the United States immediately upon release by Customs, as well as any person who acts on behalf of others, as an agent, broker, or consignee, to secure the release of Hass avocados from Customs and the introduction of the released Hass avocados into the current of commerce and who is listed in the import records of Customs as the importer of record for such Hass avocados.

§ 1219.15 Industry information.

Industry information means information, programs, and activities that are designed to increase efficiency in processing, enhance the development of new markets and marketing strategies, increase marketing efficiency, and enhance the image of Hass avocados and the Hass avocado industry in the United States.

§ 1219.16 Marketing.

Marketing means any activity related to the sale or other disposition of Hass avocados in any channel of commerce.

§ 1219.17 Order.

Order means this subpart.

§ 1219.18 Part and subpart.

Part means the Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order itself shall be a *subpart* of such part.

§ 1219.19 Person.

Person means any individual, group of individuals, firm, partnership, corporation, joint stock company, association, cooperative, or any other legal entity.

§ 1219.20 Producer.

Producer means any person who is engaged in the business of producing Hass avocados in the United States for commercial use, who owns, or shares the ownership and risk of loss, of such Hass avocados.

§ 1219.21 Programs, plans, and projects.

Programs, plans, and projects means those research, promotion, and information programs, plans, studies, or projects established pursuant to § 1219.50.

§ 1219.22 Promotion.

Promotion means any action to advance the image, desirability, or marketability of Hass avocados in the United States, including paid advertising, sales promotion, and publicity. Promotion activities are designed to improve the competitive position and stimulate sales of Hass avocados in the domestic marketplace.

§ 1219.23 Research.

Research means any type of test, study, or analysis relating to market research, market development, and market efforts, or relating to the use, quality, or nutritional value of Hass avocados, other related food science research, or research designed to advance the knowledge, image, desirability, usage, or marketability of Hass avocados in the United States.

§ 1219.24 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other 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.

§ 1219.25 State.

State means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the

Marshall Islands, and the Federated States of Micronesia.

§ 1219.26 United States.

United States means collectively the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

THE HASS AVOCADO BOARD

§ 1219.30 Establishment and membership.

(a) A Hass Avocado Board, called the Board elsewhere in this part, is hereby established to administer the terms and provisions of this subpart. The Board shall consist of 12 members nominated by the Hass avocado industry and appointed by the Secretary as provided in this subpart, each of whom shall have an alternate nominated and appointed in the same manner as members of the Board are nominated and appointed. Board members and alternates shall be domiciled in the United States.

(b) The membership of the Board shall be divided as follows:

(1) Seven members and their alternates shall be producers of Hass avocados that are subject to assessments under this subpart;

(2) Two members and their alternates shall be importers of Hass avocados that are subject to assessments under this subpart; and

(3) Three members shall be producers of Hass avocados that are subject to assessments under this subpart or importers of Hass avocados that are subject to assessments under this subpart. Producers and importers shall be allocated to these positions so as to assure as nearly as possible that the composition of the 12-member Board reflects the proportion of domestic production and imports supplying the United States market. Such proportion shall be based on the Secretary's determination of the average volume of domestic production and the average volume of imports into the United States market over the previous three years, based on all information available to the Secretary.

(c) Three years after the assessment of funds commences pursuant to this subpart, and at the end of each three-year period thereafter, the Board shall review the production of domestic Hass avocados in the United States and the volume of imported Hass avocados on the basis of the amount of assessments collected from producers and importers over the immediately preceding three-year period and, if warranted, recommend to the Secretary the reapportionment of the positions authorized in paragraph (b)(3) of this section to reflect changes in the proportion of domestic Hass avocado production to the volume of imported Hass avocados, to the extent possible in the Act. Any adjustment under this paragraph shall be subject to the review and approval of the Secretary.

(d) For purposes of this section, *importer* means a person who is involved in, as a substantial activity, the importation of Hass avocados for sale or marketing in the United States (either directly or as an agent, broker, or consignee of any person that produces Hass avocados outside of the United States for sale in the United States), who is subject to assessments under the Order, and who is listed by Customs as the importer of record for such Hass avocados. A substantial activity means that the volume of a person's Hass avocado imports must exceed the volume of the person's production or handling of domestic Hass avocados.

§ 1219.31 Initial nomination and appointment of producer members and alternates.

(a) The Association will nominate producer members and alternates to serve on the Board in accordance with the following procedures.

(1) The Association shall establish a list of producers in the United States who are eligible to serve on the Board and notify all producers that they may nominate persons to serve as members and alternates on the Board.

(2) After names are received from the producers, the Association shall prepare a ballot with the names of all persons nominated and mail it to all producers to allow them the opportunity

to vote for the persons who will represent their interests on the Board.

(3) After tabulating the vote, the Association shall announce the results and submit two names for each producer member and two names for each alternate producer member to the Secretary from the persons receiving the highest number of votes.

(b) The Secretary shall select the producer members and alternates of the Board from the names submitted by the Association. Following the selection of the producer members, the Secretary shall select the alternate producer members. In selecting the alternate members, the Secretary shall consider the names submitted by the Association for each alternate member position along with the individuals whose names were submitted by the Association for each Board member position but were not selected for that position.

§ 1219.32 Initial nomination and appointment of importer members and alternates.

(a) The Department will conduct the nomination process for the initial importer members and alternates on the Board in accordance with the following procedures.

(1) The Department shall notify all known importers and importer organizations that they may nominate persons to serve as importer members and alternates on the Board.

(2) After names are received from the importers and importer organizations, the Department shall prepare a ballot with the names of all persons nominated and mail it to all known importers to allow them the opportunity to vote for the persons who will represent their interests on the Board.

(3) After tabulating the vote, the Department shall announce the results and submit two names for each importer member and two names for each alternate importer member to the Secretary from the persons receiving the highest number of votes.

(b) The Secretary shall select the importer members and alternates of the Board from the nominees elected by importers. Following the selection of the importer members, the Secretary shall select the alternate importer members. In selecting the alternate members, the Secretary shall consider the names for each alternate member position along with the individuals who were elected by importers for each Board member position but were not selected for that position.

§ 1219.33 Subsequent nomination and appointment of Board members and alternates.

The Board's staff shall announce at least 150 days in advance of the expiration of members' and alternates' terms that such terms are expiring and shall solicit nominations in accordance with procedures recommended by the Board and approved by the Secretary. Nominations for such positions should be submitted to the Secretary no less than 90 days prior to the expiration of the terms.

§ 1219.34 Failure to nominate.

In any case in which producers or importers fail to nominate individuals for appointment to the Board, the Secretary may appoint individuals to fill vacancies from the appropriate segments of the industry.

§ 1219.35 Term of office.

The members and alternate members of the Board shall serve for terms of three years, except the members of the initial Board shall serve terms as follows: Four members and four alternates shall serve for two-year terms; four members and four alternates shall serve for three-year terms; and four members and four alternates shall serve for four-year terms. No member shall serve more than two consecutive three-year terms. Members and alternates serving initial two-year or four-year terms may serve for one additional three-year term. A Board member may serve as an alternate during the years the member is ineligible for a member position. Each term of office will end on October 31, with new terms of office beginning on November 1.

§ 1219.36 Vacancies.

(a) In the event any member or alternate of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such member or alternate

shall be disqualified from serving on the Board and the position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds that the recommendation of the Board shows adequate cause, the member shall be removed from office.

(c) Should any Board member position become vacant in the event of the death, removal, resignation, or disqualification, the alternate of that member shall automatically assume the position of said member. The alternate shall serve until the end of the member's normal term. If there is no alternate member to assume the position of member, the successor member and alternate shall be nominated and selected in the manner specified in §§ 1219.31, 1219.32, or 1219.33.

(d) Should any alternate member become vacant in the event of death, removal, resignation, or disqualification, the Board may nominate persons to serve for the unexpired term of such alternate member. The nomination shall be conducted at a regularly scheduled Board meeting as soon as practicable after the vacancy occurs. The Board may solicit the names of nominees from producers and importers prior to the meeting and from the floor of the meeting. All nominees must meet the qualifications for nomination. The Board shall submit two nominees for each vacancy to the Secretary. A vacancy will not be required to be filled if the unexpired term is less than six months.

§ 1219.37 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such duties as assigned. In the event of the death, removal, resignation, or disqualification of any member, the alternate for that member shall automatically assume the position of said member. In the event that both a member of the Board and the alternate are unable to attend a meeting, the Board may not designate any other alternate to serve in such member's or alternate's place and stead for the meeting.

§ 1219.38 Powers and duties.

The Board shall have the following powers and duties in addition to the responsibilities and authorities specified in other sections of this subpart:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

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

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, at the start of each fiscal period, and at such other times as the Board determines to be appropriate;

(d) To recommend to the Secretary rules and regulations to effectuate the terms and conditions of this subpart;

(e) To employ such persons, other than the 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 such persons;

(f) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board and approved by the Secretary;

(g) To develop budgets for the implementation of this subpart and submit the budgets to the Secretary for approval and to propose and develop (or receive and evaluate), approve, and submit to the Secretary for approval programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research;

(h) To develop and implement after the approval by the Secretary programs, plans, and projects for Hass

avocado promotion, industry information, consumer information, or related research, to contract or enter into agreements with appropriate persons to implement the programs, plans, and projects, and to pay the costs of the implementation of contracts and agreements with funds collected under this subpart.

(i) To maintain such records and books 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;

(j) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, and industry information designed to strengthen the Hass avocado industry's position in the domestic marketplace; to maintain and expand existing domestic markets and uses for Hass avocados; to create new domestic markets; and to carry out programs, plans, and projects designed to provide maximum benefits to the Hass avocado industry;

(k) To evaluate on-going and completed programs, plans, and projects for Hass avocado promotion, industry information, consumer information, or related research and to comply with the independent evaluation provisions of the Federal Agricultural Improvement and Reform Act of 1996 [7 U.S.C. 7401 *et seq.*];

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

(m) To recommend to the Secretary amendments to this Order;

(n) To invest, pending disbursement under a program, plan, or project, funds collected through assessments authorized under this Act only in:

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

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

(3) Any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal and interest by the United States, except that income from any such invested funds may be used only for a purpose for which the invested funds may be used;

(o) To borrow funds necessary for the startup expenses of the Order;

(p) To cause the books of the Board to be audited by a qualified independent auditor at the end of each fiscal period and to submit a report of the audit directly to the Secretary;

(q) To give the Secretary the same notice of meetings and teleconferences of the Board and its committees as is given to members in order that the Secretary's representative(s) may attend or participate in the meetings;

(r) To act as intermediary between the Secretary and any producer, first handler, or importer;

(s) To periodically prepare and make public reports of its activities carried out, and at least once each fiscal period, to make public an accounting of funds received and expended; and

(t) To notify Hass avocado producers, first handlers, and importers of all Board meetings through news releases or other means.

§ 1219.39 Board procedure.

(a) At a properly convened meeting of the Board, seven (7) members, including alternates acting in place of members of the Board, shall constitute a quorum: *Provided,* that such alternates shall serve only when the member is absent from a meeting. Any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by one vote more than 50 percent of the members by mail, telephone, electronic mail, facsimile, or other means of communication. Such alternative means for the Board taking action may be undertaken for various reasons. These reasons include the need to address matters of an emergency nature when

there is not enough time to call an assembled meeting of the Board. All telephone votes shall be confirmed promptly in writing. In that event, all members must be notified and provided an opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board. All votes shall be recorded in the Board minutes.

(c) All Board members and alternates and the Secretary will be notified at least 10 days in advance of all Board meetings, except the chairperson of the Board can waive the 10-day requirement in matters of an emergency nature.

(d) Each member of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by one vote more than 50 percent of the total votes represented by the Board members present.

(e) There shall be no voting by proxy.

(f) The chairperson shall be a voting member of the Board.

§ 1219.40 Committee procedure.

(a) The Board may establish committees as deemed necessary to carry out the purposes and objectives of the Order.

(b) The chairperson of the Board shall appoint all committee chairpersons and shall appoint all members of each committee after consultation with the committee chairperson affected. Appointments are subject to approval by the Board and may be changed from time to time as determined by the chairperson of the Board with the concurrence of the Board.

(c) The chairperson of the Board may appoint committee members from among the Board members and alternates and from the industry in general.

(d) The rules and procedures under which committees conduct their activities shall be prescribed in the Board's bylaws.

(e) Committee members and the Secretary will be notified at least 10 days in advance of all committee meetings.

(f) It will be considered a quorum at a committee meeting when at least one more than half of those assigned to the committee are present.

(g) There shall be no voting by proxy on committees.

(h) The chairperson of the Board shall be an ex-officio member of all committees.

§ 1219.41 Compensation and expenses.

(a) The members and alternates of the Board and committee members shall serve without compensation but shall be reimbursed for reasonable out-of-pocket expenses, as approved by the Board, incurred by them in the performance of their duties.

(b) The Board shall have in place sufficient internal controls to prevent reimbursements or expenditures for unreasonable or otherwise controversial travel and meeting expenses.

§ 1219.42 Prohibited activities.

The Board may not engage in and shall prohibit its employees and agents from engaging in:

(a) Any action that would be a conflict of interest. For the purposes of this subpart, Board members and employees thereof must disclose any relationship with any organization or company that has a contract with the Board or operates a State promotion program. No member may vote on any matter in which the member or member's business entity has a financial interest.

(b) Using funds collected under this subpart for the purpose of influencing legislation or governmental action or policy, by local, national, and foreign governments, except to develop and make recommendations to the Secretary as provided for in this subpart.

(c) In a program, plan, or project conducted under this subpart:

(1) Making any reference to private brand names or making false, misleading, disparaging, or unwarranted claims on behalf of Hass avocados or

(2) Making any false, misleading, or disparaging statements with respect to the attributes or use of any agricultural product. This section shall not preclude the Board from offering its programs, plans, and projects for use by commercial parties under such terms and conditions as the Board may prescribe as approved by the Secretary.

(d) For the purposes of this section, a reference to State of origin or country

of origin does not constitute a reference to a private brand name with regard to any funds credited to or disbursed by the Board to the Association or to any importer association established in accordance with § 1219.54.

BUDGETS, EXPENSES, AND ASSESSMENTS

§ 1219.50 Budgets, programs, plans, and projects.

(a) The Board shall submit to the Secretary, on a fiscal period basis, annual budgets of its anticipated expenses and disbursements of the Board in the administration of this subpart, including the projected costs of Hass avocado promotion, industry information, consumer information, and related research programs, plans, and projects. The first budget shall cover such period as may remain before the beginning of the next fiscal period. If such fiscal period is 90 days or less, the first budget shall cover such period, as well as the next fiscal period. Thereafter, the Board shall submit budgets for each succeeding fiscal period not less than 60 days before the beginning of such fiscal period.

(b) The Board shall receive and evaluate, or on its own initiative develop programs, plans and projects for Hass avocado promotion, industry information, consumer information as well as related research. The Board shall submit to the Secretary for approval any program, plan, or project authorized in this subpart. Such programs, plans or projects shall provide for:

(1) The establishment, implementation, issuance, effectuation, administration, and evaluation of appropriate programs, plans, or projects for advertising, sales promotion, other promotion, and consumer information with respect to Hass avocados directed toward increasing the general demand for Hass avocados in the United States. Funds shall be available as necessary to carry out this section;

(2) The establishment, implementation, issuance, effectuation, administration, and evaluation of appropriate programs, plans, and projects designed to strengthen the position of the Hass avocado industry in the domestic marketplace; to maintain, develop, and expand markets for Hass avocados in the United States; to lead to the development of new marketing strategies; to advance the image and desirability of, increase the efficiency of, and encourage further development of the Hass avocado industry; and to provide for the disbursement of necessary funds for the purposes described in this section;

(3) The establishment, implementation, issuance, effectuation, administration, and evaluation of programs, plans, and projects for marketing development research; research on the sale, distribution, marketing, use, quality, and nutritional value of Hass avocados; and other research with respect to Hass avocado marketing, promotion, industry information, or consumer information, including the creation of new products thereof. Information acquired from such plans and projects shall be disseminated as appropriate. Funds shall be available as necessary to carry out this section; and

(4) The Board to enter into contracts or make agreements for the development and carrying out of research, promotion, and information, and pay for the costs of such contracts or agreements with funds collected pursuant to § 1219.54.

(c) A budget, program, plan, or project for Hass avocados promotion, industry information, consumer information, or related research may not be implemented prior to approval of the budget, program, plan, or project by the Secretary. If the Secretary fails to provide notice to the Board or approval or disapproval of a budget, program, plan, or project within 45 days after receipt, such budget, program, plan, or project shall be deemed approved by the Secretary and may be implemented by the Board.

(d) The Board, from time to time, may seek advice and consult with experts from the production, import, wholesale, and retail segments of the Hass avocado industry to assist in the development of promotion, industry information, consumer information, and related research programs, plans, and projects. For these purposes, the Board may appoint special committees composed of persons other than Board members. A committee so appointed shall consult directly with the Board.

(e) Programs must be conducted throughout the year to reflect the periods when imported and domestic Hass avocados are in the U.S. marketplace.

(f) The Board shall consult with both the Association and importer associations on programs, plans, and projects for generic promotions.

§ 1219.51 Contracts and agreements.

(a) The Board shall enter into a contract or an agreement with the Association for the implementation of programs, plans, or projects for promotion, industry information, consumer information, or related research with respect to Hass avocados and for the payment of the cost of the contract or agreement with funds received by the Board under this subpart. The Board may disburse such funds as necessary for these purposes after such programs, plans, or projects have been submitted to and approved by the Secretary.

(b) Any contract or agreement entered into shall provide that the contracting or agreeing party shall develop and submit to the Board a program, plan or project, together with a budget that includes the estimated costs to be incurred for the program, plan or project, and such program, plan or project shall become effective on the approval of the Secretary. For such contract or agreement, the contracting or agreeing party shall:

(1) Keep accurate records of all transactions of the party;

(2) Account for funds received and expended;

(3) Make periodic reports to the Board of activities conducted; and

(4) Make such other reports as the Board or the Secretary shall require.

(c) The Secretary may audit the records of the contracting or agreeing party periodically.

(d) Contractors and subcontractors are subject to the provisions of § 1219.42.

(e) The Board may enter into contracts or agreements for administrative services, including contracts for employment, as may be required to conduct its business. To the extent appropriate to the contract involved, contracts or agreements entered into by the Board under the authority of this section shall conform to the provisions described in paragraph (b) of this section.

§ 1219.52 Control of administrative costs.

(a) As soon as practicable after September 9, 2002, and after consultation with the Secretary and other appropriate persons, the Board shall implement a system of cost controls based on normally accepted business practices to:

(1) Ensure that the costs incurred by the Board in administering this part in any fiscal period shall not exceed 10 percent of the projected level of assessments and other income received by the Board for generic promotion and research programs for that fiscal period; and

(2) Cover the minimum administrative activities and personnel needed to properly administer and enforce this subpart, and conduct, supervise, and evaluate programs, plans, and projects under this subpart.

(b) Reimbursements to the Secretary required under § 1219.53(b) are excluded from the limitation on spending.

(c) To the extent possible, the Board shall use the resources, staffs, and facilities of existing avocado organizations as provided in § 1219.54(a).

§ 1219.53 Budget and expenses.

(a) The Board is authorized to incur such expenses, including provision for a reasonable reserve for operating contingencies, as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board, including assessments, contributions from any person not subject to assessments under this subpart, and other funds available to the Board.

(b) The Board shall reimburse the Department:

(1) For expenses not to exceed $25,000 incurred by the Secretary in connection with any referendum conducted under the Act;

(2) For administrative costs incurred by the Secretary for supervisory work

of up to two employee years annually after the Order or amendment to the Order has been issued and made effective; and

(3) For costs incurred by the Secretary in implementation of the Order, for enforcement of the Act and the order, for subsequent referenda conducted under the Act, and in defending the Board in litigation arising out of action taken by the Board or otherwise in defense of the Order.

(c) The Board shall establish and maintain the minimum level of annual administrative expenses necessary to efficiently and effectively carry out the programs authorized by the Act. The Board shall include its annual administrative expenses as a separate item in its annual report. The Board shall adhere to its fiduciary responsibilities and ensure that all monies are spent in accordance with the Act and the Order.

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

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. The contributions shall be free from any encumbrance by the donor, and the Board shall retain complete control of their use.

§ 1219.54 Assessments.

(a) Except as provided in § 1219.55, the initial rate of assessment shall be 2.5 cents per pound on fresh Hass avocados produced and handled in the United States and on fresh Hass avocados imported into the United States. An equivalent rate shall be assessed on processed and frozen Hass avocados on which an assessment has not been paid. Such equivalent rate will be assessed on processed or frozen Hass avocados upon the recommendation of the Board with the approval of the Secretary. The rate of assessment may be increased or decreased as recommended by the Board and approved by the Secretary. Such an increase or decrease may occur not more than once annually. Any change in the assessment rate shall be announced by the Board at least 30 days prior to going into effect and shall not be subject to a vote in a referendum. The maximum assessment rate authorized is 5 cents per pound. No more than one assessment shall be made on any Hass avocados.

(b) *Domestic assessments.* The collection of assessments on domestic Hass avocados will be the responsibility of the first handler.

(1) In the case of a producer acting as the producer's own first handler, the producer will be required to collect and remit the assessments due to the Board.

(2) Each first handler shall collect from the producer and pay to the Board an assessment of 2.5 cents per pound in accordance with this subpart. Assessments shall be remitted by each first handler to the Board or its agent within 30 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place.

(3) The first handler shall maintain a separate record of the domestic Hass avocados of each producer whose domestic Hass avocados are handled, including the domestic Hass avocados owned by the handler and domestic Hass avocados that are exported.

(4) Assessment of other types of fresh avocados may be added at the recommendation of the Board with the approval of the Secretary.

(c) *Import assessments.* Each importer of fresh Hass avocados shall pay an assessment to the Board through Customs on fresh Hass avocados imported for marketing in the United States.

(1) The assessment rate for imported fresh Hass avocados shall be the same or equivalent to the rate for fresh Hass avocados produced and handled in the United States.

(2) The import assessment shall be uniformly applied to imported fresh Hass avocados that are identified by the number 0804.40.00.10 in the Harmonized Tariff Schedule of the United States or any other numbers to identify fresh Hass avocados. Assessments

on other types of imported fresh avocados or on processed Hass avocados, such as prepared, preserved, or frozen Hass avocados or Hass avocado paste, puree, and oil will be added at the recommendation of the Board with the approval of the Secretary.

(3) The assessments due on imported Hass avocados shall be paid when they are released from custody by Customs and introduced into the stream of commerce in the United States.

(d) All assessment payments and reports will be submitted to the Board's office. All final payments for a crop year are to be received no later than November 30 of that year, unless the Board determines that assessments due from the first handler shall be paid to the Board at a different time and manner, with approval of the Secretary.

(e) A late payment charge prescribed by the Secretary shall be imposed on any first handler who fails to remit to the Board the total amount for which any such handler is liable on or before the due date. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the handler is liable. The rate of interest shall be prescribed by the Secretary. The timeliness of a payment to the Board shall be based on the date the payment is actually received by the Board.

(f) Regulations issued by the Secretary may provide for different first handler payment schedules of assessments on domestic Hass avocados, so as to recognize differences in marketing or purchasing practices and procedures.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions under federal debt collection procedures.

(h) The Board may authorize other organizations to collect assessments on its behalf with approval of the Secretary.

(i) The collection of assessments shall commence on or after a date established by the Secretary and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Board and may hold such assessments in an interest-bearing account until the Board is constituted and the funds are transferred to the Board.

(j) To facilitate the payment of assessments under this section, the Board shall publish lists of first handlers required to remit assessments under this subpart and exempt handlers.

(k) The Association shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados produced in such State. Such funds shall be remitted to such State organization no later than 30 days after such funds are received by the Board. In addition, such funds and any proceeds from the investment of such funds shall be used by the Association to finance promotion, research, consumer information, and industry information programs, plans, and projects in the United States. However, no such funds shall be used for any administrative expenses incurred by the Association.

(l) An association of Hass avocado importers established pursuant to § 1219.58 shall receive an amount of assessment funds equal to 85 percent of the assessments paid on Hass avocados imported by its members. Such funds shall be remitted to such importer association no later than 30 days after such funds are received by the Board. In addition, such funds and any proceeds from the investment of such funds shall be used by the importer association to finance promotion, research, consumer information, and industry information programs, plans, and projects in the United States. However, no such funds shall be used for any administrative expenses incurred by the importer association.

(m) In general, assessment funds received by the Board shall be used:

(1) For payment of costs incurred in implementing and administering this subpart;

(2) To provide for a reasonable reserve to be maintained from assessments to be available for contingencies; and

(3) To cover the administrative costs incurred by the Secretary in implementing and administering this Act, as set forth in § 1219.53(b).

(n) The Board may establish an operating monetary reserve which may carry over to subsequent fiscal periods: *Provided that*, the funds in the reserve do not exceed one fiscal period's budget. Subject to approval by the Secretary, reserve funds may be used to defray any expenses authorized under this part.

§ 1219.55 Exemption from assessment.

(a) Any sale of Hass avocados for export from the United States is exempt from assessment.

(b) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt Hass avocados.

§ 1219.56 Adjustment of accounts.

Whenever the Board or the Secretary determines through an audit of a person's reports, records, books, or accounts or by some other means that additional money is due to the Board, the person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against any amounts due in succeeding months unless the person requests a refund of the overpayment.

§ 1219.57 Patents, copyrights, trademarks, publications, and product formulations.

(a) Any patents, copyrights, trademarks, inventions, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, trademarks, inventions, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval of the Secretary. Section 1219.72 describes the procedures for termination.

(b) Should patents, copyrights, trademarks, inventions, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, trademarks, inventions, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, trademark, invention, publication, or product formulation in a manner consistent with paragraph (a) of this section.

§ 1219.58 Importer associations.

(a) An association of avocado importers is eligible to receive assessment funds and any proceeds from the investment of such funds only if such importer association is:

(1) Established pursuant to State law that requires detailed State regulation comparable to that applicable to the State organization of domestic avocado producers, as determined by the Secretary; or

(2) Certified by the Secretary as meeting the requirements applicable to the Board as to its operations and obligations, including budgets, programs, plans, projects, audits, conflicts of interest, and reimbursements for administrative costs incurred by the Secretary.

(b) An importer association may represent any importers of Hass avocados including importers of Hass avocados from a particular foreign country. An importer association may be composed of importers as well as representatives of foreign avocado exporting industries. An importer association should establish it own bylaws and may use existing organizations for the establishment of the association and coordination of the association's promotion and research efforts.

(c) For the purposes of the Order, the information required for certification of the importer associations by the Secretary may include, but is not limited to, the following:

(1) Evidence of incorporation under any state law with all appropriate legal requirements;

(2) Evidence that the association is composed of importers that are located in any state and subject to assessments under the Order, no matter where the association has been incorporated or in which state the importers reside;

(3) Certification of the association's ability and willingness to further the aims and objectives of the Order;

(4) Evidence of stability and permanency; and

(5) A description of the functions of the association.

BOOKS, RECORDS, AND REPORTS

§ 1219.60 Reports.

(a) Each first handler of domestic Hass avocados, producer, and importer subject to this subpart shall report to the administrative staff of the Board, at such times and in such manner as the Board may prescribe, such information as may be necessary for the Board to perform its duties.

(b) First handler reports shall include, but shall not be limited to, the following:

(1) Number of pounds of domestic Hass avocados received during the reporting period;

(2) Number of pounds on which assessments were collected;

(3) Assessments collected during the reporting period;

(4) Name and address of person(s) from whom the first handler collected the assessments on each pound handled;

(5) Date collection was made on each pound handled;

(6) Record of assessments paid, including a statement from the handler that assessments have been paid on all domestic Hass avocados handled during the reporting period; and

(7) Number of pounds exported.

(c) Each importer subject to this subpart may be required to report the following:

(1) Number of pounds of Hass avocados imported during the reporting period;

(2) Number of pounds on which an assessment was paid;

(3) Name and address of the importer;

(4) Date collection was made on each pound imported and to whom payment was made; and

(5) Record of each importation of Hass avocados during such period, giving quantity, variety, date, and port of entry.

§ 1219.61 Books and records.

Each producer, first handler, and importer subject to this subpart shall maintain and make available for inspection by the employees and agents of the Board and the Secretary, such books and records as are necessary to carry out the provisions of this subpart, and the regulations issued thereunder, including such records as are necessary to verify any reports required. Books and records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1219.62 Books and records of the Board.

(a) The Board shall maintain such books and records as the Secretary may require. Such books and records shall be made available upon request by the Secretary for inspection and audit.

(b) The Board shall prepare and submit to the Secretary, from time to time, such reports as the Secretary may require.

(c) The Board shall account for the receipt and disbursement of all the funds entrusted to the Board.

(d) The Board shall cause the books and records of the Board to be audited by an independent auditor at the end of each fiscal period. A report of each audit shall be submitted to the Secretary.

§ 1219.63 Confidential treatment.

(a) All information obtained from the books, records, or reports under the Act, this subpart, and the regulations issued thereunder shall be kept confidential and shall not be disclosed to the public by any person, including all current and former officers, employees, staff and agents of the Department, the Board, and contracting and subcontracting agencies or agreeing parties having access to such information. Only those persons having a specific

need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed, and then only in a judicial proceeding or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected from such reports, if such statements do not identify the information furnished by any person; or

(2) The publication, by direction of the Secretary, of the name of any person who has been adjudged to have violated this subpart, together with a statement of the particular provisions of this subpart violated by such person.

(b) Any disclosure of any confidential information by any employee or agent of the Board shall be considered willful misconduct.

(c) No information on how a person voted in a referendum conducted under the Act shall be made public.

§ 1219.64 List of importers.

The administrative staff of the Board shall periodically review the list of importers of Hass avocados to determine whether persons on the list are subject to this subpart.

§ 1219.65 List of producers.

The administrative staff of the Board shall periodically review the list of producers of Hass avocados to determine whether the persons on the list of subject to this subpart. On the request of the Secretary or the Board, the Association shall provide to the Secretary or the administrative staff of the Board the list of producers of Hass avocados.

MISCELLANEOUS

§ 1219.70 Right of the Secretary.

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

§ 1219.71 Suspension or termination.

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

(b) The Secretary shall suspend or terminate this subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers and importers voting who, during a representative period determined by the Secretary, have been engaged in the production or importation of Hass avocados.

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

(1) Suspend or terminate, as appropriate, the collection of assessments not later than 180 days after making such determination; and

(2) Suspend or terminate, as appropriate, all activities under this subpart in an orderly manner as soon as practicable.

§ 1219.72 Proceedings after termination.

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

(b) The said trustees shall:

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

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

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

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or, if not practicable, shall be turned over to the Secretary to be distributed to authorized Hass avocado producer and importer organizations in the interest of continuing Hass avocado promotion, research, and information programs.

§ 1219.73 Effect of termination or amendment.

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

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

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

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

§ 1219.74 Personal liability.

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

§ 1219.75 Separability.

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

§ 1219.76 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary. Except for changes in the assessment rate, the provisions of the Act applicable to the Order are applicable to any amendment of the Order.

§ 1219.77 OMB control numbers.

The control numbers assigned to the information collection requirements in this part by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, are OMB control numbers 0581–0197 and 0505–0001.

Subpart B—Referendum Procedures

§ 1219.100 General.

Referenda to determine whether eligible producers and importers of Hass avocados favor the issuance, amendment, suspension, or termination of the Hass Avocado Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1219.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, 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) *Eligible importer* means any person who imported Hass avocados that are identified by the number 0804.40.00.10 in the Harmonized Tariff Schedule of the United States for at least one year prior to the referendum. Importation occurs when Hass avocados originating outside of the United States are released from custody by the U.S. Customs Service and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced Hass avocados immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of Hass avocados from the U.S. Customs Service when such Hass avocados are entered or withdrawn for consumption in the United States.

(c) *Eligible producer* means any person who produced Hass avocados in the United States for at least one year prior to the referendum who:

(1) Owns, or shares the ownership and risk of loss of, the crop;

(2) Rents Hass avocado production facilities and equipment resulting in the ownership of all or a portion of the Hass avocados produced;

(3) Owns Hass avocado production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the Hass avocados produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados who share the risk of loss and receive a share of the Hass avocados produced. No other acquisition of legal title to Hass avocados shall be deemed to result in persons becoming eligible producers.

(d) *Hass avocados* means the fruit grown in or imported into the United States of the species *Persea americana* Mill. For the purposes of the initial referendum, the term shall include fresh fruit only.

(e) *Order* means the Hass Avocado Promotion, Research, and Information Order.

(f) *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, a Hass avocado farm 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 and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

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

(h) *Representative period* means the period designated by the Administrator.

(i) *United States*. The term ''United States'' means collectively of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the United States Virgin Islands, Guam, American Samoa, the Republic of the Marshall Islands, and the Federated States of Micronesia.

[67 FR 7264, Feb. 19, 2002; 67 FR 13563, Mar. 25, 2002]

§ 1219.102 Registration.

An eligible producer or importer of Hass avocados, as defined in this subpart, at the time of the referendum and during a representative period, who chooses to vote in any referendum conducted under this subpart, shall register with the referendum agent prior to the voting period, after receiving notice from the referendum agent concerning the referendum under § 1219.104(b). Registration information shall be confidential under § 1219.108.

§ 1219.103 Voting.

(a) Each eligible producer and eligible importer who registers to vote in

the referendum shall be entitled to cast only one ballot in the referendum. However, each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce Hass avocados, in which more than one of the parties is a producer, shall be entitled to cast one ballot in the referendum covering only such producer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate producer or importer, or an administrator, executor, or trustee or an eligible 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 eligible entity, or an administrator, executive, or trustee of an eligible 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) All ballots are to be cast by mail or fax, as instructed by the referendum agent.

§ 1219.104 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

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

(b) Notify producers and importers of the voting period for the referendum and the requirement to register to vote in the referendum at least 30 days in advance by utilizing 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.

(c) Develop the 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.

(d) Develop a list of producers and importers who register to vote.

(e) Mail to registered voters the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order.

(f) 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.

(g) Prepare a report on the referendum.

(h) Announce the results to the public.

§ 1219.105 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. 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.

§ 1219.106 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 invalid under this subpart shall not be counted.

§ 1219.107 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.

§ 1219.108 Confidential information.

The list of registered voters, ballots, and all other information or reports that reveal, or tend to reveal, the identity or vote of voters in the referendum shall be strictly confidential and shall not be disclosed.

§ 1219.109 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 0581–0197.

Subpart C—Rules and Regulations

SOURCE: 70 FR 2758, Jan. 14, 2005, unless otherwise noted.

§ 1219.200 Terms defined.

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Hass Avocado Promotion, Research, and Information Order of this part.

§ 1219.201 Definitions.

Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

§ 1219.202 Exemption for organic Hass avocados.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To obtain this exemption, an eligible Hass avocado producer shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before November 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of paragraph (a) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells Hass avocados. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic Hass avocados—on a form provided by the Board—at any time initially and annually thereafter on or before November 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic Hass avocados bearing

this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

§ 1219.203 Reapportionment of membership.

Pursuant to § 1219.30(c), the positions authorized in § 1219.30(b)(3) are reapportioned as follows: 3 importer members and their alternates.

[71 FR 26823, May 9, 2006]

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

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AUTHORITY: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

Subpart A—Soybean Promotion and Research Order

SOURCE: 56 FR 31049, July 9, 1991, unless otherwise noted.

DEFINITIONS

§ 1220.101 Act.

The term *Act* means the Soybean Promotion, Research, and Consumer Information Act, subtitle E of title XIX, of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law No. 101–624, and any amendments thereto.

§ 1220.102 Board.

The term *Board* means the United Soybean Board established under § 1220.201 of this subpart.

§ 1220.103 Commerce.

The term *commerce* means interstate, foreign, or intrastate commerce.

§ 1220.104 Committee.

The term *Committee* means the Soybean Program Coordinating Committee established under § 1220.213 of this subpart.

§ 1220.105 Consumer information.

The term *consumer information* means information that will assist consumers and other persons in making evaluations and decisions regarding the purchase, preparation, and use of soybeans or soybean products.

§ 1220.106 [Reserved]

§ 1220.107 Cooperator organization.

The term *Cooperator Organization* means the American Soybean Association, or any successor organization to the American Soybean Association, which conducts foreign market development activities on behalf of soybean producers.

§ 1220.108 Department.

Department means the United States Department of Agriculture.

§ 1220.109 Eligible organization.

The term *eligible organization* means any organization which has been certified by the Secretary pursuant to § 1220.203 of this subpart as being eligible to submit nominations for initial membership on the Board.

§ 1220.110 First purchaser.

The term *first purchaser* means—

(a) except as provided in paragraph (b) of this section, any person buying or otherwise acquiring from a producer soybeans produced by such producer; or

(b) In any case in which soybeans are pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the soybeans are forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31095, July 14, 1992]

§ 1220.111 Fiscal period.

The term *fiscal period* means the calendar year or such other annual period as the Board may determine with the approval of the Secretary.

§ 1220.112 Industry information.

The term *industry information* means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the soybean industry, and activities to enhance the image of the soybean industry.

§ 1220.113 Marketing.

The term *marketing* means the sale or other disposition of soybeans or soybean products in any channel of commerce.

§ 1220.114 National nonprofit producer-governed organization.

The term *national nonprofit producer-governed organization* means an organization that—

(a) Is a nonprofit organization pursuant to section 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6)); and

(b) Is governed by a Board of directors of agricultural producers representing soybean producers on a national basis;

§ 1220.115 Net market price.

The term *net market price* means—

(a) except as provided in paragraph (b) of this section, the sales price, or other value received by a producer for soybeans after adjustments for any premium or discount based on grading or quality factors, as determined by the Secretary; or

(b) For soybeans pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, and where the soybeans are forfeited by the producer in lieu of loan repayment, the principal amount of the loan.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31095, July 14, 1992]

§ 1220.116 Part and subpart.

Part means the Soybean Promotion and Research Order and all rules and regulations issued pursuant to the Act and the Order, and the Order itself shall be a ''Subpart'' of such part.

§ 1220.117 Plans and projects.

Plans and Projects means promotion, research, consumer information, and industry information plans, studies, or projects pursuant to § 1220.230.

§ 1220.118 Person.

The term *person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.119 Producer.

The term *producer* means any person engaged in the growing of soybeans in the United States who owns, or who shares the ownership and risk of loss of, such soybeans.

§ 1220.120 [Reserved]

§ 1220.121 Promotion.

The term *promotion* means any action, including paid advertising, technical assistance, and trade servicing activities, to enhance the image or desirability of soybeans or soybean products in domestic and foreign markets,

and any activity designed to communicate to consumers, importers, processors, wholesalers, retailers, government officials, or other information relating to the positive attributes of soybeans or soybean products or the benefits of importation, use, or distribution of soybeans and soybean products.

§ 1220.122 Qualified State Soybean Board.

The term *Qualified State Soybean Board* means a State soybean promotion entity that is authorized by State law and elects to be the Qualified State Soybean Board for the State in which it operates pursuant to § 1220.228(a)(1). If no such entity exists in a State, the term *Qualified State Soybean Board* means a soybean producer-governed entity—

(a) That is organized and operating within a State;

(b) That receives voluntary contributions and conducts soybean promotion, research, consumer information, or industry information programs; and

(c) That meets the criteria, established by the Board and approved by the Secretary, relating to the qualifications of such entity to perform its duties under this part as determined by the Board, and is certified by the Board under § 1220.228(a)(2), with the approval of the Secretary.

§ 1220.123 Referendum.

The term *Referendum* means a referendum, other than referenda defined in § 1220.106 and § 1220.124, to be conducted by the Secretary pursuant to the Act whereby producers shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of producers voting.

§ 1220.124 [Reserved]

§ 1220.125 Research.

The term *research* means any type of study to advance the image, desirability, marketability, production, product development, quality, or functional or nutritional value of soybeans or soybean products, including any research activity designed to identify and analyze barriers to export sales of soybeans and soybean products.

§ 1220.126 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated, the authority to act in the Secretary's stead.

§ 1220.127 Soybean products.

The term *soybean products* means products produced in whole or in part from soybeans or soybean byproducts.

§ 1220.128 Soybeans.

The term *soybeans* means all varieties of Glycine max or Glycine soja.

§ 1220.129 State and United States.

The terms *State* and *United States* include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1220.130 Unit.

The term *unit* shall mean each State, or group of States, which is represented on the Board.

UNITED SOYBEAN BOARD

§ 1220.201 Membership of board.

(a) For the purposes of nominating and appointing producers to the Board, the United States shall be divided into 30 geographic units and the number of Board members from each unit, subject to paragraphs (d) and (e) of this section shall be as follows:

Unit	Number of members
Illinois	4
Iowa	4
Minnesota	4
Indiana	4
Nebraska	4
Ohio	4
Missouri	3
Arkansas	3
South Dakota	3
Kansas	3
Michigan	3
North Dakota	3
Mississippi	2
Louisiana	2
Tennessee	2
North Carolina	2
Kentucky	2
Pennsylvania	2
Virginia	2
Maryland	2
Wisconsin	2
Georgia	1
South Carolina	1

Unit	Number of members
Alabama	1
Delaware	1
Texas	1
Oklahoma	1
New York	1
Eastern Region (Massachusetts, New Jersey, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico)	1
Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska)	1

(b) The Board shall be composed of soybean producers appointed by the Secretary from nominations submitted pursuant to § 1220.203. A soybean producer may only be nominated by the unit in which that soybean producer is a resident or producer.

(c) At the end of each three (3) year period, the Board shall review the geographic distribution of soybean production volume throughout the United States and may recommend to the Secretary a modification of paragraph (e) of this section, to best reflect the geographic distribution of soybean production volume in the United States. The Secretary may amend this subpart to make the changes recommended by the Board in levels of productions used to determine per unit representation. A unit may not, as a result of any modifications under this subsection, lose Board seats to which it is entitled at the time this subpart is initially issued unless its average annual production, as determined under paragraph (e)(6) of this section, declines below the levels required for representation, as specified in paragraphs (e) (1) through (5) of this section.

(d) At the end of each three (3) year period, the Secretary shall review the volume of production (minus the volume of production for which refunds have been paid) of each unit provided representation under paragraph (a) of this section, and shall adjust the boundaries of any unit and the number of Board members from each such unit to conform with the criteria set out in paragraphs (e) (1) through (5) of this section.

(e) The following formula will be used to determine the number of directors for each unit who shall serve on the Board:

(1)(i) Except as provided in paragraph (e)(1)(ii) of this section, each State will be considered as a separate unit.

(ii) States which do not have annual average soybean production equal to or greater than three million (3,000,000) bushels shall be grouped, to the extent practicable, into geographically contiguous units each of which, to the extent practicable, have a combined annual soybean production level which is equal to or greater than three million (3,000,000) bushels and each such unit shall be entitled to at least one representative on the Board.

(2) Each unit that has an annual average soybean production of less than fifteen million (15,000,000) bushels shall be entitled to one representative on the Board.

(3) Each unit which has an annual average soybean production of fifteen million (15,000,000) or more bushels but less than seventy million (70,000,000) bushels shall be entitled to two (2) representatives on the Board.

(4) Each unit which has an annual average soybean production of seventy million (70,000,000) or more bushels but less than two hundred million (200,000,000) bushels shall be entitled to three (3) representatives on the Board.

(5) Each unit which has an annual average soybean production of two hundred million (200,000,000) bushels or more shall be entitled to four (4) representatives on the Board.

(6) For the purposes of this section, average annual soybean production shall be determined by using the average of the production for the State or unit over the five previous years, excluding the year in which production was the highest and the year in which production was the lowest.

(f) [Reserved]

[56 FR 31049, July 9, 1991, as amended at 60 FR 29962, June 7, 1995; 60 FR 58500, Nov. 28, 1995; 62 FR 37489, July 14, 1997; 62 FR 41485, Aug. 1, 1997; 65 FR 63768, Oct. 25, 2000; 68 FR 57327, Oct. 3, 2003; 71 FR 69430, Dec. 1, 2006; 74 FR 62676, Dec. 1, 2009]

§ 1220.202 Term of office.

(a) The members of the Board shall serve for terms of 3 years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years.

(b) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(c) No member shall serve more than three consecutive 3-year terms in such capacity.

§ 1220.203 Nominations.

All nominations for appointments to the Board under § 1220.204 shall be made in the following manner:

(a) After the issuance of this subpart by the Secretary, nominations shall be obtained by the Secretary as specified in paragraphs (a), (b), and (c) of this section from Qualified State Soybean Boards or for initial Board nominations, eligible organizations deemed qualified to nominate pursuant to paragraph (f) of the section. A Qualified State Soybean Board, or for initial Board nominations, an eligible organization shall only submit nominations for positions on the Board representing the unit, as established under § 1220.201, in which such Qualified State Soybean Board operates.

(b) If the Secretary determines that a unit is not represented by a Qualified State Soybean Board or for initial Board nominations, an eligible organization, then the Secretary may solicit nominations from organizations which represent producers in that unit and from producers residing in that unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary.

(c) Where there is more than one State comprising a unit, the Secretary shall take into consideration the nominations submitted by Qualified State Soybean Boards or for initial Board nominations, eligible organizations, within the unit. A caucus may be held in such units for the purpose of collectively submitting nominations to the Secretary. The Secretary shall consider the proportional levels of production in each State comprising the unit when appointing members to the Board representing that unit.

(d) At least two nominations shall be submitted for each position to be filled.

(e) Nominations may be submitted in order of preference and for the initial Board, in order of preference for staggered terms. Should the Secretary reject any nomination submitted and there are insufficient nominations submitted from which appointments can be made, the Secretary may request additional nominations under paragraph (a) or (b) of this section, whichever provision is applicable for such unit.

(f) Any organization authorized pursuant to State law to collect assessments from producers may notify the Secretary of the organization's intent to nominate members to the initial Board for the State or unit, as established under § 1220.201, in which such organization operates and is authorized by State law. Such eligibility shall be based only upon the criteria established pursuant to § 1220.228(a)(1). There shall only be one organization authorized per State pursuant to this section to submit nominations to the initial Board. If no such entity exists in a State, any organization meeting those requirements of § 1220.228(a)(2) may request eligibility to submit nominations.

§ 1220.204 Appointment.

From the nominations made pursuant to § 1220.203, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1220.201.

§ 1220.205 Nominee's agreement to serve.

Any producer nominated to serve on the Board shall file with the Secretary at the time of nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Agree to disclose any relationship with any soybean promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1220.206 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request nominations for a successor pursuant to § 1220.203, and such successor shall be appointed pursuant to § 1220.204.

§ 1220.207 Alternate members.

(a) The Secretary shall solicit, pursuant to the procedures of § 1220.203, nominations for alternate members of the Board.

(b) The Secretary shall appoint one alternate member of the Board for each unit which has only one member pursuant to § 1220.204 and § 1220.205.

(c) Alternate members of the Board may attend meetings of the Board as a voting member upon the following circumstances:

(1) A member of the Board for the unit which the alternate member represents is absent; and

(2) Such member, or in the case of incapacitation or death of the member, a relative, has contacted the appropriate officer of the Board to inform such officer of such absence;

(d) An alternate member of the Board, when attending Board meetings in an official capacity, shall have the rights, duties and obligations of a Board member.

§ 1220.208 Removal.

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed or certified under this part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1220.209 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum.

(b)(1) Except for roll call votes, each member of the Board will be entitled to one vote on any matter put to the Board and the motion will carry if supported by a simple majority of those voting.

(2)(i) If a member requests a roll call vote, except as provided in paragraph (b)(2)(ii) of this section, each unit as established under § 1220.201, shall cast one vote for each percent, or portion of a percent, of the average total amount of assessments remitted to the Board that was remitted from the unit (minus refunds) during each of the three previous fiscal years of the Board under § 1220.223.

(ii)(A) During the first fiscal year of the Board, the percentage used to determine the votes given to a unit will be based on annual average soybean production of the three previous years. If a unit is represented by more than one member, each member representing the unit shall receive an equal percentage of the votes allocated to the unit.

(B) During the second and third year this subpart is in effect, the percentage used to determine the votes given to a unit will be based upon averaging the unit's percentage of annual assessments remitted to the Board (minus refunds).

(iii) Should a member representing a unit not be present, then the other members representing such unit shall vote, on an equal basis if there is more than one member representing the unit present, the number of votes which the absent member would have been entitled to vote.

(iv) A motion will carry on a roll call vote if approved by both a simple majority of all votes cast and a simple majority of all units voting (with the vote of each unit determined by a simple majority of all votes cast by members in that unit).

(3) A member may not cast votes by proxy.

(c) In lieu of a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action upon the concurring votes of a majority of its members, or if a roll call vote is requested, a simple majority of all votes cast and a simple majority of all units voting by mail, telephone, facsimile, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a regular or special meeting of the Board.

(d) On or after the end of the three-year period beginning on the effective

date of this subpart, the Board may recommend to the Secretary changes in the voting procedures of the Board described in paragraph (b) of this section.

§ 1220.210 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.211 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(e) To disseminate information to producers or producer organizations through programs or by direct contact utilizing the public postage system or other systems;

(f) To assign responsibilities relating to budget and program development to the Committee as provided in § 1220.219.

(g) To select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable;

(h) To contract with Qualified State Soybean Boards to implement plans or projects;

(i) To recommend to the Secretary amendments to this subpart; and

(j) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1220.223 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1220.212 Duties.

The Board shall have the following duties:

(a) To meet not less than three times annually, or more often if required for the Board to carry out its responsibilities pursuant to this subpart.

(b) To organize and select from among its members a chairperson, vice chairperson, a treasurer and such other officers as may be necessary.

(c) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board.

(d) To employ or contract for such persons to perform administrative functions as it may deem necessary and define the duties and determine the compensation of each.

(e) To develop and submit to the Secretary for approval, promotion, research, consumer information, and industry information plans or projects.

(f) To prepare, and submit to the Secretary for approval, budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of promotion, research, consumer information, and industry information plans or projects, and also including a description of the proposed promotion, research, consumer information, and industry information programs contemplated therein.

(g) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it.

(h) With the approval of the Secretary, to enter into contracts or agreements with appropriate parties, including national nonprofit producer-

governed organizations, for the development and conduct of activities authorized under § 1220.230 of this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1220.223. Provided, that the Board shall contract with only one national nonprofit producer-governed organization to administer all projects within a program area.

Any such contract or agreement shall provide that:

(1) The contractor shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective only upon approval of the Secretary; and

(3) The contracting party shall keep complete and accurate records of all of its transactions and make periodic reports to the Board of activities conducted pursuant to a contract and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Board and Secretary may audit the records of the contracting party periodically.

(i) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended.

(j) [Reserved]

(k) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may require and to submit a copy of each such audit to the Secretary.

(l) To give the Secretary the same notice of meetings of the Board and committees as is given to members in order that the Secretary, or a representative of the Secretary, may attend such meetings.

(m) To submit to the Secretary such information pursuant to this subpart as may be requested.

(n) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybean and soybean products produced in the United States.

[56 FR 31049, July 9, 1991, as amended at 60 FR 29962, June 7, 1995; 60 FR 58500, Nov. 28, 1995]

SOYBEAN PROGRAM COORDINATING COMMITTEE

§ 1220.213 Establishment and membership.

(a) The Board may establish, with the approval of the Secretary, a Soybean Program Coordinating Committee to assist in the administration of this subpart. The Committee shall consist of 15 members. The Committee shall be composed of 10 Board members elected by the Board and 5 producers elected by the Cooperator Organization.

(b) Board representation on the Committee shall consist of the Chairperson and Treasurer of the Board, and eight additional members duly elected by the Board to serve on the Committee. The eight representatives to the Committee elected by the Board shall, to the extent practicable, reflect the geographic and unit distribution of soybean production.

(c) Cooperator Organization representation on the Committee shall consist of five members elected by the Cooperator Organization Board of Directors. The Cooperator Organization shall submit to the Secretary the names of the representatives elected by the Cooperator Organization to serve on the Committee, the manner in which such election was held, and verify that such representatives are producers. The prospective Cooperator Organization representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any soybean entity or with any organization that has or is being considered for a contractual relationship with the Board. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1220.214 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1220.215 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Cooperator Organization, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to appoint representatives pursuant to § 1220.213 above.

§ 1220.216 Procedure.

(a) Attendance of at least 12 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds (⅔) of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than twelve of its members by mail, telephone, facsimile, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

(c) A member may not cast votes by proxy.

§ 1220.217 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed by the Board for necessary and reasonable expenses incurred by them in the performance of their responsibilities under this subpart.

§ 1220.218 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The Chairperson of the Board shall be Chairperson of the Committee.

(b) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1220.219 Powers of the Committee.

If established by the Board, the Committee may have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of soybeans and soybean products as well as plans or projects for promotion, research, consumer information, and industry information and to make recommendations to the Board regarding such proposals; and

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable.

§ 1220.220 Duties of the Committee.

If established by the Board, the Committee may have the following duties:

(a) To meet and to organize;

(b) To prepare and submit to the Board for approval, budgets on a fiscal period basis of proposed costs of promotion, research, consumer information, and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information, and industry information programs contemplated therein;

(c) To give the Secretary the same notice of meetings of the Committee and its subcommittees as is given to members in order that the Secretary, or the Secretary's representative, may attend such meetings;

(d) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(e) To encourage the coordination of programs of promotion, research, consumer information, and industry information designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products.

EXPENSES AND ASSESSMENTS

§ 1220.222 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary

finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. However, during any fiscal year, expenses incurred by the Board for administrative staff costs and their benefits shall not exceed 1 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year. Such expenses shall be paid from assessments received pursuant to § 1220.223. The administrative expenses of the Board, including the cost of administrative staff, shall not exceed 5 percent of the projected level of assessments, net of projected refunds, of the Board for that fiscal year.

(b) The Board shall reimburse the Secretary, from assessments received pursuant to § 1220.223, for administrative costs incurred after an Order has been submitted to the Department pursuant to section 1968(b) of the Act; Provided, that the Board shall only be required to reimburse the Secretary for one-half (50%) of the costs incurred by the Secretary to conduct the refund referendum relating to continuation of authority to pay refunds.

(c)(1) The Board may, with the approval of the Secretary, authorize a credit to Qualified State Soybean Boards of up to 5 percent of the amount to be remitted to the Board pursuant to § 1220.223 and § 1220.228 of this subpart to offset collection and compliance costs relating to such assessments and for fees paid to State governmental agencies or first purchasers for collection of the assessments where the payment of such fees by the Qualified State Soybean Board is required by State law enacted prior to November 28, 1990.

(2) The portion of the credit authorized in paragraph (c)(1) of this section which compensates Qualified State Soybean Boards for fees paid to State governmental agencies or first purchasers for collection of the assessments where the payment of such fees by the Qualified State Soybean Board is required by State law enacted prior to November 28, 1990:

(i) Shall not exceed one-half of such fees paid to State governmental agencies or first purchasers, and;

(ii) Shall not exceed 2.5 percent of the amount of assessments collected and remitted to the Board.

(3) Except for that portion of the credit issued pursuant to paragraph (c)(2) of this section, credits authorized by paragraph (c)(1) of this section will be included as part of the Board's administrative expenses.

§ 1220.223 Assessments.

(a)(1) Except as prescribed by regulations approved by the Secretary or as otherwise provided in this section, each first purchaser of soybeans shall collect an assessment from the producer, and each producer shall pay such assessment to the first purchaser, at the rate of one-half of one percent (0.5%) of the net market price of the soybeans purchased. Each first purchaser shall remit such assessment to the Board or to a Qualified State Soybean Board, as provided in paragraph (a)(5) of this section.

(2) Any producer marketing processed soybeans or soybean products of that producer's own production, shall remit to a Qualified State Soybean Board or to the Board, as provided in paragraph (a)(5) of this section, an assessment on such soybeans or soybean products at a rate of one-half of one percent (0.5%) of the net market price of the soybeans involved or the equivalent thereof.

(3) In determining the assessment due from each producer under paragraph (a)(1) or (a)(2) of this section, a producer who is contributing to a Qualified State Soybean Board shall receive a credit from the Board for contributions to such Qualified State Soybean Board on any soybeans assessed under this section in an amount not to exceed one-quarter of one percent of the net market price of the soybeans assessed.

(4) In order for a producer to receive the credit provided for in paragraph (a)(3) of this section, the Qualified State Soybean Board or the first purchaser must establish to the satisfaction of the Board that the producer has contributed to a Qualified State Soybean Board.

(5)(i) If the soybeans, for which an assessment is paid, were grown in a State other than the State which is the situs of the first purchaser, the first purchaser that collects the assessment shall remit the assessment and information as to the State of origin of the soybeans to the Qualified State Soybean Board operating in the State in which the first purchaser is located. The Qualified State Soybean Board operating in the State in which the first purchaser is located shall remit such assessments to the Qualified State Soybean Board operating in the State in which the soybeans were grown. If no such Qualified State Soybean Board exists in such State, then the assessments shall be remitted to the Board. The Board, with the approval of the Secretary, may authorize Qualified State Soybean Boards to propose modifications to the foregoing ''State of Origin'' rule to ensure effective coordination of assessment collections between Qualified State Soybean Boards.

(ii)(A) If a producer pledges soybeans grown by that producer as collateral for a loan issued by the Commodity Credit Corporation and if that producer forfeits said soybeans in lieu of loan repayment, the Commodity Credit Corporation shall at the time of the loan settlement, collect from the producer the assessments due based on 0.5 percent of the principal loan amount received by the producer and remit the assessment to the Qualified State Soybean Board in the State in which the soybeans were pledged, or if no Qualified State Soybean Board exists in such State, the Board.

(B) If a producer redeems and subsequently markets soybeans which have been pledged as collateral for a loan issued by the Commodity Credit Corporation, the first purchaser shall collect and remit the assessments due pursuant to paragraph (a)(1) of this section; or if a producer markets such soybeans as processed soybeans or as soybean products, the producer shall remit the assessment pursuant to paragraph (a)(2) of this section.

(iii) Qualified State Soybean Boards and the Board shall coordinate assessment collection procedures to ensure that producers marketing soybeans are required to pay only one assessment per bushel of soybeans and collections are adjusted among States on a mutually agreeable basis.

(b) The collection of assessments pursuant to paragraph (a) of this section, shall commence on and after the date assessments are required to be paid and shall continue until terminated by the Secretary. If the Board is not constituted on the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board, and to hold such assessments until the Board is constituted, then remit such assessments to the Board.

(c)(1) Each person responsible for the collection of assessments under paragraph (a) of this section, shall collect and remit the assessments to the Board or a Qualified State Soybean Board on a monthly basis or as required by State law, but no less than quarterly, unless the Board, with the approval of the Secretary, has specifically authorized otherwise.

(2) Any unpaid assessments due the Board or a Qualified State Soybean Board from a person responsible for remitting assessments to the Board or a Qualified State Soybean Board pursuant to paragraph (a) of this section, shall be increased two percent (2%) each month beginning with the day following the date such assessments were due under this subpart. Any remaining amount due shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(3) The amounts payable pursuant to this section shall be computed monthly on unpaid assessments and shall include any unpaid late charges previously applied pursuant to this section.

(4) For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board or a Qualified State Soybean Board when due, shall be considered to have been payable by the date it would have been due if the report had been filed when due.

(d) Prior to the continuance referendum, the Board, pursuant to procedures approved by the Secretary, shall

ensure that each Qualified State Soybean Board is provided credit in accordance with the provisions of section 1969(n)(1) and subject to section 1969(n)(3) of the Act.

(e) Following the continuance referendum, the Board, pursuant to procedures approved by the Secretary, shall ensure annually that each Qualified State Soybean Board is provided credit in accordance with the provisions of section 1969(n)(2) and subject to section 1969(n)(3) of the Act.

[56 FR 31049, July 9, 1991, as amended at 56 FR 42923, Aug. 30, 1991; 57 FR 31096, July 14, 1992]

§§ 1220.224–1220.227 [Reserved]

§ 1220.228 Qualified State Soybean Boards.

(a)(1) Any soybean promotion entity that is authorized by State statute to collect assessments required by State law from soybean producers may notify the Board of its election to be the Qualified State Soybean Board for the State in which it operates so that producers may receive credit pursuant to § 1220.223(a)(3) for contributions to such organization. Only one such entity may make such election or be qualified pursuant to paragraph (a)(2) of this section. Such entity, upon making such election, agrees to the following:

(i) To conduct activities as defined in § 1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(ii) Provide a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(iii) Collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(iv) Remit to the Board each assessment paid and remitted to it, minus authorized credits issued pursuant to § 1220.222(c) and credits issued to producers pursuant to § 1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines a different date for remittance of assessments;

(v) If the entity is authorized or required to pay refunds to producers, any requests from producers for refunds for contributions to it by the producer following the termination of authority to pay refunds, will be honored by forwarding to the Board that portion of such refunds equal to the amount of credit received by the producer for contributions to it pursuant to § 1220.223(a)(3);

(vi) [Reserved]

(vii) Furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(viii) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(ix)(A) Except as otherwise provided in paragraph (a)(1)(ix)(B) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(B) The prohibition in paragraph (a)(1)(ix)(A) of this section, shall not apply to—

(*1*) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under the Order;

(*2*) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(*3*) The development and recommendation of amendments to this subpart.

(2) If no entity elects to serve as a Qualified State Soybean Board within a State pursuant to paragraph (a)(1) of

this section, any State soybean promotion entity that is organized and operating within a State, and receives assessments or contributions from producers and conducts soybean or soybean product promotion, research, consumer information, or industry information programs, may apply for certification as the Qualified State Soybean Board for such State so that producers may receive credit pursuant to §1220.223(a)(3) for contributions to such organizations. All provisions of this subpart applicable to Qualified State Soybean Boards will be applicable to such entity. The Board shall review such applications for certification and shall make a determination as to the certification of each applicant.

(b) In order for the State soybean entity to be certified by the Board pursuant to paragraph (a)(2) of this section, as a Qualified State Soybean Board, the entity must:

(1) Conduct activities as defined in §1220.230 that are intended to strengthen the soybean industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such State entity will collect assessments paid on soybeans marketed within the State and establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization will remit to the Board each assessment paid and remitted to it, minus credits issued pursuant to §1220.222(c) and authorized credits issued to producers pursuant to §1220.223(a)(3), and other required deductions by the last day of the month following the month in which the assessment was remitted to it unless the Board determines a different date for remittance of assessments;

(5)–(6) [Reserved]

(7) Certify to the Board that it will furnish the Board with an annual report by a certified public accountant or an authorized State agency of all funds remitted to such Board pursuant to this subpart; and

(8) Not use funds it collects pursuant to this subpart to fund plans or projects which make use of any unfair or deceptive acts or practices with respect to the quality, value or use of any product that competes with soybeans or soybean products; and

(9)(i) Except as otherwise provided in paragraph (b)(9)(ii) of this section, funds collected or received by the Qualified State Soybean Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(ii) The prohibition in paragraph (b)(9)(i) of this section, shall not apply to—

(A) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under this subpart;

(B) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof; or

(C) The development and recommendation of amendments to this subpart.

(c) Notwithstanding any other provisions of this subpart, and provided that activities of a Qualified State Soybean Board are authorized under the Act and this subpart, the Board shall not have the authority to:

(1) Establish guidelines, regulations, or rules which would restrict or infringe upon a Qualified State Soybean Board's authority to determine administrative or program expenditure allocations or administrative or program implementation; and

(2) Direct Qualified State Soybean Boards to participate or not participate in program activities or implementation.

(d) The Board shall establish procedures, after an opportunity for public comment and subject to approval of the Secretary, which provide Qualified State Soybean Boards with a right to present information to the Board prior to any determinations relating to nonparticipation as a Qualified State Soybean Board following initial election or

determination as a Qualified State Soybean Board.

[56 FR 31049, July 9, 1991, as amended at 60 FR 58500, Nov. 28, 1995; 61 FR 50694, Sept. 27, 1996; 72 FR 2769, Jan. 23, 2007]

§ 1220.229 Influencing governmental action.

(a) Except as otherwise provided in paragraph (b) of this section, funds collected or received by the Board under this subpart shall not be used in any manner for the purpose of influencing any action or policy of the United States Government, any foreign or State government, or any political subdivision thereof.

(b) The prohibition in paragraph (a) of this section shall not apply to—

(1) The development and recommendation of amendments to this subpart;

(2) The communication to appropriate government officials of information relating to the conduct, implementation, or results of promotion, research, consumer information, and industry information under this subpart; or

(3) Any action designed to market soybeans or soybean products directly to a foreign government or political subdivision thereof.

§ 1220.230 Promotion, research, consumer information, and industry information.

(a) The Board shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans or projects authorized in this subpart. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate promotion, research, consumer information, and industry information activities with respect to soybean and soybean products;

(2) The establishment and conduct of research, and studies with respect to the sale, distribution, marketing and utilization of soybean and soybean products and the creation of new products thereof, to the end that marketing and utilization of soybean and soybean products may be encouraged, expanded, improved or made more acceptable; and

(3) Such other activities as are authorized by the Act and this subpart.

(b) Each plan or project described in paragraph (a) of this section, shall be periodically reviewed or evaluated by the Board to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information, and industry information. If it is found by the Board that any such plan or project does not further the purposes of the Act, then the Board shall terminate such plan or project.

(c) No such plans or projects shall make use of unfair or deceptive acts or practices with respect to the quality, value or use of any competing product. In carrying out any plan or project funded by the Board described in paragraph (a) of this section, no preference shall be given to a brand or trade name of any soybean product without the approval of the Board and the Secretary.

REPORTS, BOOKS, AND RECORDS

§ 1220.241 Reports.

Each producer marketing processed soybeans or soybean products of that producer's own production and each first purchaser responsible for the collection of assessments under § 1220.223 shall be required to report to the Board periodically such information as may be required by the regulations recommended by the Board and approved by the Secretary. Such information may include but not be limited to the following:

(a) The number of bushels of soybeans purchased, initially transferred, or which, in any other manner, is subject to the collection of assessment;

(b) The amount of assessments remitted;

(c) The basis, if necessary, to show why the remittance is less than one-half percent (0.5%) of the net market price per bushel of soybeans purchased multiplied by the number of bushels purchased; and

(d) The date any assessment was paid.

§ 1220.242 Books and records.

(a) Except as provided in paragraph (b) of this section, each person who is subject to this subpart shall maintain

and make available for inspection by the Board or Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued under this part, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

(b) Any producer who plants less than 25 acres of soybeans annually and does not market such soybeans shall not be required to maintain books or records pursuant to this subpart.

§ 1220.243 Confidential treatment.

Except as otherwise provided in the Act, financial or commercial information that is obtained under the Act and this subpart and that is privileged and confidential shall be kept confidential by all persons, including employees and former employees of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting agencies having access to such information, and shall not be available to Board members or any other producers. Only those persons having a specific need for such information in order to effectively administer the provisions of this part shall have access to such information.

MISCELLANEOUS

§ 1220.251 Proceedings after termination.

(a) Upon the termination of this subpart, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property, owned, in the possession of or under the control of the Board, including any unpaid claims or property not delivered or any other claims existing at the time of such termination.

(b) The trustees shall:

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

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to § 1220.212(h);

(3) From time to time account for all receipts and disbursements; and

(4) Deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct, and upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information, or industry information plans or projects authorized pursuant to this subpart.

§ 1220.252 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any rule issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

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

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

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

§ 1220.253 Personal liability.

No member, employee or agent of the Board, including employees, agents or board members of Qualified State Soybean Boards, acting pursuant to authority provided in this subpart, shall be held personally responsible, either

individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts of either commission or omission, of such member or employee, except for acts of dishonesty or willful misconduct.

§ 1220.254 Patents, copyrights, inventions, and publications.

(a) Any patents, copyrights, inventions, or publications developed through the use of funds remitted to the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Upon termination of this subpart, § 1220.251 shall apply to determine disposition of all such property.

(b) Notwithstanding the provisions of paragraph (a) of this section, if patents, copyrights, inventions, or publications are developed by the use of funds remitted to the Board under this subpart. Should patents, copyrights, inventions or publications be developed through the use of funds remitted to the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication.

§ 1220.255 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any Qualified State Soybean Board recognized, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1220.256 Separability.

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

§ 1220.257 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act, Public Law 96–511, is OMB number 0581–0093, except Board member nominee information sheets are assigned OMB number 0505–0001.

[56 FR 31049, July 9, 1991, as amended at 61 FR 50694, Sept. 27, 1996]

Subpart B—Rules and Regulations

SOURCE: 57 FR 29439, July 2, 1992, unless otherwise noted.

DEFINITIONS

§ 1220.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms as appears in subpart A of this part.

§ 1220.302 Exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board or other party as designated by the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the

Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each first purchaser. The first purchaser shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) The exemption will apply at the first reporting period following the issuance of the exemption.

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2759, Jan. 14, 2005]

ASSESSMENTS

§ 1220.310 Assessments.

(a) A 0.5 percent of the net market price per bushel assessment on soybeans marketed shall be paid by the producer of the soybeans in the manner designated in § 1220.311.

(b) If more than one producer shares the proceeds received for the soybeans marketed, each such producer is obligated to pay that portion of the assessments which is equivalent to each producer's proportionate share of the proceeds.

(c) Failure of the first purchaser to collect the assessment on each bushel of soybeans marketed as designated in § 1220.311 shall not relieve the producer of the producer's obligation to pay the assessment to the appropriate Qualified State Soybean Board or the United Soybean Board as required in § 1220.312.

§ 1220.311 Collection and remittance of assessments.

(a) Except as otherwise provided in this section, each first purchaser making payment to a producer for soybeans marketed by a producer shall collect from that producer at the time of settlement of that producer's account an assessment at the rate of 0.5 percent of the net market price per bushel of soybeans marketed and shall be responsible for remitting the assessment to the Qualified State Soybean Board or the United Soybean Board as provided in § 1220.312. The first purchaser shall give to the producer a receipt indicating payment of the assessment. The receipt shall be any document issued by the first purchaser that contains the information requested in § 1220.314(a).

(b) A first purchaser who purchases soybeans pursuant to a contract with a producer, either on a volume basis or on a per acre basis, shall be responsible for remitting the assessment due on soybeans purchased as required in § 1220.312. Such assessment shall be based upon 0.5 percent of the net market price specified or established in the contract and shall be collected at the time of payment to the producer. If the net market price is not specified or established in the contract the assessment shall be based on fair market value as specified in paragraph (c) of this section below.

(c) Any producer marketing processed soybeans or soybean products of that producer's own production either directly or through retail or wholesale outlets shall be responsible for remitting to the Qualified State Soybean Board or the United Soybean Board pursuant to § 1220.312, an assessment on the number of bushels of soybeans

processed or manufactured into soybean products at the rate 0.5 percent of the net market price of the soybeans involved or the equivalent thereof. The assessment shall attach upon date of sale of the processed soybeans or soybean products and shall be based upon the posted county price for soybeans on the date of the sale as posted at the local ASCS office for the county in which the soybeans are grown. The producer shall remit the assessment in the manner provided in § 1220.312.

(d) Any producer marketing processed soybeans or soybean products of that producer's own production shall be responsible for remitting to the Qualified State Soybean Board or the United Soybean Board pursuant to § 1220.312, an assessment on the number of bushels of soybeans processed or manufactured into soybean products at the rate of 0.5 percent of the net market price of the soybeans involved or the equivalent thereof. The assessment shall attach upon the date of final settlement for such processed soybeans or soybean products and shall be based upon the posted county price for soybeans on the date of final settlement as posted at the local ASCS office for the county in which the soybeans are grown. The producer shall remit the assessment in the manner provided in § 1220.312.

(e) A producer delivering soybeans of the producer's own production against a soybean futures contract shall be responsible for remitting an assessment at the rate of 0.5 percent of net market price as specified in settlement documents. The assessment shall attach at the time of delivery and the producer shall remit the assessment due in accordance with § 1220.312.

(f) A producer who forfeits soybeans of that producer's own production which were pledged as collateral on a loan issued by Commodity Credit Corporation shall pay an assessment. The assessment shall attach upon the date the settlement statement is prepared and issued to the producer by the Commodity Credit Corporation and shall be 0.5 percent of the principal amount of the loan for the soybeans as specified by Commodity Credit Corporation in the settlement statement. The Commodity Credit Corporation shall collect the assessment and then remit the assessment due in accordance with § 1220.312.

§ 1220.312 Remittance of assessments and submission of reports to United Soybean Board or Qualified State Soybean Board.

(a) Each first purchaser and each producer responsible for the remittance of assessments shall remit assessments and submit a report of assessments to the Qualified State Soybean Board in the State in which each first purchaser or each producer responsible for the remittance of assessments is located or if there is no Qualified State Soybean Board in such State, then to the United Soybean Board as provided in this section.

(b) First purchasers and producers responsible for remitting assessments shall remit assessments and reports on a monthly or quarterly basis depending on the State or region in which the first purchasers or producers are located. The reporting period for each State and region shall be as follows:

Monthly	Quarterly
Arkansas	Alabama
Iowa	Delaware
Kansas	Florida
Kentucky	Georgia
Michigan	Illinois
Minnesota	Indiana
Missouri	Louisiana
Mississippi	Maryland
North Carolina	North Dakota
Tennessee	Nebraska
Wisconsin	New Jersey
	Ohio
	Oklahoma
	Pennsylvania
	South Carolina
	South Dakota
	Texas
	Virginia
	Eastern Region
	Western Region

(c) *Reports.* Each first purchaser or producer responsible for remitting assessments shall make reports on forms made available by the United Soybean Board or on Qualified State Soybean Board forms which contain the information required in § 1220.241 and are approved by the Board. A first purchaser with multiple facilities or purchasing locations within a State shall have the option to submit a single, consolidated report specifying the combined volume

of soybeans purchased or the net market value of all soybeans purchased from the producers in the State. Reports shall be submitted with assessments due in accordance with the provisions of paragraph (d) of this section.

(d) *Remittances.* Each first purchaser or producer responsible for remitting assessments shall remit all assessments to the Qualified State Soybean Board, its designee, or the United Soybean Board. All assessments shall be remitted in the form of a check or money order payable to the order of the applicable Qualified State Soybean Board or the United Soybean Board and shall be sent to the designated address not later than the last day of the month following the month or quarter in which the soybeans, processed soybeans, or soybean products were marketed and shall be accompanied by the reports required by paragraph (c) of this section. All remittances shall be received subject to collection and payment at par.

(e) *Receipt of Reports and Remittances.* The timeliness of receipt of reports and assessments by the Board or Qualified State Soybean Board shall be based on the applicable postmark date or the date actually received by the Board or the Qualified State Soybean Board whichever is earlier.

[57 FR 29439, July 2, 1992, as amended at 58 FR 40732, July 30, 1993; 60 FR 58500, Nov. 28, 1995; 68 FR 69954, Dec. 16, 2003]

§ 1220.313 Qualified State Soybean Boards.

The following State soybean promotion organizations shall be Qualified State Soybean Boards. First purchasers and producers responsible for remitting assessments located in States which have a Qualified State Soybean Board shall remit assessments accompanied by the required reports to the Qualified State Soybean Board in the State in which the first purchaser or producer responsible for remitting assessments is located.

(1) Alabama Soybean Producers Board

(2) Arkansas Soybean Promotion Board

(3) Delaware Soybean Board

(4) Florida Soybean Advisory Council

(5) Georgia Agricultural Commodity Commission for Soybeans

(6) Illinois Soybean Program Operating Board

(7) Iowa Soybean Promotion Board

(8) Indiana Soybean Development Council, Inc.

(9) Kansas Soybean Commission

(10) Kentucky Soybean Promotion Board

(11) Louisiana Soybean Promotion Board

(12) Maryland Soybean Board

(13) Soybean promotion Committee of Michigan

(14) Minnesota Soybean Research and Promotion Council

(15) Mississippi Soybean Promotion Board

(16) Missouri Soybean Merchandising Council

(17) Nebraska Soybean Development, Utilization, and Marketing Board

(18) New Jersey Soybean Board

(19) North Carolina Soybean Producers Association

(20) North Dakota Soybean Council

(21) Ohio Soybean Council Board of Trustees

(22) Oklahoma Soybean Commission

(23) Pennsylvania Soybean Board

(24) South Carolina Soybean Board

(25) South Dakota Soybean Research and Promotion Council

(26) Tennessee Soybean Promotion Board

(27) Texas Soybean Producers Board

(28) Virginia Soybean Board

(29) Wisconsin Soybean Marketing Board, Inc.

§ 1220.314 Document evidencing payment of assessments.

(a) Each first purchaser responsible for remitting an assessment to a Qualified State Soybean Board or the United Soybean Board is required to give to the producer from whom the first purchaser collected an assessment written evidence of payment of the assessment containing the following information:

(1) Name and address of the first purchaser.

(2) Name of producer who paid assessment.

(3) Number of bushels sold.

(4) Net market price.

(5) Total assessments paid by the producer.

(6) Date.

(7) State in which soybeans were grown.

(b) [Reserved]

§§ 1220.330–1220.332 [Reserved]

Subparts C–E [Reserved]

Subpart F—Procedures To Request a Referendum

SOURCE: 69 FR 13461, Mar. 23, 2004, unless otherwise noted.

DEFINITIONS

§ 1220.600 Act.

Act means the Soybean, Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), and any amendments thereto.

§ 1220.601 Administrator, AMS.

Administrator, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.602 Administrator, FSA.

Administrator, FSA, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1220.603 Farm Service Agency.

Farm Service Agency also referred to as ''FSA'' means the Farm Service Agency of USDA.

§ 1220.604 Farm Service Agency County Committee.

Farm Service Agency County Committee, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1220.605 Farm Service Agency County Executive Director.

Farm Service Agency County Executive Director, also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1220.606 Farm Service Agency State Committee.

Farm Service Agency State Committee, also referred to as ''FSA State Committee,'' means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

§ 1220.607 Farm Service Agency State Executive Director.

Farm Service Agency State Executive Director, also referred to as ''SED,'' means the person employed by the FSA State Committee to execute the policies of the FSA State Committee and to be responsible for the day-to-day operation of the FSA State office, or the person acting in such capacity.

§ 1220.608 Order.

Order means the Soybean Promotion and Research Order.

§ 1220.609 Person.

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

§ 1220.610 Producer.

Producer means any person engaged in the growing of soybeans in the United States who owns or who shares the ownership and risk of loss of such soybeans.

§ 1220.611 Public notice.

Public notice means a notice published in the FEDERAL REGISTER, not later than 60 days prior to the last day of the Request for Referendum period, that provides information regarding the Request for Referendum period. Such notification shall include, but not be limited to explanation of producers'

rights, procedures to request a referendum, the purpose, dates of the Request for Referendum period, location for conducting the Request for Referendum, and eligibility requirements. Additionally, the United Soybean Board is required to provide producers, in writing, this same information during the same time period. Other pertinent information shall also be provided, without advertising expense, through press releases by State and county FSA offices and other appropriate Government offices, by means of newspapers, electronic media, county newsletters, and the like.

§ 1220.612 Representative period.

Representative period means the period designated by the Secretary pursuant to section 1970 of the Act.

§ 1220.613 Secretary.

Secretary means the Secretary of Agriculture of the United States Department of Agriculture (USDA) or any other officer or employee of USDA to whom there has been delegated or to whom there may be delegated the authority to act in the Secretary's stead.

§ 1220.614 Soybeans.

Soybeans means all varieties of glycine max or glycine soja.

§ 1220.615 State and United States.

State and United States include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

PROCEDURES

§ 1220.616 General.

An opportunity to request a referendum shall be provided to U.S. soybean producers to determine whether eligible producers favor the conduct of a referendum and the Request for Referendum shall be carried out in accordance with this subpart.

(a) The opportunity to request a referendum shall be provided at the county FSA offices.

(b) If the Secretary determines, based on results of the Request for Referendum that no less than 10 percent (not in excess of one-fifth of which may be producers in any one State) of all producers have requested a referendum on the Order, a referendum will be held within 1 year of that determination.

(c) If the Secretary determines, based on the results of the Request for Referendum, that the requirements in paragraph (b) of this section are not met, a referendum will not be conducted.

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 589,182.

[69 FR 13461, Mar. 23, 2004, as amended at 74 FR 9049, Mar. 2, 2009]

§ 1220.617 Supervision of the process for requesting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting producers to request a referendum in accordance with this subpart.

§ 1220.618 Eligibility.

(a) *Eligible producers*. Each person who was a producer and provides evidence that they or the producer entity they represent has paid an assessment on soybeans during the representative period is provided the opportunity to request a referendum. Each producer entity is entitled to only one request.

(b) *Proxy Registration*. Proxy registration is not authorized, except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may request a referendum on behalf of that entity. Any individual who requests a referendum on behalf of any producer entity, shall certify that he or she is authorized by such entity to take such action.

(c) *Joint and group interest*. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to make only one request for a referendum; provided, however, that any individual member of a group who is an eligible

producer separate from the group may request a referendum separately.

§ 1220.619 Time and Place for Requesting a Referendum.

(a) The opportunity to request a referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to request a referendum by following the procedures in § 1220.622 during the normal business hours of each county FSA office.

(b) Producers can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office or through an online search of FSA's web site at *www.fsa.usda.gov/pas/default.asp*.

(c) Each eligible person shall request a referendum in the county FSA office where FSA maintains and processes the producer's, corporation's, or other entities administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other legal entity owns or rents land. An individual or authorized representative of a corporation who grows soybeans in more than one county would request a referendum in the county FSA office where the individual or corporation or other entity does most of its business.

§ 1220.620 Facilities.

Each county FSA office will provide:

(a) A polling place that is well known and readily accessible to producers in the county and that is equipped and arranged so that each person can complete and submit their request in secret without coercion, duress, or interference of any sort whatsoever, and

(b) A holding container of sufficient size so arranged that no request can be read or removed without breaking seals on the container.

§ 1220.621 Certification and request form.

Form LS–51–1 shall be used to request a referendum and certify producer eligibility. The form does not require a ''yes'' or ''no'' vote. Individual producers and representatives of other producer entities should read the form carefully. By completing and signing the form, the individual simultaneously certifies eligibility and requests that a referendum be conducted.

§ 1220.622 Certification and request procedures.

(a) To request that a referendum be conducted, each eligible producer shall, during the Request for Referendum period, be provided the opportunity to request a referendum during a specified period announced by the Secretary.

(1) Each eligible producer shall be required to complete form LS–51–1 in its entirety and sign it. The producer must legibly print his/her name and, if applicable, the producer entity represented, address, county, and telephone number. The producer must read the certification statement on form LS–51–1 and sign it certifying that:

(i) The person or the producer entity they represent was a producer of soybeans during the representative period;

(ii) The individual requesting a referendum on behalf of a corporation or other entity is authorized to do so; and

(iii) The individual has submitted only one request for a referendum unless they are also an authorized representative for another eligible corporation or other entity.

(2) The producer, corporation, or other entity must also provide documentation, such as a sales receipt, showing that the producer, corporation, or other entity has paid an assessment on soybeans during the representative period.

(3) Only a completed and signed form LS–51–1 accompanied by documentation showing that soybean assessments were paid during the representative period shall be considered a valid request for a referendum.

(b) To request a referendum, eligible producers may obtain form LS–51–1 in-person, by mail, or by facsimile during the request for referendum period from the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the

opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land. Eligible producers may also obtain form LS–51–1 via the Internet at *http://www.ams.usda.gov/lsmarketing programs*. For those persons who chose to obtain form LS–51–1 via the Internet, the completed form and required documentation must be submitted to the county FSA office where FSA maintains and process the producer's, corporation's, or other entity's administrative farm records. For producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land.

(c) Producers or producer entities may return form LS–51–1 and the accompanying documentation in-person, by mail, or facsimile to the appropriate county FSA office. Form LS–51–1 returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the Request for Referendum period to be considered a valid request. Form LS–51–1 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the Request for Referendum period and must be received in the county FSA office prior to the start of canvassing Form LS 51–1.

(d) Producers who obtain form LS–51–1 in-person at the appropriate FSA county office may complete and return the form the same day, accompanied by documentation, such as a sales receipt, showing that soybean assessments were paid during the representative period.

[69 FR 13461, Mar. 23, 2004, as amended at 74 FR 9049, Mar. 2, 2009]

§ 1220.623 Canvassing requests.

(a) Canvassing of Form LS–51–1 shall take place at the opening of county FSA offices on the 5th business day following the Request for Referendum period. Such canvassing, acting on behalf of the Administrator, AMS, shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the requests and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) The request for referendum should be canvassed as follows:

(1) *Number of eligible requests for a referendum.* Each person who was a producer during the representative period and provides documentation to prove that they paid an assessment will be considered eligible to request a referendum.

(2) *Number of ineligible requests for a referendum.* If FSA cannot determine that a producer is eligible based on the submitted documentation or if the producer fails to submit the required documentation, the producer shall be determined to be ineligible. FSA shall notify ineligible producers in writing as soon as practicable but no later than the 8th business day following the final day of the Request for Referendum period.

(c) *Appeal.* A person declared to be ineligible by FSA can appeal such decision and provide additional documentation to the FSA county office within 5 business days after the postmark date of the letter of notification of ineligibility. FSA will then make a final decision on the producer's eligibility and notify the producer of the decision.

(d) *Number of valid requests for referendum.* A person has been declared eligible and has provided and completed

all of the required information on form LS–51–1.

(e) *Number of invalid requests for a referendum.* An invalid request for referendum includes, but is not limited to the following:

(1) Form LS–51–1 is not signed or all required information has not been provided;

(2) Form LS–51–1 and supporting documentation returned in-person or by facsimile was not received by the last business day of the Request for Referendum period;

(3) Form LS–51–1 and supporting documentation returned by mail was not postmarked by midnight of the final day of the Request for Referendum period;

(4) Form LS–51–1 and supporting documentation returned by mail was not received in the county FSA office prior to canvassing of the ballots;

(5) Form LS–51–1 or supporting documentation is mutilated or marked in such a way that any required information on the form is illegible; or

(6) Form LS–51–1 and supporting documentation not returned to the appropriate county FSA office.

§ 1220.624 Confidentiality.

The names of persons requesting a referendum shall be confidential and may not be divulged except as the Secretary may direct.

§ 1220.625 Counting requests.

(a) The requests for a referendum shall be counted by county FSA offices on the same day as the requests are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the Request for Referendum period.

(b) Requests for a referendum shall be counted as follows:

(1) Total number of producers who returned a Request for Referendum form LS–51–1;

(2) Number of ineligible producers requesting a referendum;

(3) Number of eligible producers requesting a referendum;

(4) Number of valid requests for a referendum; and

(5) Number of invalid requests for a referendum.

§ 1220.626 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event later than 18th business day following the final day of the specified period, have prepared and certified the county summary of requests on a form provided by the Administrator, FSA. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1220.627 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the Request for Referendum period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

§ 1220.628 Results of the request for referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS shall tabulate the results of the Request for Referendum. USDA will issue an official press release announcing the results of the Request for Referendum and publish the same results in the FEDERAL REGISTER. In addition, USDA will post the official

results at the following Web site: ''*http://www.ams.usda.gov/lsmarketingprograms*''.

Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

[69 FR 13461, Mar. 23, 2004, as amended at 74 FR 9049, Mar. 2, 2009]

§ 1220.629 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the ''Request for Soybean Referendum,'' all of the form LS–51–1's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of the FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

§ 1220.630 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Sorghum Promotion, Research, and Information Order

DEFINITIONS

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Subparts B–E [Reserved]

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Subpart A—Sorghum Promotion, Research, and Information Order

DEFINITIONS

§ 1221.1 Act.

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

§ 1221.2 Board.

Board or *Sorghum Promotion, Research, and Information Board* means the administrative body established pursuant to § 1221.100, or such other name as recommended by the Board and approved by the Secretary.

§ 1221.3 Calendar year.

Calendar year means the 12-month period from January 1 through December 31.

§ 1221.4 Certified organization.

Certified organization means any organization that has been certified by the Secretary pursuant to this part as eligible to submit nominations for membership on the Board.

§ 1221.5 Conflict of interest.

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

§ 1221.6 Crop year.

Crop year means the time period by which the USDA reports crop production for sorghum and is indicated by the calendar year in which sorghum is normally harvested.

§ 1221.7 Customs.

Customs means the U.S. Customs and Border Protection of the U.S. Department of Homeland Security.

§ 1221.8 Department.

Department means the United States Department of Agriculture or any officer or employee of the USDA to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1221.9 First handler.

First handler means the first person who buys or takes possession (excluding a common or contract carrier of sorghum owned by another) of more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage from producers in a calendar year for marketing. The term first handler includes a producer who markets sorghum of the producer's own production directly to consumers. In any case in which sorghum is pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program and the sorghum is forfeited by the producer in lieu of loan repayment, the Commodity Credit Corporation will be considered a first handler.

§ 1221.10 Fiscal period.

Fiscal period means the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Board and approved by the Secretary.

§ 1221.11 Handle.

Handle means to engage in the receiving or acquiring of sorghum and in

the shipment (except as a common or contract carrier of sorghum owned by another) or sale of sorghum, or other activity causing sorghum to enter the current of commerce.

§ 1221.12 Harvest.

Harvest means combining or threshing sorghum for grain and/or severing the stalks from the land with mechanized equipment.

§ 1221.13 Importer.

Importer means any person importing more than 1,000 bushels of grain sorghum; or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage into the United States in a calendar year as a principal or as an agent, broker, or consignee of any person who produces or purchases sorghum outside of the United States for sale in the United States, and who is listed as the importer of record for such sorghum.

§ 1221.14 Information.

Information means information and programs that are designed to develop new markets and marketing strategies; increase market efficiency; enhance the image of sorghum on a national or international basis; and assist producers in meeting their conservation objectives. These include, but are not exclusive to:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of sorghum;

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the sorghum industry, and activities to enhance the image of the sorghum industry.

§ 1221.15 Market.

Market means to sell or otherwise dispose of sorghum into intrastate, interstate, or foreign commerce by buying, distributing, or otherwise placing sorghum into commerce.

§ 1221.16 Net market price.

Net market price means the sales price, or other value, per volumetric unit, received by a producer for sorghum after adjustments for any premium or discount.

§ 1221.17 Net market value.

Net market value means:

(a) Except as provided in paragraph (b)and (c) of this section, the value found by multiplying the net market price by the appropriate quantity of the volumetric units or the minimum value in a production contract received by a producer for sorghum after adjustments for any premium or discount.

(b) For imported sorghum, the total value paid by the importer for the sorghum as reported on the appropriate Customs form; or

(c) For sorghum pledged as collateral for a loan issued under any Commodity Credit Corporation price support loan program, the principal amount of the loan.

§ 1221.18 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1221.19 Part and subpart.

Part means the Sorghum Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

§ 1221.20 Person.

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

§ 1221.21 Producer.

Producer means any person who is engaged in the production and sale of sorghum in the United States and who owns, or shares the ownership and risk of loss of, the sorghum.

§ 1221.22 Production.

Production, as used in § 1221.100, means:

(a) for the purpose of establishing the initial Board in paragraphs (a), (b), (c), (d), and (e) of § 1221.100, the volume of grain sorghum produced during the last 5 crop years, excluding the high and low years, and

(b) For the purpose of reapportionment in paragraphs (e) and (f) of § 1221.100, the total assessments collected by the Board during the last 5 crop years, excluding the high and low years.

§ 1221.23 Promotion.

Promotion means any action taken to present a favorable image of sorghum to the public and the end-user industry for the purpose of improving the competitive position of sorghum and stimulating the sale of sorghum. This includes paid advertising and public relations.

§ 1221.24 Qualified sorghum producer organization.

Qualified sorghum producer organization means a qualified State-legislated sorghum promotion, research, and education commission or organization, approved by the Secretary. For States without a qualified State-legislated sorghum promotion, research, and education commission or organization, qualified sorghum producer organization means any qualified organization that has the primary purpose of representing sorghum producers, has sorghum producers as members, and that is approved by the Secretary.

§ 1221.25 Referendum.

Referendum means a referendum conducted by the Secretary pursuant to the Act whereby producers and importers are provided the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting.

§ 1221.26 Research.

Research means any type of test, study, or analysis designed to advance the knowledge, image, desirability, use, marketability, production, product development, or quality of sorghum, including, but not limited to, research relating to yield, nutritional value, cost of production, new product development, inbred and hybrid development, nutritional value, health research, and marketing of sorghum.

§ 1221.27 Secretary.

Secretary means the Secretary of Agriculture of the United States, 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.

§ 1221.28 Sorghum.

Sorghum means any harvested portion of *Sorghum bicolor* (L.) Moench or any related species of the genus Sorghum of the family Poaceae. This includes, but is not limited to, grain sorghum (including hybrid sorghum seeds, inbred sorghum line seed, and sorghum cultivar seed), sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage.

§ 1221.29 State.

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

§ 1221.30 Suspend.

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

§ 1221.31 Terminate.

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

§ 1221.32 United States.

United States or *U.S.* means collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

SORGHUM PROMOTION, RESEARCH, AND INFORMATION BOARD

§ 1221.100 Establishment and representation.

There is hereby established a Sorghum Promotion, Research, and Information Board, hereinafter called the Board. Representation includes, but is not limited to, fixed State seats determined by total production with at-large seats to allow representation from a broad geographical area. The Board shall initially be composed of 13 representatives, with the maximum number of producers from one State limited to 6, appointed by the Secretary from nominations as follows:

(a) The largest production State based on total production shall have 5 sorghum producers to serve as representatives.

(b) The second largest production State based on total production shall have 3 sorghum producers to serve as representatives.

(c) The third largest production State based on total production shall have one sorghum producer to serve as a representative.

(d) There shall be 4 sorghum producers to serve as at-large national representatives with at least two representatives appointed from States not described in paragraphs (a), (b), and (c) of this section.

(e) If the value of assessments on imported sorghum reaches or exceeds the production of the third largest sorghum production State, there shall be one importer to serve as a representative plus an additional at-large national representative, with the maximum number of producers from one State being increased from six to seven.

(f) At least once every 5 years, the Board will review the geographical distribution of production of sorghum in the United States, the production of sorghum in the United States, and the value of assessments on sorghum imported into the United States. The review will be based on Board assessment records and statistics from the USDA. If warranted, the Board may recommend to the Secretary that representation on the Board be altered to reflect any changes in geographical distribution of domestic sorghum production. If, in the review, the Board determines that the value of assessments on sorghum imported into the United States exceeds 15 percent of the production of sorghum, the Board shall recommend to the Secretary that the nomination procedures and appointments to the Board be altered as necessary or appropriate to facilitate the equitable representation of importers on the Board.

§ 1221.101 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations for State-specific and at-large national seats shall be obtained by the Secretary from eligible organizations certified under § 1221.107. Certified eligible organizations representing producers in a State, or when making nominations for at-large seats, shall submit to the Secretary at least two nominees for each vacant seat. If the Secretary determines that a State is not represented by a certified eligible organization, then the Secretary may solicit nominations from other organizations or other persons residing in the State.

(b) If so required pursuant to § 1221.100(f), at least two nominations for the importer representative shall be submitted by the Board to the Secretary.

(c) After the establishment of the initial Board, the Secretary shall announce when a vacancy does or will exist. Nominations for subsequent Board representatives shall be submitted to the Secretary not less than 90 days prior to the expiration of the terms of the representatives whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to section 1221.105.

(d) When there is more than one certified eligible organization representing a State or when the Secretary solicits nominations from organizations and persons residing in that State, or when eligible certified organizations are nominating persons for at-

large positions, eligible certified organizations may caucus and jointly nominate two qualified producers for each position on the Board for which a representative is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that State, or to fill an at-large position.

§ 1221.102 Nominee's agreement to serve.

Any producer or person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any sorghum promotion entity or with any organization that has or is being considered for a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

§ 1221.103 Appointment.

From the nominations made pursuant to § 1221.101, the Secretary shall appoint the representatives of the Board on the basis of representation provided in § 1221.100.

§ 1221.104 Term of office.

(a) The term of office for the representatives of the Board shall be three years, except for the initial term, pursuant to paragraph (c) of this section.

(b) Representatives may serve a maximum of 2 consecutive 3-year terms.

(c) When the Board is first established, the Secretary shall establish staggered terms as follows:

(1) Largest Production State—2 representatives shall serve a 2-year term, 1 representative shall serve a 3-year term, and 2 representatives shall serve a 4-year term.

(2) Second Largest Production State—1 representative shall serve a 2-year term, 1 representative shall serve a 3-year term, and 1 representative shall serve a 4-year term.

(3) Third Largest Production State—The representative shall serve a 3-year term.

(4) At-large national—1 representative shall serve a 2-year term, 2 representatives shall serve a 3-year term, and 1 representative shall serve a 4-year term.

(5) States with multiple representatives shall have their staggered terms assigned by the Secretary. At-large national representatives shall also have their staggered terms assigned by the Secretary.

(6) Representatives serving initial terms of 2 or 4 years shall be eligible to serve a single term of 3 years after their initial 2- or 4-year term.

(d) Each representative shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

(e) Any successor appointed pursuant to § 1221.105 serving 1 year or less may serve two consecutive 3-year terms.

§ 1221.105 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, a successor for the unexpired term of such representative shall be appointed by the Secretary pursuant to § 1221.103 from the most recent list of nominations for the position pursuant to § 1221.101 or the Secretary shall request nominations for a successor pursuant to § 1221.101, except that said nomination and replacement shall not be required if an unexpired term is less than 6 months.

§ 1221.106 Removal.

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in an act of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be a detriment to the purposes of the Act.

§ 1221.107 Certification of organizations.

(a) The eligibility of State, regional, or national organizations to participate in making nominations for membership on the Board shall be certified by the Secretary. Those organizations that may seek certification include:

(1) State-legislated sorghum promotion, research, and information organizations;

(2) Organizations whose primary purpose is to represent sorghum producers within a State, region, or at the national level; or,

(3) Organizations that have sorghum producers as members.

(b) Such eligibility shall be based, in addition to other information, upon a report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) The geographic territory covered by the organization's active membership;

(2) The nature and size of the organization's active membership, proportion of active membership accounted for by producers, a map showing the sorghum producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county;

(3) The extent to which the sorghum producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(c) The primary consideration in determining the eligibility of an organization shall be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its participation in the nomination of State specific and national at-large members to the Board. Any sorghum producer organization found eligible by the Secretary under this section shall be certified by the Secretary, and the Secretary's determination as to eligibility shall be final.

§ 1221.108 Procedure.

(a) At a Board meeting, it will be considered a quorum when a simple majority of the voting representatives are present.

(b) At the start of each fiscal period, the Board will approve a chairperson, vice chairperson, and secretary/treasurer who will conduct meetings throughout that period.

(c) All Board representatives and the Secretary or the Secretary's designee will be notified at least 30 days in advance of all Board and committee meetings, unless an emergency meeting is declared.

(d) Each voting representative of the Board will be entitled to one vote on any matter put to the Board, and the motion will carry if supported by a simple majority of the total votes of the Board representatives present at the meeting.

(e) It will be considered a quorum at a committee meeting when a simple majority of those assigned to the committee are present at the meeting. Committees may consist of individuals other than Board representatives, and such individuals may vote in committee meetings. Committee members shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(f) In lieu of voting at a properly convened meeting and, when in the opinion of the chairperson of the Board such action is considered necessary, the Board may take action if supported by a simple majority of the Board representatives by mail, telephone, electronic mail, facsimile, or any other means of communication. In that event, all representatives must be notified and provided the opportunity to vote. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

All telephone votes shall be confirmed promptly in writing. All votes shall be recorded in Board minutes.

(g) There shall be no voting by proxy.

(h) The chairperson shall be a voting representative.

(i) The organization of the Board and the procedures for conducting meetings of the Board shall be in accordance with its bylaws, which shall be established by the Board and approved by the Secretary.

§ 1221.109 Compensation and reimbursement.

The representatives of the Board shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Board, incurred by them in the performance of their duties as Board representatives.

§ 1221.110 Powers and duties.

The Board shall have the following powers and duties:

(a) To administer the Order in accordance with its terms and conditions and to collect assessments;

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

(c) To meet not less than annually, and organize, and select from among the representatives of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines appropriate;

(d) To employ persons, other than the representatives, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(e) To develop programs, plans, and projects, and enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs, plans, or projects of research, information, or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that: Any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and, make such other reports available as the Board or the Secretary considers relevant. Furthermore, any 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) 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;

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

(4) 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.

(f) To prepare and submit for approval of the Secretary fiscal period budgets in accordance with § 1221.112;

(g) To maintain such records and books 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;

(h) To cause its books to be audited by a competent auditor at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary;

(i) To give the Secretary the same notice of Board and committee meetings as is given to representatives in order that the Secretary's representative(s) may attend such meetings;

(j) To act as intermediary between the Secretary and any producer, first handler or importer;

(k) To furnish to the Secretary any information or records that the Secretary may request;

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

(m) To recommend to the Secretary such amendments to the Order as the Board considers appropriate; and with the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart;

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, consumer information, evaluation, and industry information designed to strengthen the sorghum industry's position in the marketplace; maintain and expand existing markets and uses for sorghum; and to carry out programs, plans, and projects designed to provide maximum benefits to the sorghum industry;

(o) To provide not less than annually a report to producers and importers accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request; and

(p) To invest funds in accordance with § 1221.115.

§ 1221.111 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 is 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, other than recommending to the Secretary amendments to this part; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the Order that is false or misleading or disparaging to another agricultural commodity.

EXPENSES AND ASSESSMENTS

§ 1221.112 Budget and expenses.

(a) Prior to the beginning of each fiscal period, and as may be necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this subpart. 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 year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

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

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

(c) Subject to this section, any amendment or addition to an approved budget that increases the budget must be approved by the Secretary. Shifts of funds that do not result in an increase in the Board's approved budget and that are consistent with this subpart and the Board's governing bylaws need not have prior approval by the Secretary.

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

(e) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the

Board shall be expended only for start-up costs and capital outlays and are limited to the first fiscal period of operation of the Board.

(f) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects in accordance with the Order. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(g) In accordance with § 1221.118(a), the Board shall deposit funds in a refund escrow account and refrain from allocating this amount for expenditure until the Order is approved by the required referendum except as provided for in § 1221.118.

(h) The Board shall allocate an appropriate amount each year to allow for payment of future referendums.

(i) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(j) The Board shall determine annually an allocation amount no less than 15 percent but no more than 25 percent of the total assessments collected on all sorghum available for any fiscal period, less the expenses pursuant to paragraph (i), for use by qualified sorghum producer organizations pursuant to § 1221.128 for State programs of generic promotion, research, and information. Amounts allocated by the Board for State generic promotion, research, and information programs will be based on requests submitted to the Board by qualified sorghum producer organizations when it is determined that these requests meet the goals and objectives stated in the Act and Order. The request shall include detailed programs, plans, or projects with budgets. Qualified sorghum producer organizations shall not submit requests for State generic promotion, research, and information programs that exceed the annual allocation amount determined by the Board which shall be the product of:

(1) The State's proportional contribution based on reports submitted by first handlers pursuant to § 1221.124(a) to total assessments remitted on all sorghum for the previous fiscal period; multiplied by

(2) The total assessments collected on all sorghum for the previous fiscal period less expenses pursuant to paragraph (i) of this section.

(k) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal period an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal period except for the initial fiscal period. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

(l) The Board shall allocate all other funds available for any fiscal period, to the extent practicable, subject to paragraphs (g), (h), (i), (j), and (k) of this section on programs, plans, or projects, as provided for in § 1221.121.

(m) The Board shall determine annually the allocation of total funds pursuant to this section, with the approval of the Secretary.

§ 1221.113 Financial statements.

(a) As requested by the Secretary, the Board shall prepare and submit financial statements to the Secretary on a monthly basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, fiscal period-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Board shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal period to which it applies.

§ 1221.114 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal period excess funds in a reserve so established, *provided* that funds in the reserve shall not exceed one fiscal period's anticipated expenses.

§ 1221.115 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency of the United States; general obligations of any State or any political subdivision of a State; interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve system; or obligations that are fully guaranteed as to principal and interest by the United States.

§ 1221.116 Assessments.

(a) The funds to cover the Board's expenses shall be paid from assessments on producers and importers, donations from any person not subject to assessments under this Order, and other funds available to the Board and subject to the limitations contained therein.

(b) First handlers of domestic sorghum shall be responsible for collecting assessments from producers on all domestically handled sorghum. This includes sorghum of the first handler's own production. Grain pledged as collateral for a Commodity Credit Corporation price support loan program shall be considered handled sorghum. A first handler shall not collect an assessment on sorghum from a producer when said producer presents documentation demonstrating that an assessment has previously been collected on said sorghum.

(c) The following assessment rates for sorghum shall apply:

(1) Grain sorghum shall be initially assessed at a rate of 0.6 percent of net market value received by the producer pursuant to paragraph (e) of this section; and

(2) Sorghum forage, sorghum hay, sorghum haylage, sorghum billets, and sorghum silage shall be initially assessed at a rate of 0.35 percent of net market value received by the producer pursuant to paragraph (e) of this section.

(d) Importers of sorghum shall pay an assessment to the Board through Customs on sorghum imported into the United States. The following apply to imported sorghum:

(1) The assessment rates for imported sorghum shall be the same or equivalent to the rates for sorghum produced in the United States.

(2) The import assessment shall be uniformly applied to imported sorghum that is identified by the numbers 1007.00.0020 and 1007.00.0040 in the Harmonized Tariff Schedule of the United States.

(3) The assessments due on imported sorghum shall be paid when the sorghum enters the United States.

(4) If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The Board will review the assessment rates and may make recommendations to modify the assessment rates to the Secretary. Assessment rates may be raised or lowered no more than 0.2 percent of net market value received by producers and importers in any one calendar year. The maximum assessment rate cannot exceed 1 percent of the net market value received by producers and importers.

(f) Each person responsible for collecting assessments under paragraph (b) of this section shall remit the amount due to the Board in such a manner as required by regulations recommended by the Board and prescribed by the Secretary.

(g) Any unpaid assessment due to the Board pursuant to this section shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a later date than the date prescribed by this subpart because of a person's failure to timely submit a report to the Board shall be considered to have been payable by the date it would have been due if the report had been filed timely. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board.

(h) An additional charge shall be imposed on any person subject to a late payment charge in the form of interest on the outstanding portion of any

amount for which the person is liable. The rate of interest shall be prescribed by the Secretary.

(i) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

(j) The Board may authorize other organizations to collect assessments on its behalf with the approval of the Secretary.

(k) The collection of assessments pursuant to this section shall begin with respect to sorghum handled on or after the effective date established by the Secretary and shall continue until terminated or suspended by the Secretary.

(l) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments, if the Board is not in place or is otherwise unable to develop such rules and regulations.

(m) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in §§1221.124 and 1221.125 shall be mailed to the location designated by the Board.

§ 1221.117 Exemptions.

(a) Any importer of less than and including 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage per calendar year may claim an exemption from the assessment required under § 1221.116.

(b) An importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. An importer shall certify that the importer will import less than and including 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the sorghum was actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt sorghum and, in the case of importers, proof of payment of assessments.

(g) A producer or importer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces or imports only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (m) of this section; and is not, or does not import products from, a split operation shall be exempt from the payment of assessments.

(h) To apply for an exemption under this section, the applicant shall submit the request to the Board or other party as designated by the Board, on a form provided by the Board, at any time initially and annually thereafter on or before January 1 as long as the applicant continues to be eligible for the exemption.

(i) The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of

1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(j) If the applicant complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the applicant. The Board will have 30 days from the date of receiving the request to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(k) The producer or importer shall provide a copy of the Certificate of Exemption to each first handler. The first handler shall maintain records showing the name and address of the exempt producer or importer and the exemption number assigned by the Board.

(l) The exemption will apply at the first reporting period following the issuance of the exemption.

(m) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer or importer from exemption under this section, except that producers or importers who produce or import both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR Part 205, provided all other criteria are met.

§ 1221.118 Refund escrow accounts.

(a) The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected by the Board during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum by ten percent (10 percent).

(b) Upon failure of the required referendum, the Board shall pay refunds of assessments to eligible persons requesting refunds during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

(d) If the Order is approved by the required referendum conducted under § 1221.130 then:

(1) The escrow account shall be closed; and

(2) The funds shall be available to the Board for disbursement under § 1221.112.

§ 1221.119 Refunds.

Any producer or importer from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart through the announcement of the results of the required referendum, upon failure of the required referendum shall have the right to receive from the Board a refund of such assessment, or a prorated share thereof, upon submission of proof satisfactory to the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

§ 1221.120 Procedure for obtaining a refund.

Upon failure of the required referendum, each producer or importer who paid an assessment pursuant to this subpart during the period beginning on the effective date of the Order

and ending on the date the required referendum results are announced may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations recommended by the Board and prescribed by the Secretary:

(a) A producer or importer shall obtain a Board-approved refund application form from the Board. Such forms may be obtained by written request to the Board and the request shall bear the producer's or importer's signature or properly witnessed mark.

(b) Any producer or importer requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer or importer but no later than the date the results of the required referendum are announced by the Secretary. The refund application shall show:

(1) Producer's or importer's name and address;

(2) Name and address of the person who collected applicant's assessment;

(3) Number of bushels or tons of sorghum on which a refund is requested;

(4) Total amount of refund requested;

(5) Date or inclusive dates on which assessments were paid; and

(6) The producer's or importer's signature or properly witnessed mark.

(c) The documentation provided pursuant to § 1221.125(b) to the producer by the first handler responsible for collecting an assessment pursuant to this subpart, or a copy thereof, or such other evidence deemed satisfactory to the Board, shall accompany the producer's refund application. An importer must submit documentation showing that the assessment was paid along with a copy of the appropriate Customs form stating the net market value of the sorghum.

(d) The Board shall initiate payment of refund requests, or pay a prorated share thereof, within 90 days of the date the results of the required referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1221.119.

PROMOTION, RESEARCH, AND INFORMATION

§ 1221.121 Programs, plans, and projects.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any program, plan, or project authorized under this subpart. Such programs, plans, or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs for promotion, research, and information, including consumer and industry information, with respect to sorghum; and

(2) The establishment and conduct of research with respect, but not limited to: The yield, use, nutritional value and benefits, sale, distribution, and marketing of sorghum, and the creation of new products thereof, to the end that the marketing and use of sorghum may be encouraged, expanded, improved, or made more acceptable; and to advance the image, desirability, or quality of sorghum.

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

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Board to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Board that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Board shall terminate such program, plan, or project.

(d) No program, plan, or project including advertising shall be false or misleading or disparaging to another agricultural commodity. Sorghum of all origins shall be treated equally.

§ 1221.122 Independent evaluation.

Pursuant to the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), the Board shall, not less often than every five years, authorize

and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other 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 paragraph.

§ 1221.123 Patents, copyrights, inventions, trademarks, information, publications, and product formulations.

(a) Any patents, copyrights, inventions, trademarks, information, publications, or product formulations developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government, as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, inventions, trademarks, information, publications, or product formulations, inure to the benefit of the Board; shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board; and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1221.132 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions, trademarks, information, publications, or product formulations be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions, trademarks, information, publications, or product formulations shall be determined by agreement between the Board and the party contributing funds towards the development of such patents, copyrights, inventions, trademarks, information, publications, or product formulations in a manner consistent with paragraph (a) of this section.

REPORTS, BOOKS, AND RECORDS

§ 1221.124 Reports.

(a) Each first handler, on a State-by-State basis, will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of bushels or tons of domestic sorghum within the State that were marketed to the first handler;

(2) Number of bushels or tons of domestic sorghum within the State on which an assessment was paid;

(3) The amount of assessments remitted on sorghum within the State;

(4) Date that any assessments were paid within the State;

(5) The explanation, if necessary, to show why the remittance is less than the applicable assessment rate multiplied by the net market price multiplied by the number of bushels or tons within the State that were marketed to the first handler; and

(6) The first handler's tax identification number.

(b) Each importer will be required to provide to the Board periodically such information as may be required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of bushels or tons of sorghum imported;

(2) Number of bushels or tons of imported sorghum on which an assessment was paid;

(3) The amount of assessments remitted;

(4) Date that any assessments were paid;

(5) The explanation, if necessary, to show why the remittance is less than the applicable assessment rate multiplied by the net market value; and

(6) The importer's tax identification number.

§ 1221.125 Books and records.

(a) Each first handler, producer, or importer subject to this subpart shall maintain and make available during normal business hours for inspection By employees or agents of the Board or the Secretary such books and records as are necessary to carry out the provisions of this part, including records necessary to verify any required reports. Such records shall be maintained for at least 2 years beyond the fiscal period of their applicability.

(b) Each first handler responsible for collecting assessments pursuant to this subpart is required to give the producer from whom the assessment was collected, written evidence of payment of the assessment paid pursuant to this subpart. Such written evidence serving as a receipt shall include, but not be limited to, the following information:

(1) Name and address of the first handler,

(2) Name of producer who paid the assessment,

(3) Total number of bushels or tons of sorghum on which the assessment was paid,

(4) Total assessment paid by the producer,

(5) Date on which assessments were paid, and

(6) Such other information as the Board, with the approval of the Secretary, may require.

§ 1221.126 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, subpart, or any regulation issued under the Act. In addition, the Secretary may authorize the use, under this part, of information regarding producers, first handlers, or importers, that is accumulated under laws or regulations other than the Act or regulations issued under the Act.

§ 1221.127 Confidential treatment.

All information obtained from books, records, or reports under the Act and this part shall be kept confidential by all persons, including all employees and former employees of the Board, all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information. Such information shall not be available to Board representatives, first handlers, producers, or importers. Only those persons having a specific need for such information to effectively administer the provisions of this subpart shall have access to such information. Only such information so obtained as the Secretary deems relevant shall be disclosed by them, and then only in a judicial proceeding or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

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

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

QUALIFICATION OF SORGHUM PRODUCER ORGANIZATIONS

§ 1221.128 Qualification.

(a) Organizations receiving qualification from the Secretary will be entitled to submit requests for funding to the Board pursuant to § 1221.112(j). Only one sorghum producer organization per State may be qualified.

(b) State-legislated sorghum promotion, research, and information organizations may request qualification and will be considered first for qualification by the Secretary.

(c) If a State-legislated sorghum promotion, research, and information organization does not elect to seek qualification from the Secretary within a specified time period as determined by the Secretary, or does not meet eligibility requirements as specified by the Secretary, then any State sorghum producer organization whose primary purpose is to represent sorghum producers within a State, or any other State organization that has sorghum producers as part of its membership, may request qualification.

(d) Qualification shall be based, in addition to other available information, upon a factual report submitted by the organization that shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(1) The geographic territory covered by the organization's active membership;

(2) The nature and size of the organization's active membership, proportion of active membership accounted for by producers, a map showing the sorghum-producing counties in which the organization has active members, the volume of sorghum produced in each such county, the number of sorghum producers in each such county, and the size of the organization's active sorghum producer membership in each such county;

(3) The extent to which the sorghum producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organizations operating funds are derived;

(6) The functions of the organization; and

(7) The ability and willingness of the organization to further the purpose and objectives of the Act.

(e) The primary consideration in determining the eligibility of an organization shall be whether its sorghum producer membership consists of a sufficiently large number of sorghum producers who produce a relatively significant volume of sorghum to reasonably warrant its qualification to submit requests for funding to the Board. Any sorghum producer organization found eligible by the Secretary under this section will be qualified by the Secretary, and the Secretary's determination as to eligibility shall be final.

MISCELLANEOUS

§ 1221.129 Right of the Secretary.

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

§ 1221.130 Referenda.

(a) For the purpose of ascertaining whether the persons subject to this part favor the continuation, suspension, or termination of this part, the Secretary shall conduct a referendum among persons subject to assessments under § 1221.116 who, during a representative period determined by the Secretary, have engaged in the production or importation of sorghum.

(1) The referendum shall be conducted not later than 3 years after assessments first begin under this part.

(2) This part will be approved in a referendum if a majority of those persons voting vote for approval.

(b) The Secretary shall conduct a subsequent referendum:

(1) Not later than 7 years after assessments first begin under this part;

(2) At the request of the Board; or

(3) At the request of 10 percent or more of the sorghum producers and importers eligible to vote to determine if the persons favor the continuation, suspension, or termination of this part.

(c) The Secretary may conduct a referendum at any time to determine whether the continuation, suspension or termination of this part or a provision of this part is favored by sorghum producers and importers eligible to vote.

(d) The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct referenda.

(e) A referendum conducted under this section with respect to this part shall be conducted in the manner determined by the Secretary to be appropriate.

§ 1221.131 Suspension or termination.

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

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is approved or favored by a majority of the producers and importers voting who, during a representative period determined by the Secretary, have been engaged in the production or importation of sorghum.

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

(1) No later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

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

§ 1221.132 Proceedings after termination.

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

(b) The said trustees shall:

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

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

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

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

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practical, by qualified organizations pursuant to § 1221.128 in the interest of continuing sorghum promotion, research, and information programs.

§ 1221.133 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination or amendment of this part or any subpart thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this part; or

(b) Release or extinguish any violation of this part; or

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

§ 1221.134 Personal liability.

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

§ 1221.135 Separability.

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

§ 1221.136 Amendments.

Amendments to this subpart may be proposed from time to time by the Board or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1221.137 Rules and regulations.

The Secretary may prescribe such rules and regulations as may be necessary to effectively carry out the provisions of this subpart.

§ 1221.138 OMB control number.

The control number assigned to the information collection requirements of this part 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 0581–0246.

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PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

Subpart A—Pork Promotion, Research, and Consumer Information Order

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AUTHORITY: 7 U.S.C. 4801–4819 and 7 U.S.C. 7401.

Subpart A—Pork Promotion, Research, and Consumer Information Order

SOURCE: 51 FR 31903, Sept. 5, 1986, unless otherwise noted.

DEFINITIONS

§ 1230.1 Act.

Act means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.2 Department.

Department means the United States Department of Agriculture.

§ 1230.3 Secretary.

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

§ 1230.4 Board.

Board means the National Pork Board established pursuant to § 1230.50.

§ 1230.5 Consumer information.

Consumer information means an activity intended to broaden the understanding of the sound nutritional attributes of pork and pork products, including the role of pork and pork products in a balanced, healthy diet.

§ 1230.6 Council.

Council means the National Pork Producers Council, a nonprofit corporation of the type described in section 501(c)(5) of the Internal Revenue Code of 1954 and incorporated in the State of Iowa.

§ 1230.7 Customs Service.

Customs Service means the United States Customs Service of the United States Department of Treasury.

§ 1230.8 Delegate Body.

Delegate Body means the National Pork Producers Delegate Body established pursuant to § 1230.30.

§ 1230.9 Fiscal period.

Fiscal period means the 12-month period ending on December 31 or such other consecutive 12-month period as the Secretary or Board may determine.

§ 1230.10 Imported.

Imported means entered, or withdrawn from a warehouse for consumption, in the customs territory of the United States.

§ 1230.11 Imported pork and pork products.

Imported pork and pork products means products which are imported into the United States which the Secretary determines contain a substantial amount of pork, including those products which have been assigned one or more of the following numbers in Schedule 1 of the Tariff Schedules of the United States Annotated (1985): 106.4020; 106.4040; 106.8000; 106.8500; 107.1000; 107.1500; 107.3020; 107.3040; 107.3060; 107.3515; 107.3525; 107.3540; and 107.3560.

§ 1230.12 Importer.

Importer means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.13 Market.

Market means to sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

§ 1230.14 Market value.

Market value means, with respect to porcine animals which are sold, the price at which they are sold. With respect to porcine animals slaughtered for the sale by the producer, the term means the most recent annual seven-market average for barrows and gilts, as published by the Department. With respect to imported porcine animals, the term means the declared value. With respect to imported pork and pork products, the term means an amount which represents the value of the live porcine animals from which the pork or pork products were derived, based upon the most recent annual seven-market average for barrows and gilts, as published by the Department.

§ 1230.15 Part and subpart.

Part means the Pork Promotion, Research, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the aforesaid order shall be a ''subpart of such part.

§ 1230.16 Person.

Person means any individual, group of individuals, partnership, corporation, association, organization, cooperative, or other entity.

§ 1230.17 Plans and projects.

Plans and projects means promotion, research, and consumer information plans, studies, or projects.

§ 1230.18 Porcine animal.

Porcine animal means a swine, that is raised as (a) a feeder pig, that is, a young pig sold to another person to be finished for slaughtering over a period of more than 1 month; (b) for breeding purposes as seed stock and included in the breeding herd; and (c) a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.19 Pork.

Pork means the flesh of a porcine animal.

§ 1230.20 Pork product.

Pork product means an edible product produced or processed in whole or in part from pork.

§ 1230.21 Producer.

Producer means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.22 Promotion.

Promotion means any action, including but not limited to paid advertising and retail or food service merchandising, taken to present a favorable image for porcine animals, pork, or pork products to the public, or to educate producers with the intent of improving the competitive position and stimulating sales of porcine animals, pork, or pork products.

§ 1230.23 Research.

Research means any action designed to advance, expand, or improve the image, desirability, nutritional value, usage, marketability, production, or quality of porcine animals, pork, or pork products, including the dissemination of the results of such research.

§ 1230.24 State.

State means each of the 50 States.

§ 1230.25 State association.

State association means the single organization of producers in a State that is organized under the laws of that State and is recognized by the chief executive officer of such State as representing such State's producers. If no such organization exists in a State as of January 1, 1986, the Secretary may recognize an organization that represents not fewer than 50 producers who market annually an aggregate of not less than 10 percent of the pounds of porcine animals marketed in such State. The Secretary may cease to recognize a State association and instead recognize another organization of producers in a State as that State's association if the Secretary determines either that a majority of the members of the existing State association are not producers or that a majority of the members of the other organization seeking recognition are producers and that such organization better represents the economic interests of producers.

§ 1230.26 State where produced.

State where produced means with respect to a porcine animal marketed as a feeder pig or as breeding stock, the State in which that porcine animal was born, and with respect to a porcine animal that is marketed as a market hog, the State in which that porcine animal was fed for market.

NATIONAL PORK PRODUCERS DELEGATE BODY

§ 1230.30 Establishment and membership.

(a) There is hereby established a National Pork Producers Delegate Body which shall consist of producers and importers appointed by the Secretary.

(b)(1) At least two producer members shall be allocated to each State, but any State that has more than 300 but less than 601 shares shall receive three producer members; each State with more than 600 but less than 1,001 shares shall receive four producer members and each State with more than 1,000 shares shall receive an additional member in excess of four for each 300 additional shares in excess of 1,000 shares, rounded to the nearest 300.

(2) [Reserved]

(3) In each fiscal period, shares shall be assigned to each State on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to such State.

(c)(1) The number of importer members to be appointed shall be determined by allocating three such members for the first 1,000 shares. Importers shall receive an additional member in excess of three for each 300 shares in excess of 1,000 shares, rounded to the nearest 300.

(2) [Reserved]

(3) In each fiscal period, shares shall be assigned to importers on the basis of one share for each $1,000 (rounded to the nearest $1,000) of the net amount of assessments attributable to importers.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.31 Nomination and appointment of producer members.

(a) [Reserved]

(b) Delegate Body nominations for appointment as producer members shall be submitted to the Secretary in the number requested by the Secretary by each State association either after an election conducted in accordance with § 1230.32 and by nominating the producers who receive the highest number of votes in such State; or pursuant to a selection process that is approved by the Secretary, is given public-notice at least one week in advance by publication in a newspaper or newspapers of general circulation in such State and in pork production and agriculture trade publications, and provides complete and equal access to every producer who has paid all assessments due under this subpart and who has not demanded any refund of an assessment paid pursuant to this subpart

in the period since the selection of the previous Delegate Body;

(c) The Secretary shall appoint the producer members of each Delegate Body from the nominations submitted in accordance with this section, except that if a State association does not submit nominations in the required manner or number, or if a State has no State association, the Secretary shall select producer members from that State after consultation with representatives of the pork industry in that State.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.32 Conduct of election.

If a State association selects nominees for appointment to the Delegate Body through an election, it shall be conducted in the following manner:

(a) Elections shall be administered by the Board and the Board shall determine the timing of any elections.

(b) Producers who are residents of that State may be named as candidates for election to be nominees for appointment to the Delegate Body:

(1) By a nominating committee of producers in that State appointed by the Board; or

(2) The number of pork producers in a State shall be determined by the Department based on the latest available Department information, which tabulates by State the number of farming operations with porcine animals.

(c) To be eligible to vote in an election to nominate producer members from a State, a person must:

(1) Be a producer who is a resident of that State;

(2) Have paid all assessments due pursuant to this subpart; and

(3) Not have demanded any refund of an assessment paid pursuant to this subpart in the period since the selection of the previous Delegate Body.

(d) The Board shall cause notices of any election to be published at least one week prior to the election in a newspaper or newspapers of general circulation in that State, and in pork production and agricultural trade publications. The notices shall set forth the period of time and places for voting and such other information as the Board considers necessary.

(e) The identity of any person who voted and the manner in which any person voted shall be kept confidential.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

§ 1230.33 Appointment of importer members.

The Secretary shall appoint the importer members of each Delegate Body after consultation with importers.

§ 1230.34 Term of office.

(a) The members of the Delegate Body shall serve for terms of one year, except that the members of the initial Delegate Body shall serve only until the completion of the nomination and appointment process of the succeeding Delegate Body.

(b) Each member of the Delegate Body shall serve until that member's term expires, or a successor is appointed, whichever occurs later.

§ 1230.35 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Delegate Body, the Secretary shall appoint a successor for the unexpired term of such member from nominations made either by the appropriate State association or by importers, depending upon whether the vacancy is a producer or importer vacancy.

§ 1230.36 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Delegate Body, but only if that majority is also entitled to cast a majority of the shares (including fractions thereof). Any action of the Delegate Body, including any motion or nomination presented to it for a vote, shall require a majority vote, that is, the concurring votes of a majority of the shares cast on that action. The Delegate Body shall give timely notice of its meetings. The Delegate Body shall give the Secretary the same notice of its meetings as it gives to its members in order that the Secretary or a representative of the Secretary may attend meetings.

(b) The number of votes that may be cast by a producer member if present

at a meeting shall be equal to the number of shares attributable to the State of such member divided by the number of producer members from such State. The number of votes that may be cast by an importer member if present at a meeting shall be equal to the number of shares allocated to importers divided by the number of importer members.

§ 1230.37 Officers.

The Delegate Body shall elect its Chairperson by a majority vote at the first annual meeting, but at each annual meeting after the first, the President of the Board shall serve as the Delegate Body's Chairperson.

§ 1230.38 Compensation and reimbursement.

The members of the Delegate Body shall serve without compensation but may be reimbursed by the Board for actual transportation expenses incurred by them in exercising their powers and duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.39 Powers and duties of the Delegate Body.

The Delegate Body shall have the following powers and duties:

(a) To meet annually;

(b) To recommend the rate of assessment prescribed by the initial order and any increase in such rate;

(c) To determine the percentage of the net assessments attributable to porcine animals produced in a State that each State association shall receive; and

(d) To nominate not less than 23 persons, including producers from a minimum of 12 States or importers, for appointment to the initial Board and not less than one and one-half persons (rounded up to the nearest person) for each vacancy on the Board that requires nominations thereafter. Each nomination shall be by a majority vote of the Delegate Body voting in person in accordance with § 1230.36.

NATIONAL PORK BOARD

§ 1230.50 Establishment and membership.

There is hereby established a National Pork Board of 15 members consisting of producers representing at least 12 States or importers appointed by the Secretary from nominations submitted pursuant to § 1230.39(d). The Board shall be deemed to be constituted once the Secretary makes the appointments to the Board.

§ 1230.51 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall be designated for, and shall serve terms as follows: One-third of such members shall serve for one year terms; One-third shall serve for two year terms; and the remaining One-third shall serve for three year terms.

(b) Each member of the Board shall serve until the member's term expires, or until a successor is appointed, unless the member is removed pursuant to § 1230.55(b).

(c) No member shall serve more than two consecutive terms provided that those members serving an initial term of one year are eligible to serve two additional consecutive terms, but in no event, more than seven years in total.

(d) The first year of the terms of the initial Board shall begin immediately on appointment by the Secretary and continue until July 1, 1988. In subsequent years, the term of office shall begin on July 1.

§ 1230.52 Nominations.

Nominations for members of the Board shall be made by the Delegate Body in accordance with § 1230.39(d).

§ 1230.53 Nominee's agreement to serve.

Any person nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with the Council or a State association or any organization that has a contract with the Board and thereafter disclose, at

any time while serving on the Board, any relationship with any organization that applies to the Board for a contract; and

(c) Withdraw from participation in deliberations, decisionmaking, or voting on matters concerning any entity referred to in paragraph (b) of this section, if an officer or member of the executive committee of such entity.

§ 1230.54 Appointment.

From the nominations submitted pursuant to § 1230.39(d), the Secretary shall appoint 15 producers or importers as members of the Board, but in no event shall the Secretary appoint producer members representing fewer than 12 States.

§ 1230.55 Vacancies.

(a) To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor for the unexpired term of such member from the most recent list of nominations made by the Delegate Body.

(b) If a member of the Board fails or refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that that member be removed from office. If the Secretary finds that the recommendation of the Board demonstrates adequate cause, the Secretary shall remove such member from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1230.56 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall give timely notice of its meetings. The Board shall give the Secretary the same notice of its meetings, including the meetings of its committees, as it gives to its members in order that the Secretary, or a representative of the Secretary, may attend the meetings.

(b) The Board may take action upon the concurring votes of a majority of its members by mail, telephone, telegraph or by other means of communication when, in the opinion of the President of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing and recorded in the Board minutes. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1230.57 Compensation and reimbursement.

The members of the Board shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the exercise of their powers and the performance of their duties under this subpart. Such expenses shall be paid from funds received by the Board pursuant to § 1230.72.

§ 1230.58 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To meet not less than annually, and to organize and elect from among its members, by majority vote, a President and such other officers as may be necessary;

(b) To receive and evaluate, or, on its own initiative, develop, and budget for proposals for plans and projects and to submit such plans and projects to the Secretary for approval;

(c) To administer directly or through contract the provisions of this subpart in accordance with its terms and provisions;

(d) To develop and submit to the Secretary for the Secretary's approval, plans and projects conducted either by the Board or others;

(e) To prepare and submit to the Secretary for the Secretary's approval, which is required for the following to be implemented:

(1) Budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including the projected cost of plans and projects to be conducted by the Board directly or by way of contract or agreement; and

(2) The budget, plans, or projects for which State associations are to receive funds under § 1230.72, including a general description of the proposed plan and project contemplated therein;

(f) With the approval of the Secretary, to enter into contracts or agreements with any person for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1230.71. Any such contract or agreement shall provide that:

(1) The contracting party shall develop and submit to the Board a plan or project together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its relevant transactions and make periodic reports to the Board of relevant activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party;

(g) To appoint or employ staff persons as it may deem necessary, to define the duties and determine the compensation of each, to protect the handling of Board funds through fidelity bonds, and to conduct routine business.

(h) To disseminate information to or communicate with producers or State associations through programs or by direct contact utilizing the public postage system or other systems;

(i) To select committees and subcommittees of Board members and to adopt such rules and by laws for the conduct of its business as it may deem advisable;

(j) To utilize advisory committees of persons other than Board members to assist in the development of plans or projects and pay the reasonable expenses and fees of the members of such committees;

(k) To prescribe rules and regulations necessary to effectuate the terms and provisions of this subpart;

(l) To recommend to the Secretary amendments to this subpart;

(m) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1230.71 in, and only in, an obligation of the United States, a general obligation of any State or any political subdivision thereof, an interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or an obligation fully guaranteed as to principal and interest by the United States.

(n) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and prepare and submit such reports as the Secretary may prescribe from time to time, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(o) To prepare and make public and available to producers and importers at least annually, a report of its activities carried out and an accounting of funds received and expended;

(p) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards at the end of each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(q) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(r) To submit to the Secretary such information pursuant to this subpart as the Secretary may request; and

(s) To carry out an effective and coordinated program of promotion, research, and consumer information designed to strengthen the position of the pork industry in the marketplace and maintain, develop, and expand markets for pork and pork products.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988]

PROMOTION, RESEARCH, AND CONSUMER INFORMATION

§ 1230.60 Promotion, research, and consumer information.

(a) The Board shall receive and evaluate, or, on its own initiative, develop, and submit to the Secretary for approval, any plans and projects. Such plans and projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans and projects for promotion, research, and consumer information with respect to pork and pork products designed to strengthen the position of the pork industry in the marketplace and to maintain, develop, and expand domestic and foreign markets for pork and pork products;

(2) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of pork and pork products and the creation of new products thereof, to the end that marketing and utilization of pork and pork products may be encouraged, expanded, improved, or made more acceptable.

(b) Each plan and project shall be periodically reviewed or evaluated by the Board to ensure that the plan and project contributes to an effective and coordinated program of promotion, research, and consumer information. If it is found by the Board that any such plan and project does not further the purposes of the Act, the Board shall terminate such plan and project.

(c) No plan or project shall make a false or misleading claim on behalf of pork or a pork product or a false or misleading statement with respect to an attribute or use of a competing product.

(d) No plan or project shall undertake to advertise or promote pork or pork products by private brand or trade name unless such advertisement or promotion is specifically approved by the Board, with the concurrence of the Secretary.

EXPENSES AND ASSESSMENTS

§ 1230.70 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve that would permit an effective promotion, research, and consumer information program to continue in years when the amount of assessments may be reduced) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, maintenance, and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart, including financing plans and projects. Such expenses shall be paid from assessments collected pursuant to § 1230.71 and other funds available to the Board, including donations.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1230.71, for reasonable administrative expenses incurred by the Department with respect to this subpart after January 1, 1986, including any expenses reasonably incurred for the conduct of elections of nominees for appointment to the initial Delegate Body and for the conduct of referenda.

§ 1230.71 Assessments.

(a)(1) Each producer producing in the United States a porcine animal raised as a feeder pig that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a feeder pig.

(2) Each producer producing in the United States a porcine animal raised for slaughter that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(3) Each producer producing in the United States a porcine animal raised for slaughter that such producer slaughters for sale shall pay an assessment on that animal unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid on that animal as a market hog.

(4) Each producer producing in the United States a porcine animal raised for breeding stock that is sold shall pay an assessment on that animal, unless such producer demonstrates to the Board by appropriate documentation that an assessment was previously paid

by a person on that animal as breeding stock.

(5) Each importer importing a porcine animal, pork, or pork product into the United States shall pay an assessment on that porcine animal, pork, or pork product, unless such importer demonstrates to the Board by appropriate documentation that an assessment was previously paid for that porcine animal, pork, or pork product.

(b)(1) Each purchaser of a porcine animal raised by a producer as a feeder pig or market hog shall collect an assessment on such porcine animal if an assessment is due pursuant to paragraph (a) of this section, and shall remit that assessment to the Board. For the purposes of collection and remittance of assessments, any person engaged as a commission merchant, auction market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

(2) Assessments on porcine animals raised as breeding stock which are sold by a commission merchant, auction, market, or livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be collected and remitted by the commission merchant, auction market, or livestock market selling such porcine animals.

(3) Each producer of porcine animals slaughtered for sale by the producer or sold directly to a consumer in connection with a custom slaughter operation shall remit an assessment to the Board if an assessment is due pursuant to paragraph (a) of this section.

(4) Assessments on domestic porcine animals shall be remitted in the form of a negotiable instrument made payable to the ''National Pork Board,'' which, together with the reports required by §1230.80, shall be sent to the address designated by the Board.

(5) Each importer of a porcine animal, pork, or pork product shall remit an assessment to the Customs Service at the time such porcine animal, pork, or pork product is imported or in such manner as may be established by regulations prescribed by the Board and approved by the Secretary, if an assessment is due pursuant to paragraph (a) of this section.

(c) The initial rate of assessment shall be 0.25 percent of market value.

(d) The rate of assessment may, upon the recommendation of the Delegate Body, be increased by regulations prescribed by the Board and approved by the Secretary by no more than 0.1 percent of such market value per fiscal period to a total of not more than 0.5 percent of market value.

(e) Assessments on imported pork and pork products shall be expressed in an amount per pound for each type of pork or pork product subject to assessment, which shall be established by regulations prescribed by the Board and approved by the Secretary.

[51 FR 31903, Sept. 5, 1986; 51 FR 36383, Oct. 10, 1986; 53 FR 1910, Jan. 25, 1988; 53 FR 30245, Aug. 11, 1988; 56 FR 6, Jan. 2, 1991]

§1230.72 Distribution of assessments.

Assessments remitted to the Board shall be distributed as follows:

(a) Each State association shall receive on a monthly basis, a percentage determined by the Delegate Body or 16.5 percent, whichever is higher, of the net assessments attributable to that State. The net assessments attributable to a State is the total amount of assessments received from producers in a State.

(b) A State association which was conducting a pork promotion program in the period from July 1, 1984 to June 30, 1985, shall receive additional amounts at such times as the Board may determine, so that the total amount received on an annual basis would be equal to the amount that would have been collected in such State pursuant to the pork promotion program in existence in such State from July 1, 1984, to June 30, 1985, had the porcine animals subject to assessment, been produced from July 1, 1984, to June 30, 1985, and been subject to the rates of assessment then in effect from such State to the Council and other national entities involved in pork promotion, research, and consumer information. This paragraph shall apply to a State association only if the annual amount determined under this paragraph would be greater than the annual

amount determined under paragraph (a) of this section.

(c) The Council shall receive on a monthly basis 35 percent of the net assessments until after the referendum is conducted, and 25 percent thereafter and until 12 months after the referendum.

[51 FR 31903, Sept. 5, 1986, as amended at 60 FR 58501, Nov. 28, 1995]

§ 1230.73 Uses of distributed assessments.

(a) Each State association shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the administrative expenses incurred in connection therewith, including the cost of administering nominations and elections of producer members of the Delegate Body.

(b) The Council shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for financing plans and projects and the Council's administrative expenses.

(c) The Board shall use its distribution of assessments pursuant to § 1230.72, as well as any proceeds from the investment of such funds pending their use, for:

(1) Financing plans and projects;

(2) The Board's expenses for the Board's administration, maintenance, and functioning as authorized by the Secretary;

(3) Accumulation of a reserve not to exceed one fiscal period's budget to permit continuation of an effective promotion, research, and consumer information program in years when assessment amounts may be reduced; and

(4) The Secretary's administrative costs in carrying out this part.

§ 1230.74 Prohibited use of distributed assessments.

(a) No funds collected under this subpart shall in any manner be used for the purpose of influencing legislation as that term is defined in section 4911 (d) and (e)(2) of the Internal Revenue Code of 1954, or for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this part.

(b) Organizations receiving distributions of assessments from the Board shall furnish the Board with annual financial statements audited by a certified public accountant of all funds distributed to such organizations pursuant to this subpart and any other reports as may be required by the Secretary or the Board in order to verify the use of such funds.

[51 FR 31903, Sept. 5, 1986, as amended at 53 FR 30245, Aug. 11, 1988; 60 FR 33683, June 29, 1995]

§ 1230.75 Adjustment of accounts.

Whenever the Board or the Department determines, through an audit of a person's reports, records, books or accounts or through some other means that additional money is due the Board or that money is due such person from the Board, such person shall be notified of the amount due. Any amount due the Board shall be remitted to the Board by the next date for remitting assessments as provided in § 1230.71(b)(3). Any overpayment to the Board shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1230.76 Charges.

Any assessment not paid when due shall be increased 1.5 percent each month beginning with the day following the date such assessment was due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the

date actually received by the Board, whichever is earlier.

§ 1230.77 [Reserved]

REPORTS, BOOKS, AND RECORDS

§ 1230.80 Reports.

Each person responsible for collecting or remitting any assessment under § 1230.71(b) shall report at the time for remitting assessments to the Board the following information:

(a) The quantity and market value of the porcine animals subject to assessment;

(b) The amount of assessment collected;

(c) The month the assessment was collected;

(d) The State where the porcine animals were produced; and

(e) Such other information as may be required by regulations prescribed by the Board and approved by the Secretary.

§ 1230.81 Books and records.

Each person who is subject to this subpart shall maintain and, during normal business hours, make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provision of this subpart, including such records as are necessary to verify any required reports. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1230.82 Confidential treatment.

All information obtained from the books, records or reports required to be maintained under §§ 1230.80 and 1230.81 of this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and all employees and all former officers and employees of contracting parties having access to such information, and shall not be available to Board members. Only those persons having a specific need for such information in order to effectively implement, administer, or enforce the provisions of this subpart shall have access to such information. In addition, only such information so furnished or acquired shall be disclosed as the Secretary deems relevant and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

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

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

MISCELLANEOUS

§ 1230.85 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contract or agreement;

(3) From time to time account for all receipts and disbursements and deliver all property on hand together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

(4) Upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right

to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the plans and projects authorized pursuant to this subpart.

§ 1230.86 Effect of termination or amendment.

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

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

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

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

§ 1230.87 Personal liability.

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

§ 1230.88 Patents, copyrights, inventions, and publications.

Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications inure to the benefit of the Board as income and be subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1230.85 shall apply to determine disposition of all such property.

§ 1230.89 Amendments.

The Secretary may from time to time amend provisions of this part. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1230.90 Separability.

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

§ 1230.91 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this subpart have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter and have been assigned OMB Control Number 0851–0151.

Subpart B—Rules and Regulations

SOURCE: 53 FR 1911, Jan. 25, 1988, unless otherwise noted.

DEFINITIONS

§ 1230.100 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in Subpart A of this part.

§ 1230.102 Exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (i) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit

the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment to the Board.

(f) The person responsible for collecting and remitting the assessment to the Board shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic porcine animals or pork and pork products—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic porcine animals or pork and pork products bearing this HTS classification assigned by the Board will not be subject to assessments.

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2760, Jan. 14, 2005]

ASSESSMENTS

§ 1230.110 Assessments on imported pork and pork products.

(a) The following Harmonized Tariff Schedule (HTS) categories of imported live porcine animals are subject to assessment at the rate specified.

Live porcine animals	Article description	Assessment
0103.10.0000	Purebred breeding animals	0.40 percent Customs Entered Value.
0103.91.00	Other: Weighing less than 50 kg each.	

Live porcine animals	Article description	Assessment
0103.91.0010	Weighing less than 7 kg each	0.40 percent Customs Entered Value.
0103.91.0020	Weighing 7 kg or more but less than 23 kg each	0.40 percent Customs Entered Value.
0103.91.0030	Weighing 23 kg or more but less than 50 kg each	0.40 percent Customs Entered Value.
0103.92.00	Weighing 50 kg or more each.	
0103.92.0010	Imported for immediate slaughter	0.40 percent Customs Entered Value.
0103.92.0090	Other	0.40 percent Customs Entered Value.

(b) The following HTS categories of imported pork and pork products are subject to assessment at the rates specified.

Pork and pork products	Article description	Assessment	
		Cents/lb	Cents/kg
0203	Meat of swine, fresh, chilled, or frozen: Fresh or chilled:		
0203.11.0000	Carcasses and half-carcasses	.20	.440920
0203.12.1010	Processed hams and cuts thereof, with bone in	.20	.440920
0203.12.1020	Processed shoulders and cuts thereof, with bone in	.20	.440920
0203.12.9010	Other hams and cuts thereof, with bone in	.20	.440920
0203.12.9020	Other shoulders and cuts thereof, with bone in	.20	.440920
0203.19.2010	Processed spare ribs	.23	.507058
0203.19.2090	Processed other	.23	.507058
0203.19.4010	Bellies	.20	.440920
0203.19.4090	Other	.20	.440920
0203.21.0000	Frozen carcasses and half-carcasses	.20	.440920
0203.22.1000	Frozen-processed hams, shoulders, and cuts thereof, with bone in	.20	.440920
0203.22.9000	Frozen-other hams, shoulders, and cuts thereof, with bone in	.20	.440920
0203.29.2000	Frozen processed other	.23	.507058
0203.29.4000	Frozen other: Other	.20	.440920
0206	Edible offal of bovine animals, swine, sheep, goats, horses, asses, mules or hinnies, fresh, chilled, or frozen:.		
0206.30.0000	Of swine, fresh or chilled	.20	.440920
0206.41.0000	Of swine, frozen: Livers	.20	.440920
0206.49.0000	Of swine, frozen: Other	.20	.440920
0210	Meat and edible meat offal, salted, in brine, dried or smoked; edible flours and meals of meat or meat offal:.		
0210.11.0010	Meat of swine: Hams and cuts thereof, with bone in	.20	.440920
0210.11.0020	Meat of swine: Shoulders and cuts thereof, with bone in	.20	.440920
0210.12.0020	Meat of swine: Bellies (streaky) and cuts thereof, Bacon	.20	.440920
0210.12.0040	Meat of swine: Bellies (streaky) and cuts thereof, Other	.20	.440920
0210.19.0010	Meat of swine: Canadian style bacon	.23	.507058
0210.19.0090	Meat of Swine: Other	.23	.507058
1601	Sausages and similar products, of meat, meat offal or blood; food preparations based on these products:		
1601.00.2010	Pork canned	.28	.617288
1601.00.2090	Pork other	.28	.617288
1602	Other prepared or preserved meat, meat offal or blood.		
1602.41.2020	Of swine: Boned and cooked and packed in airtight containers holding less than 1 kg.	.30	.661380
1602.41.2040	Of swine: Other boned and cooked and packed in airtight containers	.30	.661380
1602.41.9000	Of swine: Other	.20	.440920
1602.42.2020	Of swine: Shoulders and cuts thereof: Boned and cooked and packed in airtight containers holding less than 1 kg.	.30	.661380
1602.42.2040	Of swine: Shoulders and cuts thereof: Other boned and cooked and packed in airtight containers.	.30	.661380
1602.42.4000	Of swine: Other shoulders and cuts thereof	.20	.440920
1602.49.2000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Boned and cooked and packed in air-tight containers.	.28	.617288
1602.49.4000	Of swine: Other, including mixtures: Not containing cereals or vegetables: Other	.23	.507058
1602.49.9000	Of swine: Other, including mixtures: Other	.23	.507058

[69 FR 9925, Mar. 3, 2004]

§ 1230.111 Remittance of assessments on domestic porcine animals.

Assessments on domestic porcine animals shall be remitted to the National Pork Board pursuant to § 1230.71(b) in accordance with the following remittance schedule.

(a) Monthly assessments totaling $25 or more shall be remitted to the Board by the 15th day of the month following

the month in which the porcine animals were marketed or by the 15th day following the end of a Board-approved, consecutive 4-week period in which the porcine animals were marketed.

(b) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remitted by the 15th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(c) Assessments totaling $25 or more during any month of a quarter must be remitted by the 15th day of the month following the month of the quarter in which the assessments totaled $25 or more, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(d) Assessments collected during any calendar quarter and not previously remitted as described in paragraphs (b) or (c) of this section must be remitted by the 15th day of the month following the end of the quarter regardless of the amount.

[56 FR 6, Jan. 2, 1991]

§ 1230.112 Rate of assessment.

In accordance with § 1230.71(d) the rate of assessment shall be 0.40 percent of market value.

[67 FR 58323, Sept. 16, 2002]

§ 1230.113 Collection and remittance of assessments for the sale of feeder pigs and market hogs.

Pursuant to the provisions of § 1230.71, purchasers of feeder pigs or market hogs shall collect assessments from producers if an assessment is due and shall remit those assessments to the Board. Failure of the purchaser to collect such assessment from a producer shall not relieve the producer of the obligation to pay the assessment. If the purchaser fails to collect the assessment when an assessment is due pursuant to § 1230.71, the producer (seller) shall remit the total amount of assessments due to the Board as set forth in § 1230.111.

[65 FR 7283, Feb. 14, 2000]

§ 1230.115 Submission of annual financial statements.

State Pork Producer Associations, as defined in § 1230.25, that receive distributions of assessments pursuant to § 1230.72 and that receive less than $30,000 in assessments annually, may satisfy the requirements of § 1230.74(b) by providing to the Board unaudited annual financial statements prepared by State association staff members or individuals who prepare annual financial statements, provided that two members of the State association attest to and certify such financial statements. Notwithstanding any provisions of the Order to the contrary, State associations that receive less than $30,000 in distributed assessments annually and submit unaudited annual financial statements to the Board shall be required to submit an annual financial statement audited by a certified public accountant at least once every 5 years, or more frequently if deemed necessary by the Board or the Secretary. The Board may elect to conduct its own audit of the annual financial statements of State Pork Producer Associations that receive less than $2,000 in distributed assessments annually, every 5 years in lieu of the required financial statements.

[60 FR 33683, June 29, 1995]

MISCELLANEOUS

§ 1230.120 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0151.

Subpart C [Reserved]

Subpart D—Procedures for Nominations and Elections of Pork Producers and Nominations of Importers for Appointment to the Initial National Pork Producers Delegate Body

§§ 1230.501–1230.512 [Reserved]

Subpart E—Procedures for the Conduct of Referendum

SOURCE: 65 FR 43508, July 13, 2000, unless otherwise noted.

DEFINITIONS

§ 1230.601 Act.

The term *Act* means the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819) and any amendments thereto.

§ 1230.602 Administrator, AMS.

The term *Administrator, AMS,* means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.603 Administrator, FSA.

The term *Administrator, FSA,* means the Administrator, of the Farm Service Agency, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1230.604 Department.

The term *Department* means the United States Department of Agriculture.

§ 1230.605 Farm Service Agency.

The term *Farm Service Agency* also referred to as ''FSA'' means the Farm Service Agency of the Department.

§ 1230.606 Farm Service Agency County Committee.

The term *Farm Service Agency County Committee,* also referred to as the *FSA County Committee* or *COC,* means the group of persons within a county elected to act as the Farm Service Agency County Committee.

§ 1230.607 Farm Service Agency County Executive Director.

The term *Farm Service Agency County Executive Director* also referred to as the *CED,* means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and be responsible for the day-to-day operations of the FSA county office or the person acting in such capacity.

§ 1230.608 Imported porcine animals, pork, and pork products.

The term *Imported porcine animals, pork, and pork products* means those animals, pork, or pork products that are imported into the United States and subject to assessment under the harmonized tariff schedule numbers identified in § 1230.110 of the regulations.

§ 1230.609 Importer.

The term *Importer* means a person who imports porcine animals, pork, or pork products into the United States.

§ 1230.610 Order.

The term *Order* means the Pork Promotion, Research, and Consumer Information Order.

§ 1230.611 Porcine animal.

The term *Porcine animal* means a swine, that is raised:

(a) As a feeder pig, that is, a young pig sold to another person to be finished over a period of more than 1 month for slaughtering;

(b) For breeding purposes as seedstock and included in the breeding herd; and

(c) As a market hog, slaughtered by the producer or sold to be slaughtered, usually within 1 month of such transfer.

§ 1230.612 Person.

The term *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1230.613 Pork.

The term *Pork* means the flesh of a porcine animal.

§ 1230.614 Pork product.

The term *Pork product* means an edible product processed in whole or in part from pork.

§ 1230.615 Producer.

The term *Producer* means a person who produces porcine animals in the United States for sale in commerce.

§ 1230.616 Public notice.

The term *Public notice* means information regarding a referendum that would be provided by the Secretary, such as press releases, newspapers, electronic media, FSA county newsletters, and the like. Such notice would contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1230.617 Referendum.

The term *Referendum* means any referendum to be conducted by the Secretary pursuant to the Act whereby persons who have been producers and importers during a representative period would be given the opportunity to vote to determine whether producers and importers favor continuation of the Order.

§ 1230.618 Representative period.

The term *Representative period* means the 12-consecutive months prior to the first day of absentee and importer voting in the referendum. The representative period for this referendum is August 18, 1999, through August 17, 2000.

§ 1230.619 Secretary.

The term *Secretary* means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated to act in the Secretary's stead.

§ 1230.620 State.

The term *State* means each of the 50 States.

§ 1230.621 Voting period.

The term *Voting period* means the 3-consecutive business day period for in-person voting.

REFERENDUM

§ 1230.622 General.

(a) A referendum to determine whether eligible pork producers and importers favor continuation of the Pork Checkoff Program will be conducted in accordance with this subpart.

(b) The Pork Checkoff Program will be terminated only if a majority of producers and importers voting in the referendum favor such termination.

(c) The referendum will be conducted at the county FSA offices for producers and at FSA headquarters office in Washington, DC, for importers.

§ 1230.623 Supervision of referendum.

The Administrator, AMS, will be responsible for conducting the referendum in accordance with this subpart.

§ 1230.624 Eligibility.

(a) Eligible producers and importers. Persons eligible to register and vote in the referendum include:

(1) Individual Producers. Each individual that owns and sells at least one hog or pig during the representative period and does so in his or her own name is entitled to cast one ballot.

(2) Producers who are a corporation or other entity. Each corporation or other entity that owns and sells at least one hog or pig during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, owners of community property, or a corporation engaged in the production of hogs and pigs will be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer if he or she sells at least one hog or pig in his or her own name.

(3) Importers. Each importer who imports hogs, pigs, pork, or pork products during the representative period is entitled to cast one ballot. A group of individuals, such as members of a family, a partnership, or a corporation engaged in the importation of hogs, pigs, pork,

or pork products will be entitled to only one vote; provided, however, that any member of a group may register to vote as an importer if he or she imports hogs, pigs, pork, or pork products in his or her own name.

(b) Proxy registration and voting. Proxy registration and voting is not authorized, except that an officer or employee of a corporate producer or importer, or any guardian, administrator, executor, or trustee of a producer's or importer's estate, or an authorized representative of any eligible producer or importer (other than an individual producer or importer), such as a corporation or partnership, may register and cast a ballot on behalf of that entity. Any individual who registers to vote in the referendum on behalf of any eligible producer or importer corporation or other entity must certify that he or she is authorized to take such action.

§ 1230.625 Time and place of registration and voting.

(a) Producers. The referendum shall be held for 3-consecutive days on September 19, 20, 21, 2000. Eligible producers shall register and vote on-site following the procedures in 1230.628. Producers shall register and vote during the normal business hours of each county FSA office or request absentee ballots from the county FSA offices by mail, telephone, or facsimile, or pick up an absentee ballot in-person. The absentee voting period shall be from August 18, 2000, through September 21, 2000.

(b) Importers. Importer voting shall take place during the same time period provided producers for in-person and absentee voting in the referendum. The referendum shall be conducted by mail ballot by the FSA headquarters office in Washington, DC, between August 18, 2000, through September 21, 2000.

§ 1230.626 Facilities for registering and voting.

(a) Producers. Each county FSA office shall provide:

(1) Adequate facilities and space to permit producers of hogs and pigs to register and to mark their ballots in secret;

(2) A sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Copies of the Order for review.

(b) Absentee ballots. Each FSA county office shall provide each producer an absentee ballot package upon request. Producers can pick up an absentee ballot in-person or request it by telephone, mail, or facsimile. The FSA county office will provide absentee ballots by mail for all requests received by telephone, mail, or facsimile. The FSA county office shall record date of receipt of the ''Pork Referendum'' envelope containing the completed absentee ballot on the Absentee Voter Request List and place it unopened in a secure ballot box.

(c) Importers. The FSA headquarters office in Washington, DC, will:

(1) Mail ballot packages to eligible importers upon request;

(2) Have a sealed box or other designated receptacle for registration forms and ballots that is kept under observation during office hours and secured at all times; and

(3) Mail copies of the Order to importers if requested by mail, telephone, or facsimile. Importers can also pickup a ballot in-person.

§ 1230.627 Registration form and ballot.

(a) *Producers.* (1) A ballot (Form LS–72) and combined registration and certification form (Form LS–72–2) will be used for voting in-person. The information required on the registration form includes name, address, and telephone number. Form LS–72–2 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check a ''yes'' or ''no.''

(2) A combined registration and voting form (Form LS–73) will be used for absentee voting. The information required on this combined registration and voting form includes name, address, and telephone number. Form LS–73 also contains the certification statement referenced in § 1230.628. The ballot will require producers to check ''yes'' or ''no.''

(b) *Importers.* A combined registration and ballot form (Form LS–76) will be

used for importer voting. The information required on this combined registration and ballot form includes name, address, and telephone number. Form LS–76 also contains the certification statement referenced in § 1230.629. The ballot will require importers to check ''yes'' or ''no.''

§ 1230.628 Registration and voting procedures for producers.

(a) *Registering and voting in-person.* (1) Each eligible producer who wants to vote whether as an individual or as a representative of a corporation or other entity shall register during the 3-day in-person voting period at the county FSA office where FSA maintains and processes the individual producer's or corporation's or other entities' administrative farm records. A producer voting as an individual or as a representative of a corporation or other entity not participating in FSA programs, shall register and vote in the county FSA office serving the county where the individual producer or corporation or other entity owns hogs or pigs. An individual or an authorized representative of a corporation or other entity who owns hogs or pigs in more than one county shall register and vote in the FSA county office where the individual or corporation or other entity does most of their business. Producers shall be required to record on the In-Person Voter Registration List (Form LS–75) their name and address, and if applicable, the name and address of the corporation or other entity they represent before they can receive a registration form and ballot. To register, producers shall complete the in-person registration and certification form (Form LS–72–2) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period; and

(ii) The person voting on behalf of a corporation or other entity referred to in § 1230.612 is authorized to do so.

(2) Each eligible producer who has not voted by means of an absentee ballot may cast a ballot in-person at the location and time set forth in § 1230.625 and on September 19, 20, 21, 2000. Eligible producers who record their names and addresses and, if applicable, the name and address of the corporation or other entity they are authorized to represent on the In-Person Voter Registration List (Form LS–75) will receive a combined registration and certification form printed on an envelope (Form LS–72–2) and a ballot (Form LS–72). Producers will enter the information requested on the combined registration and certification form/envelope (Form LS–72–2) as indicated above. Producers will then mark their ballots to indicate ''yes'' or ''no.'' Producers will place their completed ballots in an envelope marked ''Pork Ballot'' (Form LS–72–1), seal and place it in the completed and signed registration form/envelope marked ''Pork Referendum'' (Form LS–72–2), seal that envelope and personally place it in a box marked ''Ballot Box'' or other designated receptacle. Voting will be conducted on-site under the supervision of the county FSA County Executive Director (CED).

(b) *Absentee voting.* (1) Eligible producers who are unable to vote in-person may request an absentee voting package consisting of a combined registration and absentee ballot form (Form LS–73) and two envelopes—one marked ''Pork Ballot'' (Form LS–72–1) and the other marked ''Pork Referendum'' (Form LS–73–1) by mail, telephone, facsimile, or by picking up one in-person from the county FSA office where FSA maintains and processes the producer's administrative farm records.

(2) If a producer, whether requesting an absentee ballot as an individual or as an authorized representative of a corporation or other entity that does not participate in FSA programs, and therefore does not have administrative records at a county FSA office, he or she may request an absentee voting package by telephone, mail, facsimile, or pick it up in-person from the county FSA office serving the county where the individual or corporation or other entity owns hogs or pigs. An individual or authorized representative of a corporation or other entity, who owns hogs or pigs in more than one county can request an absentee ballot from the county FSA office where the producer

or corporation or other entity does most of their business.

(3) An absentee voting package will be mailed to producers by the FSA CED to the address provided by the prospective voter. Only one absentee registration form and absentee ballot will be provided to each eligible producer. The absentee ballots and registration forms may be requested during August 1, 2000, through September 18, 2000.

(4) The county FSA office will enter on the Absentee Voter Request List (Form LS–74) the name and address of the individual or corporation or other entity requesting an absentee ballot and the date the forms were requested.

(5) To register, eligible producers shall complete and sign the combined registration and certification form and absentee ballot (Form LS–73) and certify that:

(i) They or the corporation or other entity they represent were producers during the specified representative period;

(ii) If voting on behalf of a corporation or other entity referred to in § 1230.612, they are authorized to do so.

(6) A producer, after completing the absentee voter registration form and marking the ballot, shall remove the ballot portion of the combined registration and absentee ballot form (Form LS–73) and seal the completed ballot in a separate envelope marked ''Pork Ballot'' (Form LS–72–1) and place the sealed ''Pork Ballot'' envelope in the mailing envelope marked ''Pork Referendum'' (Form LS–73–1) along with the signed registration form. Producers are required to print their name and address on the mailing envelope marked ''Pork Referendum'' (Form LS–73–1), and mail or hand deliver it to the county FSA office from which the producer or corporation or other entity obtained the absentee voting package. Absentee ballots returned in-person must be received by close of business on the last day of the in-person voting period, which is September 21, 2000. Ballots received after that date will be counted as invalid ballots.

(7) Absentee ballots returned by mail have to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the county FSA office by the close of business on the 5th business day after the last day of the in-person voting period, which is September 28, 2000. Absentee ballots received after that date will be counted as invalid ballots. Upon receiving the ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot, the county FSA CED will record the date the ''Pork Referendum'' envelope (Form LS–73–1) containing the absentee ballot was received in the FSA county office on the Absentee Voter Request List (Form LS–74) opposite the name of the producer voting absentee. The county FSA CED will place it, unopened, in a secure ballot box.

§ 1230.629 Registration and voting procedures for importers.

(a) Individual importers, corporations, or other entities can obtain the registration and certification forms, ballots, and envelopes by mail from the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, P.O. Box 44366, Washington, DC 20026–4366. Importers may pick up the voting materials in-person at USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. Importers may also request voting materials by facsimile or telephone. The facsimile number is 202/690–3354. The telephone number is 202/720–6833.

(b) When requesting a ballot, eligible importers will be required to submit a U.S. Customs Service Form 7501 showing that they paid the pork assessment during the representative period.

(c) Upon receipt of a request and U.S. Customs Service Form 7501, the voting materials will be mailed to importers by the FSA headquarters office in Washington, DC, to the address provided by the importer or importer corporation or other entity. Only one mail ballot and registration form will be provided to each eligible importer. The forms must be requested during August 1, 2000, through September 21, 2000.

(d) The FSA headquarters office in Washington, DC, will enter on the Importer Ballot Request List (Form LS–

77) the name and address of the importer requesting a ballot and the date of the request.

(e) To register, eligible importers will complete and sign the combined registration form and ballot (Form LS–76) and certify that:

(1) To the best of their knowledge and belief the information provided on the form is true and accurate;

(2) If voting on behalf of an importer corporation or other entity referred to in § 1230.612, they are authorized to do so.

(f) Eligible importers, after completing the combined ballot and registration form, will remove the ballot portion of the combined registration and ballot form (Form LS–76) and seal the completed ballot in a separate envelope marked ''Pork Ballot'' (Form LS–72–1) and place the sealed ''Pork Ballot'' envelope in the mailing envelope marked ''Pork Referendum'' (Form LS–73–1) along with the signed registration form. Importers, corporations, or other entities must legibly print their name and address on the mailing envelope marked ''Pork Referendum'' (Form LS–73–1), and mail the envelope to the FSA headquarters office at the following address: USDA, FSA, Operations Review and Analysis Staff, Attention: William A. Brown, Post Office Box 44366, Washington, DC 20026–4366. Importers may hand deliver the ''Pork Referendum'' envelope to USDA, FSA, Operations Review and Analysis Staff, Room 2741, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(g) The ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot has to be postmarked with a date not later than the last day of the in-person voting period, which is September 21, 2000, and be received in the FSA headquarters office by the close of business on the 5th business day after the date of the last day of the in-person voting period, which is September 28, 2000. If delivered in-person, it has to reach headquarters office not later than the last day of the in-person voting period. Ballots received after that date will be counted as invalid ballots. Upon receiving the ''Pork Referendum'' envelope (Form LS–73–1) containing the registration form and ballot, an FSA employee will record the date the ''Pork Referendum'' envelope containing the completed ballot was received in the FSA headquarters office in Washington, DC, on the Importer Ballot Request List (Form LS–77) directly opposite the voting importer's name. The FSA employee will place the ''Pork Referendum'' envelope, unopened, in a secure ballot box.

§ 1230.630 List of registered voters.

(a) *Producers.* The In-Person Voter Registration List (Form LS–75) and the Absentee Voter Request List (Form LS–74) will be available for inspection during the 3 days of the voting period and during the 7 business days following the date of the last day of the voting period at the county FSA office. The lists will be posted during regular office hours in a conspicuous public location at the FSA county office. The Absentee and In-Person Voter Registration Lists will be updated and posted daily. The complete In-Person Voter Request List (Form LS–75) will be posted in the FSA county office on the 1st business day after the date of the last day of the voting period. The complete Absentee Voter Request List (Form LS–74) will be posted in the FSA county office on the 6th business day after the date of the last day of the voting period.

(b) *Importers.* The Importer Ballot Request List (Form LS–77) will be maintained by the FSA headquarters office in Washington, DC, and not posted.

§ 1230.631 Challenge of votes.

(a) *Challenge period.* During the dates of the 3-consecutive day voting period and the 7 business days following the voting period, the ballots of producers may be challenged at the FSA county office.

(b) *Who can challenge.* Any person can challenge a producer's vote. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer vote must be made on a separate sheet of paper and each challenge must be signed by the challenger. The identity of the challenger will be kept confidential except

as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged.* Any producer having cast an in-person ballot or an absentee ballot whose name is posted on the In-Person Voter Registration List (Form LS–75) or the Absentee Voter Request List (Form LS–74) can be challenged. There is no challenge process for importers.

(d) *Notification of challenges.* The FSA County Committee or its representative, acting on behalf the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than 12 business days after the date of the last day of the in-person voting period. FSA will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to the FSA county offices within 5 business days of notification and not later than 17 business days after the date of the last day of the voting period.

(e) *Determination of challenges.* The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable, but no later than 22 business days after the date of the last day of the in-person voting period of its decision.

(f) *Challenged ballot.* A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the Administrator, AMS, after an appeal.

(g) *Appeal.* A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office within 5 business days after the date of receipt of the letter of notification of ineligibility, but not later than November 2, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA county office or as soon as practical thereafter.

(h) An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day after the date of the last day of the voting period. The Administrator, AMS, shall send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

[65 FR 43508, July 13, 2000, as amended at 65 FR 62579, Oct. 19, 2000]

§ 1230.632 Receiving ballots.

(a) *Producers.* A ballot shall be considered to be received on time if:

(1) It was cast in-person in the county FSA office prior to the close of business on the date of the last day of the in-person voting period; or

(2) It was cast as an absentee ballot, having a postmarked date not later than the last day of the in-person voting period and was received in the county FSA office not later than the close of business, 5 business days after the last day of the in-person voting period.

(b) *Importers.* A ballot shall be considered to be received on time if it had a postmarked date not later than the date of the last day of the in-person voting period and was received in the FSA headquarters office in Washington, DC, not later than the close of business, 5 business days after the last day of the in-person voting period.

§ 1230.633 Canvassing ballots.

(a) *Producers.* (1) Counting the ballots. Under the supervision of FSA CED, acting on behalf of the Administrator, AMS, the in-person registration and certification form envelopes (Form LS–72–2) and the absentee ''Pork Referendum'' envelopes (Form LS–73–1) containing the ''Pork Ballot'' envelopes for producer voters will be checked against the In-Person Voter Registration List (Form LS–75) and the

Absentee Voter Request List (Form LS–74), respectively, to determine properly registered voters. The ballots of producers voting in-person whose names are not on the In-Person Voter Registration List (Form LS–75), will be declared invalid. Likewise, the ballots of producers voting absentee whose names are not on the Absentee Voter Request List (Form LS–74) will be declared invalid. All ballots of challenged producer voters declared ineligible and invalid ballots will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular business hours on the 46th business day after the last day of the in-person voting period. FSA county office employees will remove the sealed ''Pork Ballot'' envelopes (Form LS–72–1) from the registration form envelopes and ''Pork Referendum'' envelopes (absentee voting) envelopes of all eligible producer voters and all challenged producer voters determined to be eligible. After removing all ''Pork Ballot'' envelopes, FSA county employees will shuffle the sealed ''Pork Ballot'' envelopes or otherwise mix them up so that ballots cannot be matched with producers' names. After shuffling the ''Pork Ballot'' envelopes, FSA county employees will open them and count the ballots. The ballots will be counted as follows:

(i) Number of eligible producers casting valid ballots;

(ii) Number of producers favoring continuation of the Pork Checkoff Program;

(iii) Number of producers favoring termination of the Pork Checkoff Program;

(iv) Number of challenged producer ballots deemed ineligible;

(v) Number of invalid ballots; and

(vi) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if a producer voting in-person has failed to print his or her name and address on the In-Person Voter Registration List (Form LS–75) or if an absentee voter's name and address is not recorded on the Absentee Voter Request List (Form LS–74), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they are mutilated or marked in such a way that it cannot be determined whether the voter is voting ''yes'' or ''no.'' Spoiled ballots shall not be considered as approving or disapproving the Pork Checkoff Program, or as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

(b) *Importers*—(1) *Counting the ballots.* FSA headquarters personnel, acting on behalf of the Administrator, AMS, will check the registration forms and ballots for all importer voters against the Importer Ballot Request List (Form LS–77) to determine properly registered voters. The ballots of importers voting whose names are not recorded on the Importer Ballot Request List (Form LS–77), will be declared invalid. All ballots of importer voters declared invalid will be kept separate from the other ballots and the envelopes containing these ballots will not be opened. The valid ballots will be counted on November 29, 2000, during regular office hours on the 46th business day after the date of the last day of the in-person voting period. FSA headquarter office employees will remove the sealed ''Pork Ballot'' envelope (Form LS–72–1) from the ''Pork Referendum'' envelopes (Form LS–73–1) of all eligible importer voters. After removing all ''Pork Ballot'' envelopes, FSA headquarter employees will shuffle the sealed ''Pork Ballot'' envelopes or otherwise mix them up so that ballots cannot be matched with importers' names. After shuffling the ''Pork Ballot'' envelopes, FSA headquarters employees will open the envelopes and count the ballots. The ballots will be counted as follows:

(i) Number of eligible importers casting valid ballots;

(ii) Number of importers favoring continuation of the Pork Checkoff Program;

(iii) Number of importers favoring termination of the Pork Checkoff Program;

(iv) Number of importer ballots deemed invalid; and

(v) Number of spoiled ballots.

(2) *Invalid ballots.* Ballots will be declared invalid if an importer voter's name was not recorded on the Importer Ballot Request List (Form LS–77), or the registration form or ballot was incomplete or incorrectly completed.

(3) *Spoiled ballots.* Ballots will be considered spoiled if they were mutilated or marked in such a way that it cannot be determined whether the voter is voting ''yes'' or ''no.'' Spoiled ballots shall not be considered as a ballot cast in the referendum.

(4) *Confidentiality.* All ballots shall be confidential and the contents of the ballots not divulged except as the Secretary may direct. The public can witness the opening of the ballot box and the counting of the votes but can not interfere with the process.

§ 1230.634 FSA county office report.

The FSA county office will notify the FSA State office of the results of the referendum. Each FSA county office will transmit the results of the referendum in its county to the FSA State office. Such report will include the information listed in § 1230.633. The results of the referendum in each county will be made available to the public, after the results of the referendum are announced by the Secretary. A copy of the report of results will be posted for 30 days in the FSA county office in a conspicuous place accessible to the public and a copy will be kept on file in the FSA county office for a period of at least 12 months after the referendum.

§ 1230.635 FSA State office report.

Each FSA State office will transmit to the Administrator, FSA, a written summary of the results of the referendum received from all FSA county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the FSA State Executive Director. The FSA State office will maintain a copy of the summary where it will be available for public inspection for a period of not less than 12 months.

§ 1230.636 Results of the referendum.

(a) The Administrator, FSA, will submit the combined results of the FSA State offices' results of the producers' vote and the FSA headquarters office results of the importers' vote to the Administrator, AMS. The Administrator, AMS, will prepare and submit to the Secretary a report of the results of the referendum. The results of the referendum will be announced by the Department in an official press release and published in the FEDERAL REGISTER. State reports on producer balloting, FSA headquarters office report on importer balloting, and related papers will be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of producer voting results in any State or county or the report of importer voting results shall be reexamined and checked by such persons as may be designated by the Secretary.

§ 1230.637 Disposition of ballots and records.

(a) *Producer ballots and records.* Each FSA CED will place in sealed containers marked with the identification of the referendum, the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records will be placed under lock in a safe place under the custody of the FSA CED for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, FSA, by the end of such time, the records shall be destroyed.

(b) *Importer ballots and records.* The FSA headquarters office in Washington, DC, will deliver the importers' U.S. Customs Service Form 7501s, the voter registration list, voted ballots, invalid ballots, spoiled ballots, and national summaries and records to the Marketing Programs Branch, Livestock and Seed Program, AMS, USDA,

Room 2627, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC. A Marketing Programs Branch employee will place the ballots and records in sealed containers marked with the identification of the referendum. Such ballots and records will be placed under lock in a safe place under the custody of the Marketing Programs Branch for a period of not less than 12 months after the referendum. If no notice to the contrary is received from the Administrator, AMS, by the end of such time, the records shall be destroyed.

§ 1230.638 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

§ 1230.639 Additional absentee voter challenge period.

(a) *Absentee Voter Request List*. The Absentee Voter Request List (Form LS–74) will be available for inspection during an additional challenge period of five business days (October 23, 2000–October 27, 2000) at county FSA offices. The Absentee Voter Request List will be posted daily during regular office hours in a conspicuous public location at FSA county offices during the additional challenge period.

(b) *Who can challenge*. Any person can challenge a producer's vote during the period provided in paragraph (a) of this section. Any person who wants to challenge shall do so in writing and shall include the full name of the individual or corporation or other entity being challenged. Each challenge of a producer vote must be made on a separate sheet of paper and each challenge must be signed by the challenger. The identity of the challenger will be kept confidential except as the Secretary may direct or as otherwise required by law.

(c) *Who can be challenged*. Any person whose name is on the Absentee Voter Request List who was not subject to challenge during the September 19, 2000, through October 2, 2000, challenge period may be challenged. Those producers whose names were listed on the Absentee Voter Request List and who were subject to challenge because the Absentee Voter Request List indicated they had returned their ballot are not subject to challenge during this additional 5-day period.

(d) *Notification of challenges*. The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will notify challenged producers as soon as practicable, but no later than the 2nd business day (October 31, 2000) after the last day of the additional challenge period. FSA county offices will notify all challenged persons that documentation such as sales documents, tax records, or other similar documents proving that the person owned and sold hogs or pigs during the representative period must be submitted or his or her vote will not be counted. The documentation must be provided to FSA county offices not later than November 7, 2000.

(e) *Determination of challenges*. The FSA County Committee or its representative, acting on behalf of the Administrator, AMS, will make a determination concerning the challenge based on documentation provided by the producer and will notify challenged producers as soon as practicable but no later than November 9, 2000.

(f) *Challenged ballot*. A challenge to a ballot shall be deemed to have been resolved if the determination of the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, is not appealed within the time allowed for appeal or there has been a determination by the Administrator, AMS, after an appeal.

(g) *Appeal*. A person declared to be ineligible to register and vote by the FSA County Committee or its representative, acting on behalf of the Administrator, AMS, can file an appeal at the FSA county office not later than November 17, 2000. The FSA county office shall send a producer's appeal by facsimile to the Administrator, AMS, on the date it is filed at the FSA office or as soon as practical thereafter.

(h) *Determination of appeals*. An appeal will be determined by the Administrator, AMS, as soon as practical, but in all cases not later than the 45th business day (November 28, 2000) after the date of the last day of the voting period. The Administrator, AMS, shall

send her decision on a producer's appeal to the FSA county office where the producer was initially challenged. The FSA county office shall notify the challenged producer of the Administrator's, AMS, determination on his or her appeal. The Administrator's, AMS, determination on an appeal shall be final.

[65 FR 62579, Oct. 19, 2000]

PART 1250—EGG RESEARCH AND PROMOTION

Subpart—Egg Research and Promotion Order

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AUTHORITY: 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

Subpart—Egg Research and Promotion Order

SOURCE: 40 FR 59190, Dec. 22, 1975, unless otherwise noted.

DEFINITIONS

§ 1250.301 Secretary.

Secretary means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

§ 1250.302 Act.

Act means the Egg Research and Consumer Information Act and as it may be amended (Pub. L. 93–428).

§ 1250.303 Fiscal period.

Fiscal period means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

§ 1250.304 Egg Board or Board.

Egg Board or *Board* or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

§ 1250.305 Egg producer or producer.

Egg producer or *producer* means any person who either:

(a) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(b) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual argeement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

§ 1250.306 Commercial eggs or eggs.

Commercial eggs or *eggs* means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

§ 1250.307 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1250.308 United States.

United States means the 48 contiguous States of the United States of America and the District of Columbia.

§ 1250.309 Handler.

Handler means any person who receives or otherwise acquires eggs from an egg producer, and processes, prepares for marketing, or markets, such eggs, including eggs of his own production.

§ 1250.310 Promotion.

Promotion means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

§ 1250.311 Research.

Research means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

§ 1250.312 Marketing.

Marketing means the sale or other disposition of commercial eggs, egg

products, spent fowl, or products of spent fowl in any channel of commerce.

§ 1250.313 Eligible organization.

Eligible organization means any organization, association, or cooperative which represents egg producers of any egg producing area of the United States certified by the Secretary pursuant to § 1250.356.

§ 1250.314 Plans and projects.

Plans and *projects* means those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

§ 1250.315 Part and subpart.

Part means the Egg Research and Promotion Order and all rules, regulations, and supplemental order issued pursuant to the act and the order. ''Subpart'' refers to the aforesaid order or any other portion or segment of this part.

§ 1250.316 Representative of a producer.

Representative of a producer means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

EGG BOARD

§ 1250.326 Establishment and membership.

There is hereby established an Egg Board, hereinafter called the ''Board,'' composed of 18 egg producers or representatives of egg producers, and 18 specific alternates, all appointed by the Secretary from nominations submitted by eligible organizations, associations, or cooperatives, or by other producers pursuant to § 1250.328.

§ 1250.327 Term of office.

The members of the Board, and their alternates, shall serve for terms of 2 years, except initial appointments shall be, proportionately, for terms of 2 and 3 years. Each member and alternate member shall continue to serve until his successor is appointed by the Secretary and has qualified. No member shall serve for more than three consecutive terms.

§ 1250.328 Nominations.

All nominations authorized under § 1250.326 shall be made in the following manner:

(a) Within 30 days of the approval of this order by referendum, nominations shall be submitted to the Secretary for each geographic area as specified in paragraph (d) of this section by eligible organizations, associations, or cooperatives certified pursuant to § 1250.356, or, if the Secretary determines that a substantial number of egg producers are not members of, or their interests are not represented by, any such eligible organization, association, or cooperative, then from nominations made by such egg producers in the manner authorized by the Secretary;

(b) After the establishment of the initial Board, the nominations for subsequent Board members and alternates shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members and alternates previously appointed to the Board;

(c) Where there is more than one eligible organization, association, or cooperative within each geographic area, as defined by the Secretary, they may caucus for the purpose of jointly nominating two qualified persons for each member and for each alternate member to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held within a defined geographic area, each eligible organization, association, or cooperative may submit to the Secretary two nominations for each appointment to be made;

(d) The number of members of the initial Board, and their alternates, who shall be appointed from each area are: Area 1–3, Area 2–4, Area 3–2, Area 4–2, Area 5–4, and Area 6–3, for a total of 18 members from all areas. Changes to the Board as provided in paragraph (e) of this section shall be accomplished by determining the percentage of United States egg production in each area times 18 (total Board membership) and rounding to the nearest whole number; and

(e) After the establishment of the initial Board, the area grouping of the 48 contiguous States of the United States, including the area distribution of the 18 members of the Board and their alternates, shall be reviewed at any time not to exceed 5 years by the Board, or by a person or agency designated by the Board to perform such review, and the results shall be reported to the Secretary along with any recommendations by the Board regarding whether the delineation of the areas and the area distribution of the Board should continue without any change, or whether changes should be made in either the areas or the number of Board members to be appointed from each area, providing that each area shall be represented by not less than one Board member and any action recommended shall be subject to the approval of the Secretary.

[40 FR 59190, Dec. 22, 1975, as amended at 60 FR 66861, Dec. 27, 1995]

§ 1250.329 Selection.

From the nominations made pursuant to § 1250.328, the Secretary shall appoint the members of the Board, and an alternate for each such member, on the basis of representations provided for in § 1250.326, § 1250.327, and § 1250.328.

§ 1250.330 Acceptance.

Any person appointed by the Secretary as a member, or as an alternate member, of the Board shall qualify by filing a written acceptance with the Secretary within a period of time prescribed by the Secretary.

§ 1250.331 Vacancies.

To fill any vacancy occasioned by the failure to qualify of any person appointed as a member, or as an alternate member, of the Board, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated, qualified, and appointed in the manner specified in § 1250.326, § 1250.328(b), § 1250.329, and § 1250.330, except that replacement of a Board member, or alternate, with an unexpired term of less than 6 months is not necessary.

§ 1250.332 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is appointed and qualified.

§ 1250.333 Procedure.

(a) A majority of the members, including alternates acting for members of the Board, shall constitute a quorum, and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing.

§ 1250.334 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

§ 1250.335 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violations of this subpart; and

(d) To recommend to the Secretary amendments to this subpart.

§ 1250.336 Duties.

The Board shall have the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, to adopt such rules for the conduct of its business as it may deem advisable, and it may establish advisory committees of persons other than Board members;

(b) To appoint or employ such persons as it may deem necessary and to define the duties and determine the compensation of each;

(c) To prepare and submit to the Secretary for his approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable cost of plans and projects as estimated in the budget or budgets submitted to it by prospective contractors, with the Board's recommendations with respect thereto. In preparing a budget for each of the 1994 and subsequent fiscal years, the Board shall, to the maximum extent practicable, allocate a proportion of funds for research projects comparable to the proportion of funds allocated for research projects in the Board's fiscal year 1993 budget.

(d) With the approval of the Secretary, to enter into contracts or agreements with persons, including, but not limited to, State, regional, or national agencies or State, regional, or national egg organizations which administer research, education, or promotion programs, advertising agencies, public relations firms, public or private research organizations, advertising and promotion media, and egg producer organizations, for the development and submission to it of plans and projects authorized by § 1250.341 and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of the cost thereof with funds collected pursuant to § 1250.347. Any such contracts or agreements shall provide that such contractors shall develop and submit to the Board a plan or project together with a budget or budgets which shall show estimated costs to be incurred for such plan or project, and that any such plan or project shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contractor shall keep accurate records of all of its transactions and make periodic reports to the Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

(e) To review and submit to the Secretary any plans or projects which have been developed and submitted to it by the prospective contractor, together with its recommendations with respect to the approval thereof by the Secretary;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g)–(h) [Reserved]

(i) To prepare and make public, at least annually, a report of activities carried out and an accounting for funds received and expended;

(j) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board as is given to members in order that he or his representative may attend such meetings;

(l) To act as an intermediary between the Secretary and any producer or handler; and

(m) To submit to the Secretary such information pursuant to this subpart as he may request.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 99, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989; 54 FR 12310, Mar. 24, 1989; 59 FR 38876, Aug. 1, 1994; 60 FR 66861, Dec. 27, 1995]

RESEARCH, EDUCATION, AND PROMOTION

§ 1250.341 Research, education, and promotion.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for advertising, sales promotion, and consumer education with respect to the use of eggs, egg products, spent fowl, and products of spent fowl: *Provided, however*, That any such program or project shall be directed towards increasing the general demand for eggs, egg products, spent fowl, or products of spent fowl;

(b) The establishment and carrying on of research, marketing, and development projects and studies with respect to sale, distribution, marketing, utilization, or production of eggs, egg products, spent fowl, and products of spent fowl, and the creation of new products thereof in accordance with section 7(b) of the act, to the end that the marketing and utilization of eggs, egg products, spent fowl, and products of spent fowl may be encouraged, expanded, improved, or made more acceptable, and the data collected by such activities may be disseminated;

(c) The development and expansion of foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl;

(d) Each program or project authorized under paragraphs (a), (b), and (c) of this section shall be periodically reviewed or evaluated by the Board to insure that each such program or project contributes to a coordinated national program of research, education, and promotion contributing to the maintenance of markets and for the development of new markets for and of new products from eggs, egg products, spent fowl, and products of spent fowl. If it is found by the Board that any such program or project does not further the national purpose of the act, then the Board shall terminate such program or project; and

(e) No advertising or promotion programs shall use false or unwarranted claims or make any reference to private brand names of eggs, egg products, spent fowl, and products of spent fowl or use unfair or deceptive acts or practices with respect to quality, value, or use of any competing product.

EXPENSES AND ASSESSMENTS

§ 1250.346 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. The total costs incurred by the Board for a fiscal period in collecting producer assessments and having an administrative staff shall not exceed an amount of the projected total assessments to be collected by the Board for such fiscal period that the Secretary determines to be reasonable. The funds to cover such expenses shall be paid from assessments received pursuant to § 1250.347.

[40 FR 59190, Dec. 22, 1975, as amended at 54 FR 100, Jan. 4, 1989, and 54 FR 11493, Mar. 21, 1989]

§ 1250.347 Assessments.

Each handler designated in § 1250.349 and pursuant to regulations issued by the Board shall collect from each producer, except for those producers specifically exempted in § 1250.348, and shall pay to the Board at such times and in such manner as prescribed by regulations issued by the Board an assessment at a rate not to exceed 10 cents per 30-dozen case of eggs, or the equivalent thereof, for such expenses and expenditures, including provisions for a reasonable reserve and those administrative costs incurred by the Department of Agriculture after this subpart is effective, as the Secretary finds are reasonable and likely to be incurred by the Board and the Secretary under this subpart, except that no more than one such assessment shall be made on any case of eggs.

[59 FR 64560, Dec. 15, 1994]

§ 1250.348 Exemptions.

The following shall be exempt from the specific provisions of the Act:

(a) Any egg producer whose aggregate number of laying hens at any time during a 3-consecutive-month period

immediately prior to the date assessments are due and payable has not exceeded 75,000 laying hens. The aggregate number of laying hens owned by a trust or similar entity shall be considered ownership by the beneficiaries of the trust or other entity. Ownership of laying hens by an egg producer also shall include the following:

(1) In cases in which the producer is an individual, laying hens owned by such producer or members of such producer's family that are effectively under the control of such producer, as determined by the Secretary;

(2) In cases in which the producer is a general partnership or similar entity, laying hens owned by the entity and all partners or equity participants in the entity; and

(3) In cases in which the producer holds 50 percent or more of the stock or other beneficial interest in a corporation, joint stock company, association, cooperative, limited partnership, or other similar entity, laying hens owned by the entity. Stock or other beneficial interest in an entity that is held by the following shall be considered as held by the producer:

(i) Members of the producer's family described in paragraph (a)(1);

(ii) A general partnership or similar entity in which the producer is a partner or equity participant;

(iii) The partners or equity participants in an entity of the type described in (a)(3)(ii); or

(iv) A corporation, joint stock company, association, cooperative, limited partnership, or other similar entity in which the producer holds 50 percent or more of the stock or other beneficial interests.

(b) Any egg producer owning a flock of breeding hens whose production of eggs is primarily utilized for the hatching of baby chicks.

(c) In order to qualify for exemption from the provisions of the Act under this section, producers claiming such exemption must comply with § 1250.530 regarding certification of exempt producers and other such regulations as may be prescribed by the Secretary as a condition to exemption from the provisions of the Act under this section.

[55 FR 6973, Feb. 28, 1990, as amended at 59 FR 38876, Aug. 1, 1994]

§ 1250.349 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessment specified in § 1250.347 shall be any one of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309,

(2) A producer who grades, cartons, breaks, or otherwise performs a function of a handler under § 1250.309 for eggs of his own production, or

(3) Such other persons as designated by the Board under rules and regulations issued pursuant to this subpart.

(b) Handlers shall collect and remit to the Egg Board all assessments collected in the manner and in the time specified by the Board pursuant to rules and regulations issued by the Board.

(c) Handlers shall maintain such records as the Egg Board may prescribe pursuant to rules and regulations issued by the Board.

(d) The Board with the approval of the Secretary may authorize other organizations or agencies to collect assessments in its behalf.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.350 [Reserved]

§ 1250.351 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except to recommend to the Secretary amendments to this subpart.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

REPORTS, BOOKS, AND RECORDS

§ 1250.352 Reports.

Each handler subject to this subpart and other persons subject to section 7(c) of the act may be required to report to the Board periodically such information as is required by regulations and will effectuate the purposes of the act, which information may include but not be limited to the following:

(a) Number of cases of eggs handled;

(b) Number of cases of eggs on which an assessment was collected;

(c) Name and address of person from whom any assessment was collected; and

(d) Date collection of assessment was made on each case of eggs handled.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.353 Books and records.

Each handler subject to this subpart and persons subject to section 7(c) of the act shall maintain and make available for inspection by the Board or the Secretary such books and records as are necessary to carry out the provisions of the subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least 2 years beyond the fiscal period of their applicability.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

§ 1250.354 Confidential treatment.

(a) All information obtained from such books, records, or reports shall be kept confidential by all officers and employees of the Department of Agriculture and the Board, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary, or to which the Secretary or any officer of the United States is a party and involving this subpart. Nothing in this paragraph shall be deemed to prohibit (1) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, (2) the publication, by direction of the Secretary, of general statements relating to refunds made by the Egg Board during any specific period of time, or (3) the publication, by direction of the Secretary, of the name of any person violating this subpart together with a statement of the particular provisions of this subpart violated by such person.

(b) All information with respect to refunds, except as provided in paragraph (a)(2) of this section, made to individual producers shall be kept confidential by all officers and employees of the Department of Agriculture and the Board.

[40 FR 59190, Dec. 22, 1975. Redesignated at 55 FR 6973, Feb. 28, 1990]

CERTIFICATION OF ORGANIZATIONS

§ 1250.356 Certification of organizations.

Any organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members on the Board to represent the geographic area in which the organization represents egg producers. Such eligibility shall be based in addition to other available information upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including, but not limited to, the following:

(a) Geographic territory covered by the organization's active membership;

(b) Nature and size of the organization's active membership, proportion of total of such active membership accounted for by producers of commercial eggs, a chart showing the egg production by State in which the organization has members, and the volume of commercial eggs produced by the organization's active membership in such State(s);

(c) The extent to which the commercial egg producer membership of such organization is represented in setting the organization's policies;

(d) Evidence of stability and permanency of the organization;

(e) Sources from which the organization's operating funds are derived;

(f) Functions of the organization; and

(g) The organization's ability and willingness to further the aims and objectives of the act.

The primary consideration in determining the eligibility of an organization shall be whether its egg producer membership consists of a substantial number of egg producers who produce a substantial volume of the applicable geographic area's commercial eggs to

reasonably warrant its participation in the nomination of members for the Board or to request the issuance of an order. The Secretary shall certify any organization which he finds to be eligible under this section and his determination as to eligibility shall be final.

MISCELLANEOUS

§ 1250.357 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of egg producers voting in the referendum approving this subpart, to determine whether egg producers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart at the end of 6 months after he determines that suspension or termination of the subpart is approved or favored by a majority of the egg producers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production of commercial eggs, and who produced more than 50 percent of the volume of eggs produced by the egg producers voting in the referendum.

§ 1250.358 Proceedings after termination.

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

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Secretary, (2) carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1250.336, (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct, and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the research or promotion programs hitherto authorized.

§ 1250.359 Effect of termination or amendment.

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

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

(b) Release or extinguish any violation of this subpart or any regulation issued hereunder; or

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

§ 1250.360 [Reserved]

§ 1250.361 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive action proposed

and prepared by the Board shall be submitted to the Secretary for his approval.

§ 1250.362 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by an organization certified pursuant to section 16 of the act, or by any interested person affected by the provisions of the act, including the Secretary.

§ 1250.363 Separability.

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

Subpart—Rules and Regulations

SOURCE: 41 FR 22925, June 8, 1976, unless otherwise noted.

DEFINITIONS

§ 1250.500 Terms defined.

Unless otherwise defined in this subpart, definitions of terms used in this subpart shall be those definitions of terms defined in the Egg Research and Consumer Information Act, hereinafter called the Act, and the Egg Research and Promotion Order, hereinafter called the Order.

(a) *Act*. ''Act'' means the Egg Research and Consumer Information Act as it may be amended (Pub. L. 93–428).

(b) *Secretary*. ''Secretary'' means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated, the authority to act in his stead.

(c) *Egg Board or Board*. ''Egg Board'' or ''Board'' or other designatory term adopted by such Board, with the approval of the Secretary, means the administrative body established pursuant to § 1250.326.

(d) *Fiscal period*. ''Fiscal period'' means the calendar year unless the Egg Board, with the approval of the Secretary, selects some other budgetary period.

(e) *Egg producer or producer*. ''Egg producer'' or ''producer'' means any person who either:

(1) Is an egg farmer who acquires and owns laying hens, chicks, and/or started pullets for the purpose of and is engaged in the production of commercial eggs; or

(2) Is a person who supplied or supplies laying hens, chicks, and/or started pullets to an egg farmer for the purpose of producing commercial eggs pursuant to an oral or written contractual agreement for the production of commercial eggs. Such person is deemed to be the owner of such laying hens unless it is established in writing, to the satisfaction of the Secretary or the Egg Board, that actual ownership of the laying hens is in some other party to the contract. In the event the party to an oral contract who supplied or supplies the laying hens cannot be readily identified by the Secretary or the Egg Board, the person who has immediate possession and control over the laying hens at the egg production facility shall be deemed to be the owner of such hens unless written notice is provided to the Secretary or the Egg Board, signed by the parties to said oral contract, clearly stating that the eggs are being produced under a contractual agreement and identifying the party (or parties) under said contract who is the owner of the hens.

(f) *Commercial eggs or eggs*. ''Commercial eggs'' or ''eggs'' means eggs from domesticated chickens which are sold for human consumption either in shell egg form or for further processing into egg products.

(g) *Person*. ''Person'' means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

(h) *Handle*. ''Handle'' means to grade, carton, process, transport, purchase, or in any way place eggs or cause eggs to be placed in the current of commerce. Such term shall not include the washing, the packing in cases, or the delivery by the producer of his own nest run eggs.

(i) *Handler*. ''Handler'' means any person who receives or otherwise acquires eggs from an egg producer, and

processes, prepares for marketing, or markets such eggs, including eggs of his own production.

(j) *Egg products*. ''Egg products'' means products produced, in whole or in part, from eggs.

(k) *Cooperating agency*. ''Cooperating agency'' means any person with which the Egg Board has entered into an agreement pursuant to § 1250.517(c).

(l) *Case*. ''Case'' means the standard shipping package containing 30-dozen eggs or the equivalent thereof.

(m) *Plans and projects*. ''Plans'' and ''projects'' mean those research, consumer and producer education, advertising, marketing, product development, and promotion plans, studies, or projects pursuant to § 1250.341.

(n) *Representative of a producer*. ''Representative of a producer'' means the owner, officer, or an employee of a producer who has been duly authorized to act in the place and stead of the producer.

(o) *Hen or laying hen*. ''Hen'' or ''laying hen'' means a domesticated female chicken 20 weeks of age or over, raised primarily for the production of commercial eggs.

(p) *Hatching eggs*. ''Hatching eggs'' means eggs intended for use by hatcheries for the production of baby chicks.

(q) *United States*. ''United States'' means the 48 contiguous States of the United States of America and the District of Columbia.

(r) *Promotion*. ''Promotion'' means any action, including paid advertising, to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(s) *Research*. ''Research'' means any type of research to advance the image, desirability, marketability, production, or quality of eggs, egg products, spent fowl, or products of spent fowl, or the evaluation of such research.

(t) *Consumer education*. ''Consumer education'' means any action to advance the image or desirability of eggs, egg products, spent fowl, or products of spent fowl.

(u) *Marketing*. ''Marketing'' means the sale or other disposition of commercial eggs, egg products, spent fowl, or products of spent fowl, in any channel of commerce.

(v) *Commerce*. ''Commerce'' means interstate, foreign, or intrastate commerce.

(w) *Spent fowl*. ''Spent fowl'' means hens which have been in production of commercial eggs and have been removed from such production for slaughter.

(x) *Products of spent fowl*. ''Products of spent fowl'' means commercial products produced from spent fowl.

(y) *Started pullet*. ''Started pullet'' means a hen less than 20 weeks of age.

(z) *Shell egg packer*. ''Shell egg packer'' means any person grading eggs into their various qualities.

(aa) *Egg breaker*. ''Egg breaker'' means any person subject to the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*) engaged in the breaking of shell eggs or otherwise involved in preparing shell eggs for use as egg products.

(bb) *Nest run eggs*. ''Nest run eggs'' means eggs which are packed as they come from the production facilities without having been sized and/or candled with the exception that some checks, dirties, or obvious undergrades may have been removed and provided further that the eggs may have been washed.

OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

§ 1250.501 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose*. This section collects and displays the control numbers assigned to information collection requirements by the Office of Management and Budget contained in 7 CFR part 1250 pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

(b) *Display*.

7 CFR section where identified and described	Current OMB control number
Sec.:	
1250.523	0581–0098
1250.528	0581–0098
1250.529	0581–0098
1250.530	0581–0098
1250.535	0581–0098

(Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627) and Egg Research and Consumer Information Act, as amended (7 U.S.C. 2701–2718))

[48 FR 56566, Dec. 22, 1983]

GENERAL

§ 1250.505 Communications.

Communications in connection with the Order shall be addressed to the Egg Board at its business address.

§ 1250.506 Policy and objective.

(a) It shall be the policy of the Egg Board to carry out an effective and continuous coordinated program of research, consumer and producer education, advertising, and promotion designed to strengthen the egg industry's position in the marketplace, and maintain and expand domestic and foreign markets and uses for eggs, egg products, spent fowl, and products of spent fowl of the United States.

(b) It shall be the objective of the Egg Board to carry out programs and projects which will provide maximum benefit to the egg industry and no undue preference shall be given to any of the various industry segments.

§ 1250.507 Contracts.

The Egg Board, with the approval of the Secretary, may enter into contracts with persons for the development and submission to it of plans or projects authorized by the Order and for carrying out of such plans or projects. Contractors shall agree to comply with the provisions of the Order, this subpart, and applicable provisions of the U.S. Code relative to contracting with the U.S. Department of Agriculture. Subcontractors who enter into contracts or agreements with a primary contractor and who receive or otherwise utilize funds allocated by the Egg Board shall be subject to the provisions of this subpart.

§ 1250.508 Procedure.

The organization of the Egg Board and the procedure for conducting meetings of the Board shall be in accordance with the By-Laws of the Board.

§ 1250.509 USDA costs.

Pursuant to § 1250.347 of the Order, the Board shall pay those administrative costs incurred by the U.S. Department of Agriculture for the conduct of its duties under the Order as determined periodically by the Secretary. Payment shall be due promptly after the billing for such costs.

§ 1250.510 Determination of Board Membership.

(a) Pursuant to § 1250.328 (d) and (e) of the Order, the 48 contiguous States of the United States shall be grouped into 6 geographic areas, as follows: Area 1 (North Atlantic States)—Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia; Area 2 (South Atlantic States)—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina; Area 3 (East North Central States)—Kentucky, Michigan, Missouri, Ohio, Tennessee; Area 4 (West North Central States)—Colorado, Idaho, Illinois, Indiana, Minnesota, Montana, North Dakota, South Dakota, Wisconsin, Wyoming; Area 5 (South Central States)—Iowa, Kansas, Nebraska; Area 6 (Western States)—Arizona, California, Nevada, New Mexico, Oregon, Texas, Utah, and Washington.

(b) Board representation among the 6 geographic areas is apportioned to reflect the percentages of United States egg production in each area times 18 (total Board membership). The distribution of members of the Board is:

Area 1–3, Area 2–3, Area 3–3, Area 4–3, Area 5–3, and Area 6–3. Each member will have an alternate appointed from the same area.

[71 FR 41727, July 24, 2006]

ASSESSMENTS, COLLECTIONS, AND REMITTANCES

§ 1250.514 Levy of assessments.

An assessment rate of 10 cents per case of commercial eggs is levied on each case of commercial eggs handled for the account of each producer. Each

case of commercial eggs shall be subject to assessment only once. Producers meeting the requirements of § 1250.348 are exempt from the provisions of the Act including this section.

[55 FR 6974, Feb. 28, 1990, as amended at 59 FR 64560, Dec. 15, 1994]

§ 1250.515 Reporting period and payment.

(a) For the purpose of the payment of assessments, either a calendar month or a 4-week accounting period shall be considered the reporting period; however, other accounting periods may be used when approved by the Board on an individual basis. Each collecting handler shall register his reporting period with the Board. All changes in reporting periods shall be requested in writing and subject to approval by the Board.

(b) Each producer shall pay the required assessment on his commercial eggs pursuant to § 1250.514 to the collecting handler designated in § 1250.516 on or before the date of final settlement between the producer and the collecting handler for the eggs received by the collecting handler during each reporting period.

§ 1250.516 Collecting handlers and collection.

(a) Handlers responsible for collecting the assessments shall be any of the following:

(1) The first person to whom eggs are sold, consigned, or delivered by producers and who grades, cartons, or breaks such eggs. Such shell egg breaker or egg packer must collect and remit to the Board the assessments on all eggs handled except eggs for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(2) A person who buys or receives nest run eggs from a producer and who does not grade, carton, or break such eggs. Such person shall collect the assessment from the producer and remit to the Egg Board on all such eggs, except for which there is a certification of exemption or eggs for which there is a statement indicating that an assessment has already been paid;

(3) Except as otherwise provided in paragraph (a)(4) of this section, a producer who grades, cartons, or breaks eggs of his own production shall be responsible for remitting the assessment to the Board on all eggs produced. This would include the eggs which he grades, cartons, or breaks as well as the nest run eggs which are graded, cartoned, or broken by another handler. Such a producer who remits the assessment on nest run eggs to the Board shall provide the handler specified in paragraph (a) (1) or (2) of this section with a written statement that the assessment has already been paid on the nest run eggs; or

(4) Upon approval of the Board, any person who handles eggs for a producer under a written contract that includes express provisions that said handler will remit the assessment on such eggs to the Board shall be the collecting handler notwithstanding the fact that the producer may have graded, cartoned, or otherwise processed the eggs.

Following are some examples to aid in identification of collecting handlers:

(i) Producer sells, assigns, consigns, or otherwise delivers nest run eggs of his own production to a shell egg packer or breaker for preparation for market—the shell egg packer or breaker is the collecting handler and is responsible for remitting to the Egg Board;

(ii) Producer grades, cartons, breaks, or otherwise prepares for marketing a portion of the eggs of his own production and delivers the remaining portion of his nest run eggs to a shell egg packer or breaker—the producer is the collecting handler and shall remit the assessment on his total production to the Board;

(iii) Producer sells all or a portion of his eggs in nest run form to a handler who is not a shell egg packer or breaker—the handler is responsible for collecting the assessment and remitting it to the Egg Board except for eggs covered by a statement indicating that an assessment has already been paid;

(iv) A shell egg packer or breaker who buys or receives nest run eggs from a handler who is not a shell egg packer or breaker—the handler is the collecting handler and shall remit such assessment to the Board;

(v) A shell egg packer or egg breaker buys nest run or graded eggs including undergrade eggs from another shell egg packer or egg breaker—the first shell egg packer or breaker is the collecting handler and shall remit such assessments to the Board.

(b) In the event of a producer's death, bankruptcy, receivership, or incapacity to act, the representative of the producer or his estate, or the person acting on behalf of creditors, shall be considered the producer of the eggs for the purpose of this subpart.

(c) The collecting handler may collect the assessment directly from the producer or deduct the assessment from the proceeds due or paid to the producer on whose eggs the assessment is made.

[41 FR 22925, June 8, 1976, as amended at 42 FR 60724, Nov. 29, 1977]

§ 1250.517 Remittance to Egg Board.

(a) The collecting handler responsible for remittance of assessments to the Board is not relieved of this obligation as a result of his failure to collect payment of the assessment from the egg producer(s).

(b) Each collecting handler required to remit the assessments on the eggs handled during each reporting period, specified in § 1250.515(a), shall remit the assessments directly to the Egg Board by check, draft, or money order payable to the Egg Board on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529. The assessment for each reporting period shall be calculated on the basis of the gross volume of eggs subject to assessment received by the collecting handler during each reporting period.

(c) Remittance through cooperating agency.

(1) In any State or specified geographic area the Egg Board, with the approval of the Secretary, may designate by agreement a cooperating agency to collect the assessments in its behalf. Every collecting handler within such a State or geographic area shall remit the assessments for each reporting period, specified in § 1250.515(a), to the designated cooperating agency by check, draft, or money order payable to said cooperating agency on or before the 15th day after the end of said reporting period together with a report pursuant to § 1250.529.

(2) On or before the 20th day after the end of each reporting period, each designated cooperating agency shall remit to the Egg Board the total amount of all assessments received from collecting handlers for said reporting period together with all collecting handler reports. In addition, each designated cooperating agency shall submit to the Egg Board such information as is required by the designation agreement with the Egg Board.

§ 1250.518 Receipts for payment of assessments.

(a) Each collecting handler shall give each producer whose eggs are subject to assessment a receipt for the commercial eggs handled by said collecting handler showing payment of the assessment. This receipt may be on a separate receipt form or included as part of the invoice or settlement sheet for the eggs, but in either event shall contain the following information:

(1) Name, address, and identification number of the collecting handler;

(2) Name and address of the producer who paid the assessment;

(3) Number of cases of eggs on which assessment was paid and the total amount of the assessment; and

(4) Date on which assessment was paid by producer.

(b) All eggs sold, consigned, or delivered from a collecting handler to another handler, excluding cartoned eggs and loose graded eggs sold to the bakeries, restaurants, and institutions, shall be accompanied with the collecting handler's written statement that the assessment on the lot of eggs covered by the invoice has been paid or that lot of eggs or portion thereof is exempt from assessment under provisions of § 1250.514.

§ 1250.519 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1250.347 shall be increased by a late-payment charge of 1.5 percent each month beginning with the day following the date such assessments are 30 days past due. Any remaining amount due, which shall include any unpaid charges previously

made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Assessments that are not paid when due because of a person's failure to submit a handler report to the Board as required shall accrue late-payment charges from the time such assessments should have been remitted. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date payment is actually received by the Board, whichever is earlier.

[58 FR 34697, June 29, 1993]

REGISTRATION, CERTIFICATION AND REPORTS

§ 1250.528 Registration of collecting handlers.

All collecting handlers shall, prior to August 1, 1976, register with the Egg Board by filing a registration statement. Registered collecting handlers will receive an identification number which must appear on all required reports and official communications with the Egg Board. New businesses subject to this subpart beginning after August 1, 1976, shall register with the Egg Board within 30 days following the beginning of operations. The statement of registration shall include:

(a) Name and complete address of the collecting handler;

(b) Name of individual(s) responsible for filing reports with the Egg Board; and

(c) Type of reporting period desired.

§ 1250.529 Reports.

(a) *Collecting handler reports.* (1) Each collecting handler shall make reports on forms made available or approved by the Egg Board. Each collecting handler shall prepare a separate report form each reporting period. Each report shall be mailed to the Egg Board within 15 days after the close of the reporting period and shall contain the following information:

(i) Date of report;

(ii) Reporting period covered by the report;

(iii) Name and address of collecting handler and identification number;

(iv) Total number of cases of eggs handled, total number of cases of eggs subject to collection of assessment, total number of cases of eggs exempt under § 1250.514 from collection of assessment, total number of cases of imported eggs handled, and total number of cases of eggs received from another handler and on which an assessment was already collected;

(v) The names and addresses of producers subject to assessment supplying eggs to the handlers and number of cases of eggs received from each producer;

(vi) Total amount of assessment due for eggs handled during the reporting period and remitted with the report; and

(vii) Such other information as may be required by the Board.

(2) Collecting handler reports shall be filed each reporting period following registration until such time as the Egg Board is notified in writing that the collecting handler has ceased to do business. During reporting periods in which the collecting handler does not handle any eggs, his report form shall state ''No Eggs Handled.''

(b) The Egg Board may require all persons subject to section 7(c) of the Act to make reports as needed for the enforcement and administration of the Order and as approved by the Secretary.

§ 1250.530 Certification of exempt producers.

(a) *Number of laying hens.* Egg producers not subject to the provisions of the Act pursuant to § 1250.348 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of § 1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler on or before January 1 of each year as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following: the name and address of the producer, the basis for producer exemption according

to the requirements of § 1250.348, and the signature of the producer.

(b) *Organic Production*. A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (b)(6) of this section; and is not a split operation shall be exempt from the payment of assessments.

(1) To apply for an exemption under this section, a producer shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(2) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (b) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(3) If the producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a certificate of exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(4) The producer shall provide a copy of the certificate of exemption to each handler to whom the producer sells eggs. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(5) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(6) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(c) If the exempt producer no longer qualifies for an exemption as specified in § 1250.348 or 1250.530(b), that producer shall notify, within 10 days, all handlers with whom the producer has filed a Certificate of Exemption.

[70 FR 2761, Jan. 14, 2005]

RECORDS

§ 1250.535 Retention of records.

(a) Each person required to make reports pursuant to this subpart shall maintain and retain for at least 2 years beyond the fiscal period of their applicability:

(1) One copy of each report submitted to the Egg Board;

(2) Records of all exempt producers including certification of exemption as necessary to verify the address of each exempt producer; and

(3) Such other records as are necessary to verify reports submitted to the Egg Board.

(b) Egg producers subject to § 1250.514 shall maintain and retain for at least 2 years beyond the period of their applicability:

(1) Receipts, or copies thereof, for payment of assessments; and

(2) Such records as are necessary to verify monthly levels of egg production.

§ 1250.536 Availability of records.

Each handler and egg producer subject to this subpart and all persons subject to section 7(c) of the Act shall make available for inspection and copying by authorized employees of the Egg Board and/or the Secretary during regular business hours, such information as is appropriate and necessary to verify compliance with this subpart.

§ 1250.537 Confidentiality.

All information obtained by officers and employees of the Department of Agriculture, the Egg Board, or any person under contract by the Egg Board or otherwise acting on behalf of the Egg Board from the books, records, and reports of persons subject to this subpart, and all information with respect to refunds of assessments made to individual producers, shall be kept confidential in the manner and to the extent provided in § 1250.353 of the Order.

PATENTS, COPYRIGHTS, TRADEMARKS, AND INFORMATION

§ 1250.542 Patents, copyrights, trademarks, and information.

Patents, copyrights, trademarks, and information accruing from work pursuant to any plan or project undertaken by any person on behalf of the Egg Board, financed by assessment funds or other revenues of the Egg Board; shall become property of the U.S Government as represented by the Egg Board; and such patents, copyrights, trademarks, and information may be licensed subject to approval by the Secretary of Agriculture. Upon termination of the Order, the Egg Board shall transfer custody of all such patents, copyrights, trademarks, and information to the Secretary of Agriculture pursuant to the procedure provided for in § 1250.358 who shall utilize them in a manner that he determines to be in the best interest of egg producers. Funds generated from the use of patents, copyrights, trademarks, and information by the Egg Board will be considered income subject to the same fiscal, budget, and audit control as the other funds of the Egg Board. Ownership of inventions made by employees of the Board shall be determined in accordance with Executive Order 10096.

[41 FR 22925, June 8, 1976; 41 FR 23930, June 14, 1976]

PERSONAL LIABILITY

§ 1250.547 Personal liability.

No member, alternate member, employee, or agent of the Board in the performance of his duties with the Board shall be held personally responsible either individually or jointly with others, in anyway whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, by such member, alternate member, employee, or agent, except for acts of dishonesty or willful misconduct.

PART 1260—BEEF PROMOTION AND RESEARCH

Subpart A—Beef Promotion and Research Order

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AUTHORITY: 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

Subpart A—Beef Promotion and Research Order

SOURCE: 51 FR 26138, July 18, 1986, unless otherwise noted.

DEFINITIONS

§ 1260.101 Department.

Department means the United States Department of Agriculture.

§ 1260.102 Secretary.

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

§ 1260.103 Board.

Board means the Cattlemen's Beef Promotion and Research Board established pursuant to the Act and this subpart.

§ 1260.104 Committee.

Committee means the Beef Promotion Operating Committee established pursuant to the Act and this subpart.

§ 1260.105 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.106 Collecting person.

Collecting person means the person making payment to a producer for cattle, or any other person who is responsible for collecting and remitting an assessment pursuant to the Act, the order and regulations prescribed by the Board and approved by the Secretary.

§ 1260.107 State.

State means each of the 50 States.

§ 1260.108 United States.

United States means the 50 States and the District of Columbia.

§ 1260.109 Unit.

Unit means each State, group of States or class designation which is represented on the Board.

§ 1260.110 [Reserved]

§ 1260.111 Fiscal year.

Fiscal year means the calendar year or such other annual period as the Board may determine.

§ 1260.112 Federation.

Federation means the Beef Industry Council of the National Live Stock and Meat Board, or any successor organization to the Beef Industry Council, which includes as its State affiliates the qualified State beef councils.

§ 1260.113 Established national nonprofit industry-governed organizations.

Established national nonprofit industry-governed organizations means organizations which:

(a) Are nonprofit organizations pursuant to sections 501(c) (3), (5) or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5) and (6));

(b) Are governed by a board of directors representing the cattle or beef industry on a national basis; and

(c) Were active and ongoing before the enactment of the Act.

§ 1260.114 Eligible organization.

Eligible organization means any organization which has been certified by the Secretary pursuant to the Act and this part as being eligible to submit nominations for membership on the Board.

§ 1260.115 Qualified State beef council.

Qualified State beef council means a beef promotion entity that is authorized by State statute or a beef promotion entity organized and operating within a State that receives voluntary assessments or contributions; conducts beef promotion, research, and consumer and industry information programs; and that is certified by the Board pursuant to this subpart as the beef promotion entity in such State.

§ 1260.116 Producer.

Producer means any person who owns or acquires ownership of cattle; provided, however, that a person shall not be considered a producer within the meaning of this subpart if (a) the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee; or (b) the person (1) acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party, (2) resold such cattle no later than ten (10) days from the date on which the person acquired ownership, and (3) certified, as required by regulations prescribed by the Board and approved by the Secretary, that the requirements of this provision have been satisfied.

§ 1260.117 Importer.

Importer means any person who imports cattle, beef, or beef products from outside the United States.

§ 1260.118 Cattle.

Cattle means live domesticated bovine animals regardless of age.

§ 1260.119 Beef.

Beef means flesh of cattle.

§ 1260.120 Beef products.

Beef products means edible products produced in whole or in part from beef,

exclusive of milk and products made therefrom.

§ 1260.121 Imported beef or beef products.

Imported beef or beef products means products which are imported into the United States which the Secretary determines contain a substantial amount of beef including those products which have been assigned one or more of the following numbers in the Tariff Schedule of the United States: 106.1020, 106.1040, 106.1060, 106.1080, 107.2000, 107.2520, 107.4000, 107.4500, 107.4820, 107.4840, 107.5220, 107.5240, 107.5500, 107.6100, 107.6200, 107.6300.

§ 1260.122 Promotion.

Promotion means any action, including paid advertising, to advance the image and desirability of beef and beef products with the express intent of improving the competitive position and stimulating sales of beef and beef products in the marketplace.

§ 1260.123 Research.

Research means studies relative to the effectiveness of market development and promotion efforts, studies relating to the nutritional value of beef and beef products, other related food science research, and new product development.

§ 1260.124 Consumer information.

Consumer information means nutritional data and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparing, and use of beef and beef products.

§ 1260.125 Industry information.

Industry information means information and programs that will lead to the development of new markets, marketing strategies, increased efficiency, and activities to enhance the image of the cattle industry.

§ 1260.126 Plans and projects.

Plans and projects means promotion, research, consumer information and industry information plans, studies or projects conducted pursuant to this subpart.

§ 1260.127 Marketing.

Marketing means the sale or other disposition in commerce of cattle, beef or beef products.

§ 1260.128 Act.

Act means the Beef Promotion and Research Act of 1985, Title XVI, Subtitle A of the Food Security Act of 1985, Pub. L. 99–198 and any amendments thereto.

§ 1260.129 Customs Service.

Customs Service means the United States Customs Service of the United States Department of the Treasury.

§ 1260.130 Part and subpart.

Part means the Beef Promotion and Research Order and all rules and regulations issued pursuant to the Act and the order, and the order itself shall be a ''subpart'' of such Part.

CATTLEMEN'S BEEF PROMOTION AND RESEARCH BOARD

§ 1260.141 Membership of Board.

(a) Beginning with the 2008 Board nominations and the associated appointments effective early in the year 2009, the United States shall be divided into 39 geographical units and 1 unit representing importers, and the number of Board members from each unit shall be as follows:

CATTLE AND CALVES [1]

State/unit	(1,000 Head)	Directors
1. Alabama	1,307	1
2. Arizona	930	1
3. Arkansas	1,773	2
4. California	5,450	5
5. Colorado	2,617	3
6. Florida	1,707	2
7. Idaho	2,117	2
8. Illinois	1,347	1
9. Indiana	883	1
10. Iowa	3,783	4
11. Kansas	6,550	7
12. Kentucky	2,363	2
13. Louisiana	847	1
14. Michigan	1,030	1
15. Minnesota	2,390	2
16. Mississippi	1,013	1
17. Missouri	4,450	4
18. Montana	2,383	2
19. Nebraska	6,500	7
20. Nevada	500	1
21. New Mexico	1,543	2
22. New York	1,410	1
23. North Carolina	860	1

CATTLE AND CALVES [1]—Continued

State/unit	(1,000 Head)	Directors
24. North Dakota	1,760	2
25. Ohio	1,280	1
26. Oklahoma	5,350	5
27. Oregon	1,397	1
28. Pennsylvania	1,603	2
29. South Dakota	3,717	4
30. Tennessee	2,240	2
31. Texas	13,933	14
32. Utah	830	1
33. Virginia	1,640	2
34. Wisconsin	3,383	3
35. Wyoming	1,403	1
36. Northwest	1.	
Alaska	15.	
Hawaii	158.	
Washington	1,107.	
Total	1,280.	
37. Northeast	1.	
Connecticut	54.	
Delaware	23.	
Maine	90.	
Massachusetts	46.	
New Hampshire	38.	
New Jersey	41.	
Rhode Island	5.	
Vermont	272.	
Total	569.	
38. Mid-Atlantic		1
Maryland	228.	
West Virginia	412.	
Total	640.	
39. Southeast		2
Georgia	1,187.	
South Carolina	415.	
Total	1,602.	
40. Importer [2]		9

[1] 2005, 2006, and 2007 average of January 1 cattle inventory data.
[2] 2004, 2005, and 2006 average of annual import data.

(b) The Board shall be composed of cattle producers and importers appointed by the Secretary from nominations submitted pursuant to the Act and regulations of this Part. A producer may only be nominated to represent the unit in which that producer is a resident.

(c) At least every three (3) years, and not more than every two (2) years, the Board shall review the geographic distribution of cattle inventories throughout the United States and the volume of imported cattle, beef, and beef products and, if warranted, shall reapportion units and/or modify the number of Board members from units in order to best reflect the geographic distribution of cattle production volume in the United States and the volume of imported cattle, beef, or beef products into the United States.

(d) The Board may recommend to the Secretary a modification in the number of cattle per unit necessary for representation on the Board.

(e) The following formula will be used to determine the number of Board members who shall serve on the Board for each unit:

(1) Each geographic unit or State that includes a total cattle inventory equal to or greater than five hundred thousand (500,000) head of cattle shall be entitled to one representative on the Board;

(2) States which do not have total cattle inventories equal to or greater than five hundred thousand (500,000) head of cattle shall be grouped, to the extent practicable, into geographically contiguous units each of which have a combined total inventory of not less than 500,000 head of cattle and such unit(s) shall be entitled to at least one representative on the Board;

(3) Importers shall be represented by a single unit, with the number of Board members representing such unit based upon a conversion of the total volume of imported cattle, beef or beef products into live animal equivalencies;

(4) Each unit shall be entitled to representation by an additional Board member for each one million (1,000,000) head of cattle within the unit which exceeds the initial five hundred thousand (500,000) head of cattle within the unit qualifying such unit for representation.

(f) In determining the volume of cattle within the units, the Board and the Secretary shall utilize the information received by the Board pursuant to §§ 1260.201 and 1260.202 industry data and data published by the Department.

[51 FR 26138, July 18, 1986, as amended at 55 FR 20445, May 17, 1990; 58 FR 12999, Mar. 9, 1993; 60 FR 62020, Dec. 4, 1995; 64 FR 3815, Jan. 26, 1999; 67 FR 11412, Mar. 14, 2002; 70 FR 7005, Feb. 10, 2005; 73 FR 60098, Oct. 10, 2008]

§ 1260.142 Term of office.

(a) The members of the Board shall serve for terms of three (3) years, except that the members appointed to the initial Board shall serve, proportionately, for terms of 1, 2, and 3 years. To the extent practicable, the terms of Board members from the same unit shall be staggered for the initial Board.

(b) Each member shall continue to serve until a successor is appointed by the Secretary.

(c) No member shall serve more than two consecutive 3-year terms in such capacity.

§ 1260.143 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations. An eligible organization shall only submit nominations for positions on the Board representing units in which such eligible organization can establish that it is certified as an eligible organization to submit nominations for that unit. If the Secretary determines that a unit is not represented by an eligible organization, then the Secretary may solicit nominations from organizations, and producers residing in that unit.

(b) Nominations for representation of the importer unit may be submitted by—

(1) Organizations which represent importers of cattle, beef or beef products, as determined by the Secretary, or

(2) Individual importers of cattle, beef or beef products. Individual importers submitting nominations for representation of the importer unit must establish to the satisfaction of the Secretary that the persons submitting the nominations are importers of cattle, beef or beef products.

(c) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nominations for subsequent Board members shall be submitted to the Secretary not less than sixty (60) days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1260.146.

(d) Where there is more than one eligible organization representing producers in a unit, they may caucus and jointly nominate two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

§ 1260.144 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed; and

(b) Disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board.

§ 1260.145 Appointment.

(a) From the nominations made pursuant to § 1260.143, the Secretary shall appoint the members of the Board on the basis of representation provided for in § 1260.141.

(b) Producers or importers serving on the Federation Board of Directors shall not be eligible for appointment to serve on the Board for a concurrent term.

§ 1260.146 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall request that nominations for a successor for the vacancy be submitted by the eligible organization(s) representing producers or importers of the unit represented by the vacancy. If no eligible organization(s) represents producers or importers in such unit, then the Secretary shall determine the manner in which nominations for the vacancy are submitted.

§ 1260.147 Procedure.

(a) At a properly convened meeting of the Board, a majority of the members shall constitute a quorum, and any action of the Board at such a meeting shall require the concurring votes of at least a majority of those present at

such meeting. The Board shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Board emergency action is considered necessary, and in lieu of a properly convened meeting, the Board may take action upon the concurring votes of a majority of its members by mail, telephone, or telegraph, but any such action by telephone shall be confirmed promptly in writing. In the event that such action is taken, all members must be notified and provided the opportunity to vote. Any action so taken shall have the same force as though such action had been taken at a regular or special meeting of the Board.

§ 1260.148 Compensation and reimbursement.

The members of the Board shall serve without compensation, but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.149 Powers of the Board.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive or initiate, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To adopt such rules for the conduct of its business as it may deem advisable;

(e) To recommend to the Secretary amendments to this subpart; and

(f) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1260.172, in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1260.150 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, a vice-chairperson and a treasurer and such other officers as may be necessary;

(b) To elect from its members an Executive Committee of no more than 11 and no less than 9 members, whose membership shall, to the extent practicable, reflect the geographic distribution of cattle numbers or their equivalent. The vice-chairperson of the Board shall serve as chairperson of the Executive Committee and the chairperson and the treasurer of the Board shall serve as members of the Executive Committee;

(c) To delegate to the Executive Committee the authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

(d) To elect from its members 10 representatives to the Beef Promotion Operating Committee which shall be composed of 10 members from the Board and 10 members elected by the Federation;

(e) To utilize the resources, personnel, and facilities of established national nonprofit industry-governed organizations;

(f) To review and, if approved, submit to the Secretary for approval, budgets prepared by the Beef Promotion Operating Committee on a fiscal period basis of the Committee's anticipated expenses and disbursements in the administration of the Committee's responsibilities, including probable costs of promotion, research, and consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(g) To prepare and submit to the Secretary for approval budgets on a fiscal period basis of the Board's overall anticipated expenses and disbursements, including the Committee's anticipated

expenses and disbursements, in the administration of this subpart;

(h) To maintain such books and records, which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(i)–(j) [Reserved]

(k) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(l) To cause its books to be audited by a certified public accountant at least once each fiscal period and at such other times as the Secretary may request, and submit a copy of each such audit to the Secretary;

(m) To give the Secretary the same notice of meetings of the Board as is given to members in order that the Secretary, or his representative may attend such meetings;

(n) To review applications submitted by State beef promotion organizations pursuant to § 1260.181 and to make determinations with regard to such applications;

(o) To submit to the Secretary such information pursuant to this subpart as may be requested; and

(p) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

[51 FR 26138, July 18, 1986, as amended at 60 FR 58502, Nov. 28, 1995]

§ 1260.151 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve), as the Secretary finds are reasonable and likely to be incurred by the board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with this subpart. Administrative expenses incurred by the board shall not exceed 5 percent of the projected revenue of that fiscal period. Expenses authorized in this paragraph shall be paid from assessments collected pursuant to § 1260.172.

(b) The Board shall reimburse the Secretary, from assessments collected pursuant to § 1260.172, for administrative costs incurred by the Department to carry out its responsibilities pursuant to this subpart after the effective date of this subpart.

(c) [Reserved]

(d) Expenditures for the maintenance and expansion of foreign markets for beef and beef products shall be limited to an amount equal to or less than the total amount of assessments paid pursuant to § 1260.172(a).

[51 FR 26138, July 18, 1986, as amended at 53 FR 52631, Dec. 29, 1988 and 54 FR 15918, Apr. 20, 1989; 60 FR 58502, Nov. 28, 1995]

BEEF PROMOTION OPERATING COMMITTEE

§ 1260.161 Establishment and membership.

(a) There is hereby established a Beef Promotion Operating Committee of 20 members. The Committee shall be composed of 10 Board members elected by the Board and 10 producers elected by the Federation.

(b) Board representation on the Committee shall consist of the chairperson, vice-chairperson and treasurer of the Board, and seven representatives of the Board who will be duly elected by the Board to serve on the Committee. The seven representatives to the Committee elected by the Board shall, to the extent practical, reflect the geographic and unit distribution of cattle numbers, or the equivalent thereof.

(c) Federation representation on the Committee shall consist of the Federation chairperson, vice-chairperson, and eight duly elected producer representatives of the Federation Board of Directors who are members or ex officio members of the Board of Directors of a qualified State beef council. The eight representatives of the Federation elected to serve on the Committee shall, to the extent practical, reflect the geographic distribution of cattle numbers. The Federation shall submit to the Secretary the names of the representatives elected by the Federation to serve on the Committee and the manner in which such election was held and that such representatives are

producers and are members or ex officio members of the Board of Directors of a qualified State beef council on the Federation Board of Directors. The prospective Federation representatives shall file with the Secretary a written agreement to serve on the Committee and to disclose any relationship with any beef promotion entity or with any organization that has or is being considered for a contractual relationship with the Board or the Committee. When the Secretary is satisfied that the above conditions are met, the Secretary shall certify such representatives as eligible to serve on the Committee.

§ 1260.162 Term of office.

(a) The members of the Committee shall serve for a term of 1 year.

(b) No member shall serve more than six consecutive terms.

§ 1260.163 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Committee, the Board or the Federation, depending upon which organization is represented by the vacancy, shall submit the name of a successor for the position in the manner utilized to elect representatives pursuant to § 1260.161 (b) and (c) of this section.

§ 1260.164 Procedure.

(a) Attendance of at least 15 members of the Committee shall constitute a quorum at a properly convened meeting of the Committee. Any action of the Committee shall require the concurring votes of at least two-thirds of the members present. The Committee shall establish rules concerning timely notice of meetings.

(b) When in the opinion of the chairperson of the Committee emergency action must be taken before a meeting can be called, the Committee may take action upon the concurring votes of no less than two-thirds of its members by mail, telephone, or telegraph. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Committee.

§ 1260.165 Compensation and reimbursement.

The members of the Committee shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.166 Officers of the Committee.

The following persons shall serve as officers of the Committee:

(a) The chairperson of the Board shall be chairperson of the Committee.

(b) The chairperson of the Federation shall be vice-chairperson of the Committee.

(c) The treasurer of the Board shall be treasurer of the Committee.

(d) The Committee shall elect or appoint such other officers as it may deem necessary.

§ 1260.167 Powers of the Committee.

The Committee shall have the following powers:

(a) To receive and evaluate, or on its own initiative, develop and budget for plans or projects to promote the use of beef and beef products as well as projects for research, consumer information and industry information and to make recommendations to the Secretary regarding such proposals;

(b) To select committees and subcommittees of Committee members, and to adopt such rules for the conduct of its business as it may deem advisable;

(c) To establish committees of persons other than Committee members to advise the Committee and pay the necessary and reasonable expenses and fees of the members of such committees.

§ 1260.168 Duties of the Committee.

The Committee shall have the following duties:

(a) To meet and to organize;

(b) To contract with established national nonprofit industry-governed organizations to implement programs of promotion, research, consumer information and industry information;

(c) To disseminate information to Board members;

(d) To prepare and submit to the Board for approval budgets on a fiscal-period basis of its anticipated expenses and disbursements in the administration of its responsibilities, including probable costs of promotion, research, consumer information and industry information plans or projects, and also including a general description of the proposed promotion, research, consumer information and industry information programs contemplated therein;

(e) To develop and submit to the Secretary for approval promotion, research, consumer information and industry information plans or projects;

(f) With the approval of the Secretary to enter into contracts or agreements with established national nonprofit industry-governed organizations for the implementation and conduct of activities authorized under §§ 1260.167 and 1260.169 and for the payment of the cost of such activities with funds collected through assessments pursuant to § 1260.172. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Committee a budget or budgets which shall show the estimated cost to be incurred for such activity or project;

(2) Any such plan or project shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Committee or Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary, the Committee or the Board may require. The Secretary or agents of the Committee or the Board may audit periodically the records of the contracting party;

(g) To prepare and make public, at least annually, a report of its activities carried out and an accounting for funds received and expended;

(h) To give the Secretary the same notice of meetings of the Committee and its subcommittees and advisory committees in order that the Secretary, or his representative, may attend such meetings;

(i) To submit to the Board and to the Secretary such information pursuant to this subpart as may be requested; and

(j) To encourage the coordination of programs of promotion, research, consumer information and industry information designed to strengthen the cattle industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products.

§ 1260.169 Promotion, research, consumer information and industry information.

The Committee shall receive and evaluate, or on its own initiative, develop and submit to the Secretary for approval any plans and projects for promotion, research, consumer information and industry information authorized by this subpart. Such plans and projects shall provide for:

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for promotion, research, consumer information and industry information, with respect to beef and beef products designed to strengthen the beef industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for beef and beef products;

(b) The establishment and conduct of research and studies with respect to the sale, distribution, marketing, and utilization of beef and beef products and the creation of new products thereof, to the end that marketing and utilization of beef and beef products may be encouraged, expanded, improved or made more acceptable in the United States and foreign markets;

(c) Each plan or project authorized under paragraph (a) and (b) of this section shall be periodically reviewed or evaluated by the Committee to ensure that each such plan or project contributes to an effective program of promotion, research, consumer information and industry information. If it is found by the Committee that any such plan or project does not further the purposes of the Act, then the Committee shall terminate such plan or project;

(d) In carrying out any plan or project of promotion or advertising implemented by the Committee, no reference to a brand or trade name of any beef product shall be made without the approval of the Board and the Secretary. No such plans or projects shall make use of any unfair or deceptive acts or practices, including unfair or deceptive acts or practices with respect to the quality, value or use of any competing product; and

(e) No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this part.

ASSESSMENTS

§ 1260.172 Assessments.

(a) *Domestic assessments.* (1) Except as prescribed by regulations approved by the Secretary, each person making payment to a producer for cattle purchased from such producer shall be a collecting person and shall collect an assessment from the producer, and each producer shall pay such assessment to the collecting person, at the rate of one dollar ($1) per head of cattle purchased and such collecting person shall remit the assessment to the Board or to a qualified State beef council pursuant to § 1260.172(a)(5).

(2) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall remit to a qualified State beef council or to the Board an assessment on such cattle at the rate of one dollar ($1) per head of cattle or the equivalent thereof.

(3) In determining the assessment due from each producer pursuant to § 1260.172(a), a producer who is contributing to a qualified State beef council(s) shall receive a credit from the Board for contributions to such Council, but not to exceed 50 cents per head of cattle assessed.

(4) In order for a producer described in § 1260.172(a) to receive the credit authorized in § 1260.172(a)(3), the qualified State beef council or the collecting person must establish to the satisfaction of the Board that the producer has contributed to a qualified State beef council.

(5) Each person responsible for the remittance of the assessment pursuant to § 1260.172 (a) (1) and (2) shall remit the assessment to the qualified State beef council in the State from which the cattle originated prior to sale, or if there is no qualified State beef council within such State, the assessment shall be remitted directly to the Board. However, the Board, with the approval of the Secretary, may authorize qualified State beef councils to propose modifications to the foregoing ''State of origin'' rule to ensure effective coordination of assessment collections between qualified State beef councils. Qualified State beef councils and the Board shall coordinate assessment collection procedures to ensure that producers selling or marketing cattle in interstate commerce are required to pay only one assessment per individual sale of cattle. For the purpose of this subpart, ''State of origin'' rule means the State where the cattle were located at time of sale, or the State in which the cattle were located prior to sale if such cattle were transported interstate for the sole purpose of sale. Assessments shall be remitted not later than the 15th day of the month following the month in which the cattle were purchased or marketed.

(6) If a State law or regulation promulgated pursuant to State law requires the payment and collection of a mandatory, nonrefundable assessment of more fifty (50) cents per head on the sale and purchase of cattle, or the equivalent thereof for beef and beef products as described in § 1260.172 (a)(1) and (2) for use by a qualified State beef council to fund activities similar to those described in § 1260.169, and such State law or regulation authorizes the issuance of a credit of that amount of the assessment which exceeds fifty (50) cents to producers who waive any right to the refund of the assessment credited by the State due pursuant to this subpart, then any producer subject to such State law or regulation who pays only the amount due pursuant to such State law or regulation and this subpart, including any credits issued, shall thereby waive that producer's right to

receipt from the Board of a refund of such assessment for that portion of such refund for which the producer received credit pursuant to such State law or regulation.

(b) *Importer assessments*. (1) Importers of cattle, beef, and beef products into the United States shall pay an assessment to the Board through the U.S. Customs Service, or in such other manner as may be established by regulations approved by the Secretary.

(2) The assessment rates for imported cattle, beef, and beef products are as follows:

IMPORTED LIVE CATTLE

HTS No.	Assessment rate (head)
0102.10.0010	$1.00
0102.10.0020	1.00
0102.10.0030	1.00
0102.10.0050	1.00
0102.90.2011	1.00
0102.90.2012	1.00
0102.90.4024	1.00
0102.90.4028	1.00
0102.90.4034	1.00
0102.90.4038	1.00
0102.90.4054	1.00
0102.90.4058	1.00
0102.90.4062	1.00
0102.90.4064	1.00
0102.90.4066	1.00
0102.90.4068	1.00
0102.90.4072	1.00
0102.90.4074	1.00
0102.90.4082	1.00
0102.90.4084	1.00

IMPORTED BEEF AND BEEF PRODUCTS

HTS No.	Assessment rate per kg
0201.10.0510	.01459542
0201.10.0590	.00379102
0201.10.1010	.01459542
0201.10.1090	.00379102
0201.10.5010	.01459542
0201.10.5090	.00511787
0201.20.0200	.00530743
0201.20.0400	.00511787
0201.20.0600	.00379102
0201.20.1000	.00530743
0201.20.3000	.00511787
0201.20.5000	.00379102
0201.20.8090	.00379102
0201.30.0200	.00530743
0201.30.0400	.00511787
0201.30.0600	.00379102
0201.30.1000	.00530743
0201.30.3000	.00511787
0201.30.5000	.00511787
0201.30.8090	.00511787
0202.10.0510	.01459542
0202.10.0590	.00379102
0202.10.1010	.01459542

IMPORTED BEEF AND BEEF PRODUCTS—Continued

HTS No.	Assessment rate per kg
0202.10.1090	.00370102
0202.10.5010	.01459542
0202.10.5090	.00379102
0202.20.0200	.00530743
0202.20.0400	.00511787
0202.20.0600	.00379102
0202.20.1000	.00530743
0202.20.3000	.00511787
0202.20.5000	.00379102
0202.20.8000	.00379102
0202.30.0200	.00530743
0202.30.0400	.00511787
0202.30.0600	.00527837
0202.30.1000	.00530743
0202.30.3000	.00511787
0202.30.5000	.00511787
0202.30.8000	.00379102
0206.10.0000	.00379102
0206.21.0000	.00379102
0206.22.0000	.00379102
0206.29.0000	.00379102
0210.20.0000	.00615701
1601.00.4010	.00473877
1601.00.4090	.00473877
1601.00.6020	.00473877
1602.50.0900	.00663428
1602.50.1020	.00663428
1602.50.1040	.00663428
1602.50.2020	.00701388
1602.50.2040	.00701388
1602.50.6000	.00720293

(3) The Board may prescribe by regulation, with the approval of the Secretary, an increase or decrease in the level of assessments for imported beef and beef products based upon revised determinations of live animal equivalencies.

(4) The assessments due upon imported cattle, beef and beef products shall be remitted to the Customs Service upon importation of the cattle, beef or beef products into the United States, or in such other manner as may be provided by regulations prescribed by the Board and approved by the Secretary.

(c) The collection of assessments pursuant to §1260.172 (a) and (b) shall begin with respect to cattle purchased or cattle, beef, and beef products imported on and after the effective date of this section and shall continue until terminated by the Secretary.

(d) Money remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable as appropriate to the qualified State beef council or the ''Cattlemen's Beef Promotion and Research Board.'' Such remittances and the reports specified in

§ 1260.201 shall be mailed to the location designated by the Board.

[51 FR 26138, July 18, 1986, as amended at 53 FR 52631, Dec. 29, 1988 and 54 FR 15918, Apr. 20, 1989; 54 FR 28019, July 5, 1989; 71 FR 47076, Aug. 16, 2006]

§§ 1260.173–1260.174 [Reserved]

§ 1260.175 Late-payment charge.

Any unpaid assessments due to the Board pursuant to § 1260.172 shall be increased 2.0 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this section, any assessment that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the qualified State beef council or Board, whichever is earlier.

§ 1260.176 Adjustment of accounts.

Whenever the Board or the Department determines that money is due the Board or that money is due any person from the Board, such person shall be notified of the amount due. The person shall then remit any amount due the Board by the next date for remitting assessments as provided in § 1260.172. Overpayments shall be credited to the account of the person remitting the overpayment and shall be applied against amounts due in succeeding months except that the Board shall make prompt payment when an overpayment cannot be adjusted by a credit.

§ 1260.181 Qualified State beef councils.

(a) Any beef promotion entity that is authorized by State statute or is organized and operating within a State, that receives assessments or contributions from producers and conducts beef promotion, research, consumer information and/or industry information programs may apply for certification of qualification so that producers may receive credit pursuant to § 1260.172(a)(3) for contributions to such organization. The Board shall review such applications for certification and shall make a determination as to certification of such applicant.

(b) In order for the State beef council to be certified by the Board as a qualified State beef council, the council must:

(1) Conduct activities as defined in § 1260.169 that are intended to strengthen the beef industry's position in the marketplace;

(2) Submit to the Board a report describing the manner in which assessments are collected and the procedure utilized to ensure that assessments due are paid;

(3) Certify to the Board that such council will collect assessments paid on cattle originating from the State or unit within which the council operates and shall establish procedures for ensuring compliance with this subpart with regard to the payment of such assessments;

(4) Certify to the Board that such organization shall remit to the Board assessments paid and remitted to the council, minus authorized credits issued to producers pursuant to § 1260.172(a)(3), by the last day of the month in which the assessment was remitted to the qualified State beef council unless the Board determines a different date for remittance of assessments.

(5) [Reserved]

(6) Certify to the Board that the council will furnish the Board with an annual report by a certified public accountant of all funds remitted to such council pursuant to this subpart and any other reports and information the Board or Secretary may request; and

(7) Not use council funds collected pursuant to this subpart for the purpose of influencing governmental policy or action, or to fund plans or projects which make use of any unfair or deceptive acts or practices including unfair or deceptive acts or practices

with respect to the quality, value or use of any competing product.

[51 FR 26138, July 18, 1986, as amended at 60 FR 58502, Nov. 28, 1995]

REPORTS, BOOKS AND RECORDS

§ 1260.201 Reports.

Each importer, person marketing cattle, beef or beef products of that person's own production directly to consumers, and each collecting person making payment to producers and responsible for the collection of the assessment under § 1260.172 shall report to the Board periodically information required by regulations prescribed by the Board and approved by the Secretary. Such information may include but is not limited to the following:

(a) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transaction;

(b) The number of cattle imported; or the equivalent thereof of beef or beef products;

(c) The amount of assessment remitted;

(d) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and,

(e) The date any assessment was paid.

EFFECTIVE DATE NOTE: § 1260.201 contains information collection and recordkeeping requirements and will not become effective until approval is given by the Office of Management and Budget.

§ 1260.202 Books and records.

Each person subject to this subpart shall maintain and make available for inspection by the Secretary the records required by regulations prescribed by the Board and approved by the Secretary that are necessary to carry out the provisions of this subpart, including records necessary to verify any required reports. Such records shall be maintained for the period of time prescribed by the regulations issued hereunder.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

EFFECTIVE DATE NOTE: § 1260.202 contains information collection and recordkeeping requirements and will not become effective until approval is given by the Office of Management and Budget.

§ 1260.203 Confidential treatment.

All information obtained from such books, records or reports required under the Act and this subpart shall be kept confidential by all persons, including employees and agents and former employees and agents of the Board, all officers and employees and all former officers and employees of the Department, and by all officers and employees and all former officers and employees of contracting organizations having access to such information, and shall not be available to Board members or any other producers or importers. Only those persons having a specific need for such information in order to effectively administer the provisions of this subpart shall have access to this information. In addition, only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section shall be deemed to prohibit:

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

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

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

MISCELLANEOUS

§ 1260.211 Proceedings after termination.

(a) Upon the termination of this subpart the Board shall recommend not more than 11 of its members to the Secretary to serve as trustees for the

purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all the funds and property owned, in the possession of or under the control of the Board, including unpaid claims or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contract or agreements entered into by it pursuant to §§ 1260.150 and 1260.168.

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such persons as the Secretary may direct; and

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

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the promotion, research, consumer information or industry information plans or projects authorized pursuant to this subpart.

[51 FR 26138, July 18, 1986; 51 FR 26686, July 25, 1986]

§ 1260.212 Effect of termination or amendment.

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

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

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

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

§ 1260.213 Removal.

If any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Board or Committee may recommend to the Secretary that that person be removed from office. If the Secretary finds that the recommendation demonstrates adequate cause, the Secretary shall remove the person from office. A person appointed or certified under this part or any employee of the Board or Committee may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1260.214 Personal liability.

No member, employee or agent of the Board or the Committee, including employees or agents of a qualified State beef council acting on behalf of the Board, shall be held personally responsible, either individually or jointly, in any way whatsoever, to any person for errors in judgment, mistakes or other acts of either commission or omission, or such member or employee, except for acts of dishonesty or willful misconduct.

§ 1260.215 Patents, copyrights, inventions and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, ensure to the benefit of the

Board. Upon termination of this subpart, § 1260.211 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

§ 1260.216 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board, or by any organization or association certified pursuant to the Act and this part, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1260.217 Separability.

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

Subpart B—Rules and Regulations

SOURCE: 53 FR 5754, Feb. 26, 1988, unless otherwise noted.

§ 1260.301 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms as appears in Subpart A of this part.

§ 1260.302 Organic exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that re eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (i) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board or QSBC—on a form provided by the Board or QSBC—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board or QSBC will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board or QSBC will have 60 days to approve the exemption request; after August 15, 2005, the Board or QSBC will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment.

(f) The person responsible for collecting and remitting the assessment shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board or QSBC.

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic cattle or beef and beef products—on a form provided by the Board—at any

time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic cattle or beef and beef products bearing this HTS classification assigned by the Board will not be subject to assessments.

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2762, Jan. 14, 2005]

§ 1260.310 Domestic assessments.

(a) A $1.00 per head assessment on cattle sold shall be paid by the producer of the cattle in the manner designated in § 1260.311.

(b) If more than one producer shares the proceeds received for the cattle sold, each such producer is obligated to pay that portion of the assessments which are equivalent to the producer's proportionate share of the proceeds.

(c) Failure of the collecting person to collect the assessment on each head of cattle sold as designated in § 1260.311 shall not relieve the producer of his obligation to pay the assessment to the appropriate qualified State beef council or the Cattlemen's Board as required in § 1260.312.

§ 1260.311 Collecting persons for purposes of collection of assessments.

Collecting persons for purposes of collecting and remitting the $1.00 per head assessment shall be:

(a) Except as provided in paragraphs (b), (c), and (f) of this section, each person making payment to a producer for cattle purchased in the United States shall collect from the producer an assessment at the rate of $1-per-head of cattle purchased and shall be responsible for remitting assessments to the QSBC or the Board as provided in § 1260.312. The collecting person shall collect the assessment at the time the collecting person makes payment or any credit to the producer's account for the cattle purchased. The person paying the producer shall give the producer a receipt indicating payment of the assessment.

(b) Any producer marketing cattle of that producer's own production in the form of beef or beef products to consumers, either directly or through retail or wholesale outlets, shall be responsible for remitting to the qualified State beef council or the Cattlemen's Board pursuant to § 1260.312, an assessment on such cattle at the rate of $1.00 per head of cattle or the equivalent thereof. The obligation to remit the assessment shall attach upon slaughter of the cattle, and the producer responsible for remitting the assessment shall remit the assessment in the manner provided in § 1260.312. For the purposes of this subpart, a producer marketing cattle of the producer's own production in the form of beef or beef products shall be considered a collecting person.

(c) In the States listed in the following chart there exists a requirement that cattle be brand inspected by State authorized inspectors prior to sale. In addition, when cattle are sold in the sales transactions listed below in those States, these State authorized inspectors are authorized to, and shall, except as provided for in paragraph (f) of this section, collect assessments due

as a result of the sale of cattle. In those transactions in which inspectors are responsible for collecting assessments, the person paying the producer shall not be responsible for the collection and remittance of such assessments. The following chart identifies the party responsible for collecting and remitting assessments in these States:

State	Sales through auction market	Sales to a slaughter/packer	Sales to a feedlot	Sales to an order buyer/dealer	Country sales [1]
Arizona	CP	CP	CP	B	B
California	CP	CP	B	B-CP	B
Colorado	CP	B	B	B	B
Idaho	B	B	B	B	B
Montana	CP	B	B	B	B
Nebraska	CP	CP	B-CP	B-CP	B-CP
Nevada	B	B	B	B	B
Oregon	CP	B-CP	B	B	B
New Mexico	CP	B-CP	B-CP	B-CP	B-CP
Utah	CP	B-CP	B	B	B
Washington	CP	CP	B	B-CP	B
Wyoming	CP	B	B	B	B

Key:
B—Brand inspector has responsibility to collect and remit assessments due.
CP—The person paying the producer shall be the collecting person and has responsibility to collect and remit the assessments due.
B-CP—Brand inspector has responsibility to collect; however, when there has not been a physical brand inspection the person paying the producer shall be the collecting person and has the responsibility to collect and remit assessments due.
[1] For the purpose of this subpart, the term "country sales" shall include any sales not conducted at an auction or livestock market and which is not a sale to a slaughter/packer, feedlot, or order buyer or dealer.

(d) For cattle delivered on futures contracts, the commission firm or the market agency representing the seller in the delivery of cattle shall be the collecting person.

(e) In a case where a producer sells cattle as part of a custom slaughter operation, the producer shall be the collecting person in the same manner as if the cattle were slaughtered for sale.

(f)(1) In lieu of each person making a payment to a producer for cattle purchased in the United States, producers are provided the option in accordance with this paragraph (f) to remit the assessment to the QSBC in the State in which the producer resides. A producer who transports, prior to sale, cattle of that producer's own production to another State, may elect to make a directed payment of the $1-per-head assessment in advance to the QSBC in the State in which the producer resides, provided that the producer fulfills the following requirements:

(i) Transports the cattle under retained ownership to a feedlot or similar location, and the cattle remain at such location, prior to sale, for a period not less than 30 days; and

(ii) The producer, either before or at the time of transport, signs a Certification of Producer Directed Payment of Cattle Assessments form indicating that the assessment has been paid in advance, and remits the assessment to the appropriate QSBC. A copy of the certification form indicating the payment of the assessment shall be sent by the producer with the assessment when remitted to the QSBC. The producer also shall send a copy of the certification form to the feedlot operator at the time the cattle are delivered. A copy of the certification form also shall be given to the purchaser of the cattle by the feedlot operator at the time of sale.

(2) The certification form will include the following information:

(i) Producer's Name.

(ii) Producer's social security number or Tax I.D. number.

(iii) Producer's address (street address or P.O. Box, city, State, and zip code).

(iv) Signature of Producer.

(v) Producer's State of residence.

(vi) Number of cattle shipped to out of State feedyard under retained ownership.

(vii) Date cattle shipped.

(viii) State where cattle will be on feed.

(ix) Name of feedyard.

(x) Address of feedyard.

(3) Cattle of a producer's own production shall be those cattle which meet all of the following requirements:

(i) The cattle shall be offspring of a producer's own cow herd;

(ii) The cattle shall have been continuously and exclusively under the producer's ownership; and

(iii) The cattle are transported to a feedlot with such producer continuously owning the cattle through the entire feeding phase.

(4) For those cattle for which the assessment has been producer directed and paid in advance pursuant to paragraph (f)(1) of this section, the purchaser of the cattle shall not be required to collect and remit the assessment, but shall maintain on file a copy of the Certification of Producer Directed Payment of Cattle Assessments form completed and signed by the producer who originally transported the cattle under retained ownership.

(5) For those cattle for which the assessment has been producer directed and paid in advance pursuant to paragraph (f)(1) of this section, copies of the completed Certification of Producer Directed Payment of Cattle Assessments form shall be maintained on file by the producer, the QSBC or the Board, the feedlot operator, and the purchaser of the cattle for 3 years.

(6) Producers shall not receive credit of the assessment required to be paid pursuant to paragraph (f)(1) of this section for those cattle lost because of death.

[53 FR 5754, Feb. 26, 1988, as amended at 67 FR 61766, Oct. 2, 2002]

§ 1260.312 Remittance to the Cattlemen's Board or Qualified State Beef Council.

Each person responsible for the collection and remittance of assessments shall transmit assessments and a report of assessments to the qualified State beef council of the State in which such person resides or if there is no qualified State beef council in such State, then to the Cattlemen's Board as follows:

(a) *Reports*. Each collecting person shall make reports on forms made available or approved by the Cattlemen's Board. Each collecting person shall prepare a separate report for each reporting period. Each report shall be mailed to the qualified State beef council of the State in which the collecting person resides, or its designee, or if there exists no qualified State beef council in such State, to the Cattlemen's Board. Each report shall contain the following information:

(1) The number of cattle purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, and the dates of such transactions;

(2) The amount of assessment remitted;

(3) The basis, if necessary, to show why the remittance is less than the number of head of cattle multiplied by one dollar; and

(4) The date any assessment was paid.

(b) *Reporting periods*. Each calendar month shall be a reporting period and the period shall end at the close of business on the last business day of the month.

(c) *Remittances*. The remitting person shall remit all assessments to the qualified State beef council or its designee, or, if there is no qualified State beef council, to the Cattlemen's Board at P.O. Box 27–275; Kansas City, Missouri 64180–0001, with the report required in paragraph (a) of this section not later than the 15th day of the following month. All remittances sent to a qualified State beef council or the Cattlemen's Board by the remitting persons shall be by check or money order payable to the order of the qualified State beef council or the Cattlemen's Board. All remittances shall be received subject to collection and payment at par.

§ 1260.313 Document evidencing payment of assessments.

Each collecting person responsible for remitting an assessment to a qualified State beef council or the Board, other than a producer slaughtering cattle of the producer's own production for sale, is required to give the producer from whom the collecting person collected an assessment written evidence of payment of the Beef Promotion and Research Assessments.

Such written evidence serving as a receipt shall contain the following information:

(a) Name and address of the collecting person.

(b) Name of producer who paid assessment.

(c) Number of head of cattle sold.

(d) Total assessments paid by the producer.

(e) Date.

§ 1260.314 Certification of non-producer status for certain transactions.

(a) The assessment levied on each head of cattle sold shall not apply to cattle owned by a person:

(1) If the person certifies that the person's only share in the proceeds of a sale of cattle, beef, or beef products is a sales commission, handling fee or other service fee; or

(2) If the person:

(i) Certifies that the person acquired ownership of cattle to facilitate the transfer of ownership of such cattle from the seller to a third party,

(ii) Establishes that such cattle were resold not later than 10 days from the date on which the person acquired ownership; and

(iii) Certifies that the assessment levied upon the person from whom the person purchased the cattle, if an assessment was due, has been collected and has been remitted, or will be remitted in a timely fashion.

(b) Each person seeking non-producer status pursuant to § 1260.116 shall provide the collecting person, on a form approved by the Board and the Secretary, with a Statement of Certification of Non-Producer Status at the time the collecting person makes payment to the seller of cattle, in lieu of the assessment that would otherwise be due, except as provided for in paragraphs (c) and (d) of this section.

(c) When the seller of cattle is not physically present during a sales transaction in which the seller claims non-producer status, such seller shall deliver to the collecting person an original Statement of Certification of Non-Producer Status within 10 business days of the date the collecting person makes payment to the seller of the cattle.

(d) If the collecting person is a brand inspector, as provided for in § 1260.311, the seller of cattle claiming non-producer status shall provide to the brand inspector at the time the physical brand inspection is completed, in lieu of the assessment that would otherwise be due, either: a Statement of Certification of Non-Producer Status or a valid brand inspection certificate which shows collection of the assessment by a brand inspector in a transaction which took place not more than 10 days prior to the sale of the cattle.

(e) A copy of the Statement of Certification of Non-Producer Status shall be forwarded, upon request, by the collecting person to the qualified State beef council or the Cattlemen's Board.

[53 FR 5754, Feb. 26, 1988, as amended at 66 FR 26784, May 15, 2001]

§ 1260.315 Qualified State Beef Councils.

The following State beef promotion entities have been certified by the Board as qualified State beef councils:

Alabama Cattlemen's Association
Arizona Beef Council
Arkansas Beef Council
California Beef Council
Colorado Beef Council
Florida Beef Council, Inc.
Georgia Beef Board, Inc.
Idaho Beef Council
Illinois Beef Council
Indiana Beef Council
Iowa Beef Cattle Producers Association
Kansas Beef Council
Kentucky Beef Cattle Association
Louisiana Beef Industry Council
Maryland Beef Council
Michigan Beef Industry Commission
Minnesota Beef Council
Mississippi Cattle Industry Board
Missouri Beef Industry Council
Montana Beef Council
Nebraska Beef Industry Development Board
Nevada Beef Council
New Mexico Beef Council
New York Beef Industry Council
North Carolina Cattlemen's Association
North Dakota Beef Commission
Ohio Beef Council
Oklahoma Beef Commission
Oregon Beef Council
Pennsylvania Beef Council, Inc.
South Carolina Cattle and Beef Board
South Dakota Beef Industry Council
Tennessee Beef Industry Council
Texas Beef Industry Council
Utah Beef Council

Vermont Beef Council
Virginia Cattle Industry Board
Washington State Beef Commission
West Virginia Beef Industry
Wisconsin Beef Council
Wyoming Beef Council

§ 1260.316 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0851–0152.

Subpart C [Reserved]

Subpart D—Beef Promotion and Research: Certification and Nomination Procedures for the Cattlemen's Beef Promotion and Research Board

SOURCE: 51 FR 11559, Apr. 4, 1986, unless otherwise noted. Redesignated at 51 FR 26138, July 18, 1986, and further redesignated at 51 FR 35197, Oct. 1, 1986. Redesignated also at 53 FR 9858, Mar. 28, 1988.

§ 1260.500 General.

State organizations or associations shall be certified by the Secretary as provided for in the Beef Promotion and Research Act of 1985 to be eligible to make nominations of cattle producers to the Board. Additionally, where there is no eligible organization or association in a State, the Secretary may provide for nominations in the manner prescribed in this subpart. Organizations or associations determined by the Secretary to represent importers of cattle, beef, and beef products may submit nominations for membership on the Board in a manner prescribed by the Secretary in this subpart. The number of nominees required for each allotted position will be determined by the Secretary.

§ 1260.510 Definitions.

As used in this subpart:

Act means the Beef Promotion and Research Act of 1985 (7 U.S.C. 2901–2918).

Beef means the flesh of cattle.

Beef products means edible products produced in whole or in part from beef, exclusive of milk and milk products produced therefrom.

Board means the Cattlemen's Beef Promotion and Research Board established under section 5(1) of the Act.

Cattle means live, domesticated bovine animals regardless of age.

Department means the United States Department of Agriculture.

Importer means a person who imports cattle, beef, or beef products from outside the United States.

Livestock and Seed Division means the Livestock and Seed Division of the Department's Agricultural Marketing Service.

Producer means a person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

Secretary means the Secretary of Agriculture of the United States, 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.

State means each of the 50 States.

Unit means a State or combination of States which has a total inventory of not less than 500,000 head of cattle; or importers.

§ 1260.520 Responsibility for administration of regulations.

The Livestock and Seed Division shall have the responsibility for administering the provisions of this subpart.

§ 1260.530 Certification of eligibility.

(a) *State organizations or associations: Requirements for certification.* (1) To be eligible for certification to nominate producer members to the Board, State organizations or associations must meet all of the following criteria:

(i) Total paid membership must be comprised of at least a majority of cattle producers or represent at least a majority of cattle producers in a State or unit.

(ii) Membership must represent a substantial number of producers who

produce a substantial number of cattle in such State or unit.

(iii) There must be a history of stability and permanency.

(iv) There must be a primary or overriding purpose of promoting the economic welfare of cattle producers.

(2) Written evidence of compliance with the certification criteria shall be contained in a factual report submitted to the Secretary by all applicant State organizations or associations.

(3) The primary consideration in determining the eligibility of a State organization or association shall be based on the criteria set forth in this section. However, the Secretary may consider any additional information that the Secretary deems relevant and appropriate.

(4) The Secretary shall certify any State organization or association which he determines complies with the criteria in this section, and his eligibility determination shall be final.

(b) *Organizations or associations representing importers.* The determination by the Secretary as to the eligibility of importer organizations or associations to nominate members to the Board shall be based on applications containing the following information:

(1) The number and type of members represented (*i.e.*, beef, or cattle importers, etc.).

(2) Annual import volume in pounds of beef and beef products and/or the number of head of cattle.

(3) The stability and permanency of the importer organization or association.

(4) The number of years in existence.

(5) The names of the countries of origin for cattle, beef, or beef products imported.

The Secretary may also consider additional information that the Secretary deems relevant and appropriate. The Secretary's determination as to eligibility shall be final.

§ 1260.540 Application for certification.

(a) *State organizations or associations.* Any State organization or association which meets the eligibility criteria specified in § 1260.530(a) for certification is entitled to apply to the Secretary for such certification of eligibility to nominate producers for appointment to the Board. To apply, such organization or association must submit a completed ''Application for Certification of Organization or Association,'' Form LS–25, contained in § 1260.640. It may be reproduced or additional copies may be obtained from the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250. (Telephone: 202/447–2650.)

(b) *Importer organizations or associations.* Any organization or association whose members import cattle, beef, or beef products into the United States may apply to the Secretary for determination of eligibility to nominate importers under the Act. Applications shall be in writing and shall contain the information required by § 1260.530. Interested organizations or associations may contact the Livestock and Seed Division; Agricultural Marketing Service, USDA; 14th and Independence Avenue, SW., Room 2610–S; Washington, DC 20250; (Telephone: 202/447–2650) for information concerning application procedures.

§ 1260.550 Verification of information.

The Secretary may require verification of the information to determine eligibility for certification to make nominations under the Act.

§ 1260.560 Review of certification.

The Secretary may terminate or suspend certification or eligibility of any organization or association if it ceases to comply with the certification or eligibility criteria set forth in this subpart. The Secretary may require any information deemed necessary to ascertain whether the organization or association may remain certified or eligible to make nominations.

§ 1260.570 Notification of certification and the listing of certified organizations.

Organizations and associations shall be notified in writing as to whether they are eligible to nominate producer members to the Board. A copy of the certification or eligibility determination shall be furnished to certified or eligible organizations and associations. Copies shall also be maintained on file

in the Livestock and Seed Division office, where they will be available for inspection.

§§ 1260.580–1260.600 [Reserved]

§ 1260.610 Acceptance of appointment.

Producers and importers nominated to the Board must signify in writing their intent to serve if appointed.

§ 1260.620 Confidential treatment of information.

All documents and information submitted to or obtained by the Department shall be kept confidential by all employees of the Department, except that the Secretary may issue general statements based upon the information collected from a number of different sources. These general statements will not identify any information as having been furnished by any one source.

§ 1260.630 Paperwork Reduction Act assigned number.

The OMB has approved the information collection request contained in this subpart under the provisions of 44 U.S.C. Chapter 35, and OMB Control Number 0581–152 has been assigned.

§ 1260.640 Application for Certification Form.

The following official form, ''Application for Certification of Association or Organization,'' must be completed and submitted to the Department by eligible State organizations or associations seeking certification by the Secretary. This form may be reproduced.

Information is collected in order to determine eligibility of organizations or associations to nominate cattle producers to serve as members of the Board. Application is voluntary and information is held confidential (Beef Promotion and Research Act of 1985).

U.S. DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

APPLICATION FOR CERTIFICATION OF ORGANIZATION OR ASSOCIATION

Form Approved
OMB NO. 0581-0152
Expires 12-31-88

Organizations or associations must apply for certification by the Secretary to be eligible to participate in the making of nominations of cattle producers to serve as members of the Cattlemen's Beef Promotion and Research Board as provided in the Beef Promotion and Research Act of 1985. Information submitted in response to all items must be complete. Please type or print clearly. Send original only to: *Marketing Programs and Procurement Branch*
Livestock and Seed Division, AMS
U. S. Department of Agriculture, Room 2610-S
Washington, DC 20250

1. NAME AND ADDRESS OF ORGANIZATION *(Street address or P.O. Box No., City, State, ZIP)*

TEL. (AC .....) .....

2. TYPE OF ORGANIZATION *(Check one)*
☐ Cattle Assoc. ☐ General Farm Organization
☐ Other *(Specify)* .....

3. STATE

4. TOTAL PAID MEMBERSHIP *(Most RECENT FULL calendar year)*
IN 198__ NO. _____

5. NUMBER OF PAID MEMBERS ENGAGED IN CATTLE PRODUCTION *(Most RECENT FULL calendar year)*
IN 198__ NO. _____

6. TOTAL ESTIMATED INVENTORY OF CATTLE OWNED BY PAID MEMBERS *(Most RECENT FULL calendar year)*
AS OF JAN. 1, 198__ NO. _____

7. AS EVIDENCE OF THE STABILITY AND PERMANENCY OF THE ORGANIZATION, GIVE:

A. No. of Years in Existence

B. No. of Paid Members during each of the last four calendar years:

	198__	198__	198__	198__
No. →				

C. Other Evidence *(Explain)*

I hereby certify that: (1) a primary or overriding purpose of this organization or association is to promote the economic welfare of cattle producers, and (2) the information provided in response to the above items is true, complete, and correct to the best of my knowledge. The Secretary of Agriculture may examine our books, documents, papers, records, files, and facilities to verify any of the information submitted and may procure such other information as may be required to determine this organization's or association's eligibility for certification.

8. NAME AND TITLE OF PERSON COMPLETING THIS APPLICATION *(Type or print)*

9. DATE

10. SIGNATURE

FORM LS-25
(JAN 86)

PART 1270—WOOL AND MOHAIR ADVERTISING AND PROMOTION [RESERVED]

AUTHORITY: 7 U.S.C. 1781–1787.

PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Lamb Promotion, Research, and Information Order

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SOURCE: 67 FR 17857, Apr. 11, 2002, unless otherwise noted.

Subpart A—Lamb Promotion, Research, and Information Order

DEFINITIONS

§ 1280.101 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425; Pub. L. 104–127; 110 Stat. 1029, as amended), or any amendments thereto.

§ 1280.102 Board.

Board means the Lamb Promotion, Research, and Information Board established pursuant to § 1280.201.

§ 1280.103 Certified organization.

Certified organization means any organization which has been certified by the Secretary pursuant to this part as being eligible to submit nominations for membership on the Board.

§ 1280.104 Conflict of Interest.

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

§ 1280.105 Department.

Department means the United States Department of Agriculture.

§ 1280.106 Exporter.

Exporter means any person who exports domestic live lambs from the United States.

§ 1280.107 Feeder.

Feeder means any person who acquires ownership of lambs and feeds such lambs in the U.S. until they reach slaughter weight.

§ 1280.108 First handler.

First handler means the packer or other person who buys or takes possession of lambs from a producer or feeder for slaughter, including custom slaughter. If a producer or feeder markets lamb products directly to consumers, the producer or feeder shall be considered to be a first handler with respect to such lambs produced by the producer or feeder.

§ 1280.109 Fiscal period and marketing year.

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

§ 1280.110 Information.

Information means information and programs that are designed to increase efficiency in producing lambs, to maintain and expand existing markets, and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of lamb and lamb products on a national or international basis. These include:

(a) Consumer information, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, and nutritional attributes of lamb and lamb products; and

(b) Industry information, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the lamb industry, and activities to enhance the image of lamb.

§ 1280.111 Lamb.

Lamb means ovine animals of any age, including ewes and rams.

§ 1280.112 Lamb products.

Lamb products means products produced in whole or in part from lamb, including pelts, and excluding wool and wool products.

§ 1280.113 Order.

Order means an order issued by the Secretary under § 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1280.114 Part and subpart.

Part means the Lamb Promotion, Research, and Information Order and all rules and regulations issued pursuant to the Act and the Order. The Order shall be a *subpart* of the Part.

§ 1280.115 Person.

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

§ 1280.116 Producer.

Producer means any person who owns and produces lambs in the United States for sale.

§ 1280.117 Producer information.

Producer information means activities designed to provide producers, feeders, and first handlers with information relating to production or marketing efficiencies, development of new markets, program activities, or other information that would facilitate an increase in the demand for lambs or lamb products.

§ 1280.118 Promotion.

Promotion means any action, including paid advertising and the dissemination of culinary and nutritional information and public relations with emphasis on new marketing strategies, to present a favorable image of U.S. lamb products to the public for the purpose of improving the competitive position of U.S. lamb and lamb products in the marketplace and to stimulate sales.

§ 1280.119 Referendum.

Referendum means a referendum to be conducted by the Secretary pursuant to the Act whereby producers, feeders, first handlers, and exporters shall be given the opportunity to vote to determine whether the continuance of this subpart is favored by a majority of eligible persons voting and a majority of volume voting.

§ 1280.120 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of lamb or lamb products.

§ 1280.121 Secretary.

Secretary means the Secretary of Agriculture of the United States or any other 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.

§ 1280.122 Seedstock producer.

Seedstock producer means any lamb producer in the U.S. who engages in the production and sale of breeding replacement lambs or semen or embryos.

§ 1280.123 State.

State means each of the 50 States and the District of Columbia.

§ 1280.124 Suspend.

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

§ 1280.125 Terminate.

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

§ 1280.126 Unit.

Unit means each State, group of States, or class designation (producers, feeders, first handlers, or seedstock producers) that is represented on the Board.

§ 1280.127 United States.

United States means collectively the 50 States and the District of Columbia.

§ 1280.128 Wool.

Wool means fiber from the fleece of a lamb.

§ 1280.129 Wool products.

Wool products means products produced, in whole or in part, from wool and products containing wool fiber, excluding pelts.

LAMB PROMOTION, RESEARCH, AND INFORMATION BOARD

§ 1280.201 Establishment and membership.

(a) There is hereby established a Lamb Promotion, Research and Information Board of 13 members. Members of the Board shall be appointed by the Secretary from nominations submitted in accordance with this subpart. The seats shall be apportioned as follows:

(1) *Producers*. There shall be six producer representatives on the Board appointed by the Secretary from nominations submitted pursuant to this subpart. For purposes of nominating and appointing producers to the Board, the United States as defined within this subpart shall be divided into two regions. Each region must be represented by at least two producers. The Secretary will appoint the remaining two producers to ensure that the criteria specified in paragraphs (a)(1)(i), (ii), and (iii) of this section are met. Region 1 shall include the geographic area east of the Mississippi River, which includes the following States: Maine, New Hampshire, Vermont, New York, Massachusetts, Connecticut, Pennsylvania, Rhode Island, New Jersey, Delaware, Maryland, District of Columbia, Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Ohio, Indiana, Michigan, Illinois and Wisconsin. Region 2 shall consist of all States west of the Mississippi River, which includes the following states: Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, Nebraska, North Dakota, South Dakota, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, California, Hawaii and Alaska. With regard to appointments to the Board, the Secretary shall ensure that the representation for producers on the Board shall meet the following criteria:

(i) Two producers appointed to the Board shall own annually 100 or less head of lambs;

(ii) One producer shall own annually between 101 and 500 head of lambs; and

(iii) Three producers shall own more than 500 head of lambs annually.

(2) *Feeders*. There shall be three feeder representatives on the Board appointed by the Secretary from nominations submitted pursuant to this subpart. The Secretary will appoint two feeder representatives to ensure that the criteria in paragraphs (a)(2)(i), (ii) and (iii) of this section are met. The third feeder representative will be appointed by the Secretary and will not be chosen or bound by size requirements.

(i) At least one of the feeders appointed to the Board shall feed less than 5,000 head of lambs annually.

(ii) At least one of the feeders appointed to the Board shall feed 5,000 or more head of lambs annually.

(iii) The Secretary shall ensure that the feeders appointed to the Board are not all located in one geographic region as established for producers pursuant to paragraph (a)(1) of this section.

(3) *First handlers*. There shall be three first handler representatives appointed to the Board by the Secretary from nominations submitted pursuant to this subpart.

(4) *Seedstock producers*. There shall be one seedstock producer appointed to the Board by the Secretary from nominations submitted pursuant to this subpart.

(b) In soliciting nominations for the Board, the Secretary will request those nominating to identify specific categories in which nominees will qualify.

(c) *Adjustment of membership*. At least once every 5 years, the Board will review the geographical distribution of the United States production of lambs. The review will be conducted using the National Agricultural Statistics Service inventory figures and the Board's annual assessment receipts. If warranted, the Board will recommend to

the Secretary that the membership on the Board be adjusted to reflect changes in geographical distribution of domestic lamb production.

§ 1280.202 Nominations.

All nominations authorized under this section shall be made in the following manner:

(a) Nominations shall be obtained by the Secretary from eligible organizations certified under § 1280.206. Certified eligible organizations representing producers, feeders, first handlers, or seedstock producers shall submit to the Secretary at least two nominees for each seat on the Board. If the Secretary determines that a unit is not represented by a certified eligible organization, then the Secretary may solicit nominations from other organizations or other persons residing in the unit.

(b) After the establishment of the initial Board, the Department shall announce when a vacancy does or will exist. Nomination for subsequent Board members shall be submitted to the Secretary not less than 60 days prior to the expiration of the terms of the members whose terms are expiring, in the manner as described in this section. In the case of vacancies due to reasons other than the expiration of a term of office, successor Board members shall be appointed pursuant to § 1280.205.

(c) When there is more than one certified eligible organization representing the unit or when the Secretary solicits nominations from organizations and persons residing in that unit, they may caucus and jointly nominate, two qualified persons for each position representing that unit on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary two nominees for each appointment to be made to represent that unit.

§ 1280.203 Nominee's agreement to serve.

Any producer, feeder, first handler, or seedstock producer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

(a) Serve on the Board if appointed;

(b) Disclose any relationship with any lamb promotion entity or with any organization that has or is being considered for a contractual relationship with the Board; and

(c) Withdraw from participation in deliberations, decision-making, or voting on matters that concern the relationship disclosed under paragraph (b) of this section.

§ 1280.204 Appointment.

From the nominations made pursuant to § 1280.202, the Secretary shall appoint the members of the Board on the basis of representation provided in § 1280.201.

§ 1280.205 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations for the position or the Secretary shall request nominations for a successor pursuant to § 1280.202 and such successor shall be appointed pursuant to § 1280.204.

§ 1280.206 Certification of organizations.

(a) *In General.* The eligibility of State, regional, or national organizations to represent producers, seedstock producers, feeders, and first handlers and to participate in the making of nominations under this subpart shall be certified by the Secretary. The Secretary shall certify any organization that the Secretary determines meets the eligibility criteria established under paragraphs (b) and (c) of this section. An eligibility determination by the Secretary shall be final.

(b) *Basis for Certification.* Certification shall be based upon, in addition to other available information, a factual report submitted by the organization that shall contain information considered relevant and specified by the Secretary, including:

(1) The geographic territory covered by the active membership of the organization;

(2) The nature and size of the active membership of the organization, including the number of active producers, seedstock producers, feeders, or first handlers represented by the organization;

(3) Evidence of stability and permanency of the organization;

(4) Sources from which the operating funds of the organization are derived;

(5) The functions of the organization; and

(6) The ability and willingness of the organization to further the purpose and objectives of the Act.

(c) *Primary Considerations.* The primary considerations in determining the eligibility of an organization under this paragraph shall be whether:

(1) The membership of the organization consists primarily of producers, seedstock producers, feeders, or first handlers who market or handle a substantial quantity of lamb or lamb products; and

(2) A primary purpose of the organization is in the production or marketing of lamb or lamb products.

§ 1280.207 Term of office.

(a) The members of the Board shall serve for a term of 3 years, except that the members appointed to the initial Board shall serve proportionately for terms of 1-year, 2-years, and 3-years.

(b) No member may serve more than two consecutive 3-year terms.

(c) Each member shall continue to serve until a successor is appointed by the Secretary and has accepted the position.

§ 1280.208 Compensation.

Board members shall serve without compensation, but shall be reimbursed for their reasonable expenses incurred in performing their duties as members of the Board.

§ 1280.209 Removal.

If the Secretary determines that any person appointed under this part fails or refuses to perform his or her duties properly or engages in acts of dishonesty or willful misconduct, the Secretary shall remove the person from office. A person appointed under this part or any employee of the Board may be removed by the Secretary if the Secretary determines that the person's continued service would be detrimental to the purposes of the Act.

§ 1280.210 Powers and duties of the Board.

The Board shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and provisions;

(b) To develop and recommend to the Secretary for approval such bylaws as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(c) 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 to be appropriate;

(d) To prepare and submit for the approval of the Secretary, fiscal year budgets in accordance with § 1280.212.

(e) To employ persons, other than the 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;

(f) To develop and submit plans and projects to the Secretary for the Secretary's approval, and to enter into contracts or agreements, which must be approved by the Secretary before becoming effective, for the development and carrying out of programs or projects of research, information (including producer information), or promotion, and the payment of costs thereof with funds collected pursuant to this subpart. Each contract or agreement shall provide that any person who enters into a contract or agreement with the Board shall develop and submit to the Board a proposed activity; keep accurate records of all of its transactions relating to the contract or agreement; account for funds received and expended in connection with the contract or agreement; make periodic reports to the Board of activities conducted under the contract or agreement; and make such other reports available as the Board or the Secretary considers relevant. Any 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) 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;

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

(4) 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.

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

(h) To recommend to the Secretary such amendments to the Order as the Board considers appropriate;

(i) To maintain such records and books 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;

(j) To cause its books to be audited by a competent 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;

(k) To give the Secretary the same notice of meetings of the Board as is given to members in order 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;

(l) To furnish to the Secretary any information or records that the Secretary may request;

(m) To work to achieve an effective, continuous, and coordinated program of promotion, research, and information (including producer information), designed to strengthen the lamb industry's position in the marketplace; maintain and expand existing markets and uses for lamb and lamb products; and to carry out programs, plans, and projects designed to provide maximum benefits to the lamb industry;

(n) To provide not less than annually a report to producers, feeders and first handlers, accounting for the funds expended by the Board, and describing programs implemented under the Act; and to make such report available to the public upon request;

(o) To invest funds in accordance with § 1280.213.

§ 1280.211 Prohibited activities.

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

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

(b) Using funds collected under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, other than recommending to the Secretary amendments to the Order; and

(c) Any advertising, including promotion, research, and information activities authorized to be carried out under the order, that may be false or disparaging to another agricultural commodity.

EXPENSES

§ 1280.212 Budget and expenses.

(a) The Board shall prepare and submit to the Secretary a budget for the fiscal year covering its anticipated expenses and disbursements in administering, this subpart. The budget shall be submitted before the beginning of each fiscal year, and as frequently as may be necessary thereafter.

(b) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another.

(c) The Board is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary

finds are reasonable and likely to be incurred by the Board for its maintenance and functioning, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Board.

(d) With approval of the Secretary, the Board may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Board. Any funds borrowed by the Board shall be expended only for start-up costs and capital outlays and are limited to the first year of operation of the Board.

(e) The Board may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor and the Board shall retain complete control of their use.

(f) The Board shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(g) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal year an amount that exceeds 10 percent of the assessments and other income received by the Board for that fiscal year, except for the initial fiscal year. Reimbursements to the Secretary required under paragraph (f) of this section are excluded from this limitation on spending.

§ 1280.213 Investment of funds.

The Board may invest, pending disbursement, funds it receives under this subpart, only in obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a financial institution that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States. Income from any such investment may be used for any purpose for which the invested funds may be used.

§ 1280.214 Refund escrow accounts.

(a) The Board shall establish an interest bearing escrow account with a financial institution which is a member of the Federal Reserve System and will deposit into such account an amount equal to the product obtained by multiplying:

(1) The total amount of assessments collected by the Board during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum; by

(2) Ten percent (10 percent)

(b) The Board shall pay refunds of assessments to eligible persons requesting refunds during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid no later than the date the required referendum results are announced by the Secretary.

§ 1280.215 Refunds.

Any producer, seedstock producer, feeder, first handler, or exporter from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart through the announcement of the results of the required referendum, and who is not in favor of supporting the promotion and research program as provided for in this subpart, shall have the right to receive from the Board a refund of such assessment, or a pro rata share thereof, upon submission of proof satisfactory to the Board that the producer, seedstock producer, feeder, first handler, or exporter paid the assessment for which refund is sought. Any such demand shall be made by such producer, seedstock producer, feeder, first handler, or exporter in accordance with the provisions of this

subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

§ 1280.216 Procedure for obtaining a refund.

Each producer, seedstock producer, feeder, first handler, or exporter who pays an assessment pursuant to the Act and this subpart during the period beginning on the effective date of the Order and ending on the date the required referendum results are announced may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations recommended by the Board and prescribed by the Secretary.

(a) *Application form.* A producer, seedstock producer feeder, first handler, or exporter shall obtain a Board-approved refund application form from the Board. Such form may be obtained by written request to the Board and the request shall bear the producer's, seedstock producer's, feeder's, first handler's, or exporter's signature or properly witnessed mark.

(b) *Submission of refund application to Board.* Any producer, seedstock producer, feeder, first handler, or exporter requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer, seedstock producer, feeder, first handler, or exporter but no later than the date the results of the required referendum are announced by the Secretary. The refund application shall show:

(1) The producer's, seedstock producer's, feeder's, first handler's, or exporter's name and address;

(2) Name and address of the person who collected applicant's assessment;

(3) Number of head of lambs, weight of lambs, or its equivalent, on which a refund is requested;

(4) Total amount of refund requested;

(5) Date or inclusive dates on which assessments were paid;

(6) Certification that the producer, seedstock producer, feeder, first handler, or exporter did not collect the assessment from another producer, seedstock producer, feeder, first handler; or exporter or documentation of assessments collected from others; and

(7) The producer's, seedstock producer's, feeder's, first handler's, or exporter's signature or properly witnessed mark.

(c) *Proof of payment of assessments.* The documentation provided pursuant to § 1280.225(b) to the producer, seedstock producer, feeder, first handler, or exporter by the person responsible for collecting an assessment pursuant to this subpart, or a copy thereof, or such other evidence deemed satisfactory to the Board, shall accompany the producer's, seedstock producer's, feeder's, first handler's, or exporter's refund application.

(d) *Payment of refunds.* The Board shall initiate payment of refund requests, or pay a pro rata share thereof, within 90 days of the date the results of the required referendum are released by the Secretary. Refunds shall be paid in a manner consistent with § 1280.214.

ASSESSMENTS

§ 1280.217 Lamb purchases.

(a) Except as prescribed by regulations approved by the Secretary, each first handler, or exporter making payment to a producer, seedstock producer, or feeder for lambs purchased from such producer, seedstock producer, or feeder shall collect an assessment from the producer, seedstock producer, or feeder. Each producer, seedstock producer, or feeder shall pay such assessment to the first handler or exporter, at the rate of one-half cent ($.005) per pound of live lambs sold.

(b) Except as otherwise specified in this subpart, a person shall not be considered a producer, seedstock producer, or feeder within the meaning of this subpart if;

(1) The person's only share in the proceeds of a sale of lambs is a sales commission, handling fee, or other service fee; or

(2) The person:

(i) Acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party,

(ii) Resold such lambs no later than 10 days from the date on which the person acquired ownership, and

(iii) Certified, as required by regulations recommended by the Board and

prescribed by the Secretary, that the requirements of this provision have been satisfied.

(c) Each person processing or causing to be processed lambs or lamb products of that person's own production and marketing such lambs or lamb products, shall pay an assessment on such lambs or lamb products on the live weight of the lamb at the time of slaughter at the rate established in paragraph (e) of this section. In addition, pursuant to § 1280.108, such individual would be considered a first handler and would be required by § 1280.219 to pay an additional assessment of $.30 per head. As the first handler, the individual must remit the total amount of assessment to the Board.

(d) A person who is a market agency; i.e. commission merchant, auction market, or livestock market in the business of receiving lambs for sale or commission for or on behalf of a producer, seedstock producer, or feeder shall collect an assessment from the producer, seedstock producer, or feeder and shall pass the collected assessments on to the subsequent purchaser pursuant to this subpart and regulations recommended by the Board and prescribed by the Secretary.

(e) *Rate.* Except as otherwise provided, the rate of assessment shall be one-half of a cent ($.005 per pound) per pound on all live lambs sold. The rate of assessment may be raised or lowered no more than twenty-hundredths of a cent ($.002) in any one year. The Board may recommend any change to the Department. Prior to a change in the assessment rate, the Department will provide notice by publishing in the FEDERAL REGISTER any proposed changes with interested parties allowed to provide comment.

(f) The collection of assessments pursuant to § 1280.217, § 1280.218, and § 1280.219 shall begin with respect to lambs purchased, or lambs or lamb products marketed on or after the effective date established by the Secretary and shall continue until terminated or suspended by the Secretary.

(g) If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments and invest them on behalf of the Board, and shall pay such assessments and any interest earned to the Board when it is formed. The Secretary shall have the authority to promulgate rules and regulations concerning assessments and the collection of assessments, if the Board is not in place or is otherwise unable to develop such rules and regulations.

(h) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in § 1280.223 and § 1280.225 shall be mailed to the location designated by the Board.

§ 1280.218 Exporter.

Each person exporting live lambs shall remit to the Board an assessment on such lambs at the time of export at the rate established in § 1280.217(e). An exporter directly exporting his or her own lambs shall remit an assessment to the Board at the rate established in § 1280.217(e).

§ 1280.219 First handlers.

Each first handler, in addition to remitting the assessment collected pursuant to § 1280.217, shall pay an assessment equal to thirty cents ($.30) per head of lambs purchased by the first handler for slaughter or slaughtered by such first handler pursuant to a custom slaughter arrangement. The rates of assessment for first handlers shall be increased or decreased proportionately if the assessment paid by producers, seedstock producers, and feeders is increased or decreased. Such assessment shall be remitted with the assessments collected pursuant to § 1280.217.

§ 1280.220 Collections.

(a) Each first handler and each exporter responsible for the collection of assessments under this subpart shall remit assessments to the Board by the 15th day of the month following the month in which the lambs were purchased for slaughter or export, as required by regulations recommended by the Board and prescribed by the Secretary, has provided otherwise; or

(b) If a first handler marketed lambs or lamb products directly to consumers, assessments shall be remitted to the Board by the 15th day of the

month following the month in which the lambs or lamb products were marketed, as required by regulations recommended by the Board and prescribed by the Secretary, has provided otherwise.

(c) *Late payment charges.* Any unpaid assessments due to the Board pursuant to § 1280.217 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purposes of this paragraph, any assessment determined at a date later than the date prescribed by this subpart, because of a person's failure to timely submit a report to the Board, shall be considered to have been payable by the date it would have been due if the report had been timely filed. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(d) Persons failing to remit total assessments due in a timely manner may also be subject to actions under Federal debt collection procedures.

§ 1280.221 Prohibition on use of funds.

No funds collected by the Board under this subpart shall be used to undertake any action for the purpose of influencing legislation or governmental action or policy, other than recommending to the Secretary amendments to this subpart. A plan or project conducted pursuant to this title shall not make false or misleading claims on behalf of lamb or lamb products or disparage a competing product.

REPORTS, BOOKS, AND RECORDS

§ 1280.222 Books and Records of Board.

The Board shall:

(a) Maintain such books and records, which shall be made available to the Secretary for inspection and audit, as the Secretary may prescribe,

(b) Prepare and submit to the Secretary, from time to time, such reports as the Secretary may prescribe, and

(c) Account for the receipt and disbursement of all funds entrusted to it. The Board shall cause its books and records to be audited by an independent auditor at the end of each fiscal year, and a report of such audit to be submitted to the Secretary.

§ 1280.223 Reports.

Each first handler required to remit assessments to the Board for live lambs pursuant to § 1280.217, each first handler marketing lamb products of that person's own production, and each exporter of lambs, shall report to the Board information pursuant to regulations recommended by the Board and prescribed by the Secretary. Such information may include but is not limited to the following:

(a) The number of lambs purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, the total weight in pounds, and the dates of such transactions;

(b) The number of lambs exported; the total weight in pounds of lambs exported;

(c) The amount of assessment remitted;

(d) The basis; if necessary, to show why the remittance is less than the total weight in pounds of lamb multiplied by the assessment rate;

(e) The date any assessment was paid.

§ 1280.224 Periodic evaluation.

Pursuant to the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401), the Board shall, not less often than every 5 years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and other programs conducted by the Board. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1280.225 Books and records of persons.

(a) Each first handler, exporter of lambs, and market agency shall maintain and make available for inspection

such books and records as may be required by regulations recommended by the Board and prescribed by the Secretary, including records necessary to verify any required reports. Such records shall be maintained for at least 2 years beyond the fiscal period of their applicability.

(b) Document evidencing payment of assessments. Each person, including first handlers, exporters and market agencies, responsible for collecting an assessment paid pursuant to this subpart is required to give the person from whom the assessment was collected, written evidence of payment of the assessments paid pursuant to this subpart. Such written evidence serving as a receipt shall include, but not be limited to, the following information:

(1) Name and address of the person collecting the assessment.

(2) Name of person who paid assessment.

(3) Number of head of lamb sold.

(4) Total weight in pounds of lamb sold.

(5) Total assessments paid by the producer, seedstock producer, or feeder.

(6) Date of sale.

(7) Such other information as the Board, with the approval of the Secretary, may require.

§ 1280.226 Use of information.

Information from records or reports required pursuant to this subpart shall be made available to the Secretary as is appropriate to the administration or enforcement of the Act, subpart or any regulation issued under the Act. In addition, the Secretary may authorize the use, under this part, of information regarding person paying producers, seedstock producers, feeders, first handlers, or exporters that is accumulated under laws or regulations other than the Act or regulations issued under the Act.

§ 1280.227 Confidentiality.

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

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

(b) The publication, by direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

MISCELLANEOUS

§ 1280.228 Right of the Secretary.

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

§ 1280.229 Personal liability.

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

§ 1280.230 Separability.

If any provision of the subpart is declared invalid or the applicability thereof to any person or circumstance

is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1280.231 Patents, copyrights, inventions, product formulations, and publications.

(a) Any patents, copyrights, inventions or publications developed through the use of funds collected by the Board under the provisions of this subpart shall be the property of the U.S. Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale leasing, franchising, or other uses of such patents, copyrights, inventions, or publication, inure to the benefit of the Board. Upon termination of this subpart, § 1280.235 shall apply to determine the disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds collected by the Board under this subpart and funds contributed by another organization or person, ownership and related rights to such patents, copyrights, inventions or publications shall be determined by agreement between the Board and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section.

§ 1280.232 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1280.233 Referenda.

(a) *Required referendum.* For the purpose of ascertaining whether the persons subject to this part favor the continuation, suspension, or termination of this part, the Secretary shall conduct a referendum among persons subject to assessments under § 1280.217, § 1280.218, and § 1280.219 who, during a representative period determined by the Secretary, have engaged in the production, feeding, handling, or slaughter of lamb; or the exportation of lamb.

(1) *Time for referendum.* The referendum shall be conducted not later than 3 years after assessments first begin under this part.

(2) *Approval of part.* This part may be approved in a referendum by a majority of those persons voting for approval who also represent a majority of the volume of lamb produced, fed, slaughtered, handled, and exported.

(b) *Subsequent referenda.* The Secretary shall conduct a subsequent referendum:

(1) Not later than 7 years after assessments first begin under this part;

(2) At the request of the Board established pursuant to § 1280.201; or

(3) At the request of 10 percent or more of the lamb producers, seedstock producers, feeders, first handlers, and exporters eligible to vote to determine if the persons favor the continuation, suspension, or termination of this part.

(c) *Other referenda.* The Secretary may conduct a referendum at any time to determine whether the continuation, suspension or termination of this part or a provision of this part is favored by lamb producers, seedstock producers, feeders, first handlers, and exporters eligible to vote.

(d) *Costs of referenda.* The Board shall reimburse the Secretary for any expenses incurred by the Secretary to conduct referenda.

(e) *Manner of conducting referenda.* A referendum conducted under this section with respect to this part shall be conducted in the manner determined by the Secretary to be appropriate.

(1) *Voting.* Eligible voters may vote by mail ballot in the referendum or in person if so prescribed by the Secretary.

(2) *Notice.* Not later than 30 days before a referendum is conducted under this section with respect to this part, the Secretary shall notify the eligible voters, in such manner as determined by the Secretary, of the period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under this part.

§ 1280.234 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof if the Secretary finds

that this part, subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act,

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

(1) Not later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

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

§ 1280.235 Proceedings after termination.

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

(b) The said trustees shall:

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

(2) Carry out the obligations of the Board under any contracts or agreements entered into pursuant to this subpart;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the same obligations as imposed upon the Board and the trustees.

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

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the lamb research or information programs hitherto authorized.

§ 1280.236 Effect of termination or amendment.

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

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

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

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

§ 1280.237 Rules and Regulations.

The Secretary may prescribe such rules and regulations as may be necessary to effectively carry out the provisions of this subpart.

§ 1280.238 OMB Control Numbers.

The control number for the information requirements assigned by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35 is 0581–0198, except that the OMB control number for the nominee background form is 0505–0001.

Subparts B [Reserved]

Subpart C—Rules and Regulations

SOURCE: 67 FR 39253, June 7, 2002, unless otherwise noted.

§ 1280.401 Terms defined.

As used throughout this subpart, unless the context otherwise requires,

terms shall have the same meaning as the definition of such terms in subpart A of this part.

§ 1280.402 Assessments.

(a) *Sharing proceeds of sale.* If more than one producer, feeder, or seedstock producer shares the proceeds received for the lamb or lamb products sold, each such producer, feeder, or seedstock producer is obligated to pay that portion of the assessments that is equivalent to that producer's, feeder's, or seedstock producer's proportionate share of the proceeds.

(b) *Market agencies.* A person who is a market agency; i.e., commission merchant, auction market, or livestock market in the business of receiving lambs or lamb products for sale on commission for or on behalf of a producer, feeder, or seedstock producer, will be required to collect an assessment from the producer, feeder, or seedstock producer and pass the collected assessment on to the subsequent purchaser(s) until remitted by a first handler or exporter responsible for submitting assessments under this part.

(c) *Failure to collect.* Failure of a person to collect the assessment on lambs purchased from a producer, feeder, or seedstock producer shall not relieve the producer, feeder, or seedstock producer of their obligation to pay the assessment and to remit the assessment to the Secretary.

(d) *Death, bankruptcy, receivership or incapacity to act.* In the event of a producer's, feeder's, seedstock producer's, or exporter's death, bankruptcy, receivership or incapacity to act, the representative of such producer's, feeder's, seedstock producer's, or exporter's estate, the person acting on behalf of creditors or other person acting in such person's stead, shall be considered the producer, feeder, or seedstock producer and shall be required to pay an assessment or collect an assessment.

(e) *Remittance of assessments.* (1) Assessments shall be remitted to the Lamb Promotion, Research, and Information Program, c/o the Secretary at USDA, 23029 Network Place, Chicago, Illinois 60673–1230, with a ''Monthly Remittance Report'' form LS–81 not later than the 15th day of the following month in which lambs or lamb products were purchased for slaughter or export, or marketed, if a first handler markets lambs or lamb products directly to consumers, in order to avoid late payment charges.

(2) In cases where a producer or feeder sells lambs as part of a custom slaughter operation, the producer or feeder shall be responsible for remitting the assessments pursuant to § 1280.219.

(3) Each person processing or causing to be processed lamb or lamb products of that person's own production and marketing such lamb or lamb products shall be responsible for remitting the assessments pursuant to § 1280.217(c).

(4) Late payment charges. Any unpaid assessments due to the Board pursuant to § 1280.217 shall be increased 2 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this paragraph, shall be increased at the same rate on the corresponding day of each month thereafter until paid. Any assessment received at a date later than the date prescribed by this part, because of a persons failure to submit a timely report to the Secretary, shall be considered to have been payable by the date it would have been due if the report had been filed in a timely manner. The timeliness of a payment to the Secretary shall be based on the applicable postmark date or the date actually received by the Secretary, whichever is earlier.

(5) Weekends and holidays. If the 15th day of the month falls on a Saturday, Sunday, or a federally recognized holiday then the required reports and assessment will be due the next business day in order to avoid late payment charges.

(f) *Non-producer status for certain transactions.* (1) Each person seeking non-producer status pursuant to § 1280.217 shall provide the person remitting the assessment a Statement of Certification of Non-Producer Status form (LS–78).

(2) A copy of the Statement of Certification of Non-Producer Status shall be forwarded by the person collecting the assessment to the Secretary.

§ 1280.403 Refunds.

(a) *Procedure for obtaining a refund.* Any producer, seedstock producer, feeder, first handler, or exporter from whom an assessment is collected and remitted to the Secretary, or who pays an assessment directly to the Secretary, under the authority of the Act and the Order through the announcement of the results of the required referendum, shall have a right to receive a refund of such assessment, or pro rata share thereof, upon submission of proof satisfactory that such person paid the assessment for which the refund is sought. Any such demand shall be made in accordance with the provision of the Order and this subpart.

(b) *Refund application form.* A producer shall obtain an approved application from the Secretary. Such form may be obtained by written request to the Lamb Promotion, Research, and Information Program, c/o the Secretary at USDA, P.O. Box 23198, Washington, DC 20026–3198.

(c) *Submission of refund application to the Secretary.* Any producer, seedstock producer, feeder, first handler, or exporter requesting a refund shall submit an application on the prescribed form to the Secretary within 60 days from the date the assessments were paid by such producer, seedstock producer, feeder, first handler, or exporter but no later than the date the results of the required referendum are announced by the Secretary.

(d) *Proof of payment of assessments.* The documentation provided pursuant to § 1280.225(b) to the producer, seedstock producer, feeder, first handler, or exporter by the person responsible for collecting an assessment pursuant to the Order and this subpart or such other evidence deemed satisfactory to the Secretary, shall accompany the producer's, seedstock producer's, feeder's, first handler's, or exporter's refund application.

(e) *Payment of refunds.* Refunds will be paid pursuant to § 1280.216(d).

§ 1280.404 Reporting.

(a) Each first handler required to submit assessments for live lambs pursuant to § 1280.217, each first handler marketing lamb products of that person's own production, and each exporter of lambs, shall report to the Secretary the following information on form LS–81.

(1) The number of lambs purchased, initially transferred or which, in any other manner, is subject to the collection of assessment, the total weight in pounds, and the dates of such transactions;

(2) The number of lambs exported and the total weight in pounds of lambs exported;

(3) The amount of assessment remitted;

(4) The basis; if necessary, to show why the remittance is less than the total weight in pounds of lamb multiplied by the assessment rate; and

(5) The date any assessment was paid.

(b) *Reporting periods.* For reports required pursuant to § 1280.223, each calendar month shall be a reporting period.

§ 1280.405 Books and records.

(a) Each first handler, exporter of lambs, and market agency shall maintain and, during normal business hours, make available for inspection by representatives of the Secretary, such books and records as are necessary to carry out the provisions of this part, including such books and records as are necessary to verify any required reports.

(b) *Documents evidencing payments of assessments.* Each person, including first handlers, exporters, and market agencies, responsible for collecting an assessment paid pursuant to this part is required to give the person from whom the assessment was collected, written evidence of payment of the assessments paid. Such written evidence serving as a receipt shall include the following information:

(1) Name and address of the person collecting the assessment.

(2) Name of person who paid assessment.

(3) Number of head of lambs sold.

(4) Total weight in pounds of lamb sold.

(5) Total assessments paid by the producer, seedstock producer, or feeder.

(6) Date of sale.

(7) Such other information as the Secretary may require.

§ 1280.406 Exemption.

(a) A producer, seed stock producer, or feeder who produces (including producing by feeding) only products that are eligible to be labeled as 100 percent organic under the National Organic Program (NOP) (7 CFR part 205), except as provided for in paragraph (h) of this section; a handler who handles only products that are eligible to be labeled as 100 percent organic under the NOP; or an exporter who exports only products that are eligible to be labeled as 100 percent organic under the NOP; and who operates under an approved NOP system plan and is not a split operation.

(b) To apply for an exemption under this section, the person shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the person continues to be eligible for the exemption.

(c) The request shall include the following: the person's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the person complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An exempt producer shall provide a copy of the Certificate of Exemption to each person to whom the producer sells ovine animals or lamb and lamb products. The Certificate of Exemption must accompany the ovine animals through the production chain to the person responsible for remitting the assessment to the Board.

(f) The person shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) The exemption will apply at the first reporting period following the issuance of the exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer, seed stock producer, or feeder from exemption under this section, except that persons producing or feeding both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2762, Jan. 14, 2005]

Subpart D [Reserved]

Subpart E—Procedures To Request a Referendum

DEFINITIONS

SOURCE: 69 FR 77572, Dec. 27, 2004, unless otherwise noted.

§ 1280.601 Terms defined.

As used throughout this subpart, unless the context otherwise requires, terms shall have the same meaning as the definition of such terms in subpart A of this part.

§ 1280.602 Administrator, AMS.

Administrator, AMS, means the Administrator of the Agricultural Marketing Service, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1280.603 Administrator, FSA.

Administrator, FSA, means the Administrator, of the Farm Service Agency, or any officer or employee of USDA to whom there has been delegated or may be delegated the authority to act in the Administrator's stead.

§ 1280.604 Eligibility.

Eligibility is defined as any person subject to the assessment who during the representative period determined by the Secretary have engaged in the production, feeding, or slaughtering of lambs. Such persons are eligible to participate in the referendum. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered are producers, seedstock producers, or feeders and not subject to the assessment. Such persons will not be eligible to participate in the referendum.

§ 1280.605 Farm Service Agency.

Farm Service Agency also referred to as ''FSA'' means the Farm Service Agency of USDA.

§ 1280.606 Farm Service Agency County Committee.

Farm Service Agency County Committee, also referred to as ''FSA County Committee or COC,'' means the group of persons within a county who are elected to act as the Farm Service Agency County Committee.

§ 1280.607 Farm Service Agency County Executive Director.

Farm Service Agency County Executive Director, also referred to as ''CED,'' means the person employed by the FSA County Committee to execute the policies of the FSA County Committee and to be responsible for the day-to-day operation of the FSA county office, or the person acting in such capacity.

§ 1280.608 Farm Service Agency State Committee.

Farm Service Agency State Committee, also referred to as ''FSA State Committee,'' means the group of persons within a State who are appointed by the Secretary to act as the Farm Service Agency State Committee.

§ 1280.609 Farm Service Agency State Executive Director.

Farm Service Agency State Executive Director, Farm Service Agency State Executive Director, also referred to as ''SED,'' means the person within a State who is appointed by the Secretary to be responsible for the day-to-day operation of the FSA State Office, or the person acting in such capacity.

§ 1280.610 Public notice.

Public notice means not later than 30-days before the referendum is conducted, the Secretary shall notify the eligible voters in such manner as determined by the Secretary, of the voting period during which voting in the referendum will occur. The notice shall explain any registration and voting procedures established under § 518 of the Act.

§ 1280.611 Representative period.

Representative period means the period designated by the Secretary pursuant to § 518 of the Act.

§ 1280.612 Volume of production.

(a) For producers and seedstock producers, the term *volume of production* means the total number of live domestic lambs owned and produced during the most recent calendar year.

(b) For feeders, *volume of production* means the total number of lambs owned and fed during the most recent calendar year.

(c) For first handlers, *volume of production* means the total number of lambs slaughtered during the most recent calendar year.

§ 1280.613 Voting period.

The term *voting period* means a 4-week period to be announced by the Secretary for voting the referendum.

PROCEDURES

§ 1280.620 General.

A referendum to determine whether eligible persons favor the continuance of this part shall be carried out in accordance with this subpart.

(a) The referendum will be conducted at county FSA offices.

(b) The Secretary shall determine if at least a majority of those persons voting for approval who also represent a majority of the volume of lambs owned and produced; owned and fed; or slaughtered, favor the continuance of this part.

§ 1280.621 Supervision of the process for conducting a referendum.

The Administrator, AMS, shall be responsible for supervising the process of permitting persons to vote in a referendum in accordance with this subpart.

§ 1280.622 Eligibility.

(a) Any person subject to the assessment who during the representative period determined by the Secretary has engaged in the production, feeding, or slaughtering of lambs is eligible to participate in the referendum. Those persons whose only share in the proceeds of a sale of lambs is a sales commission, handling fee or other service fee or the person acquired ownership of the lambs to facilitate the transfer of ownership of such lambs from the seller to a third party and resold such lambs no later than 10 days from the date on which the person acquired ownership are not considered are producers, seedstock producers, or feeders and not subject to the assessment. Such persons will not be eligible to participate in the referendum.

(b) *Proxy Registration*. (1) Proxy registration is not authorized, except that an officer or employee of a corporate producer, feeder, seedstock producer, or first handler, or any guardian, administrator, executor, or trustee of a person's estate, or an authorized representative of any eligible producer, feeder, seedstock producer, or first handler entity (other than an individual person), such as a corporation or partnership, may vote on behalf of that entity. Further, an individual cannot vote on behalf of another individual (*i.e.*, spouse, sharecrop lease, etc.).

(2) Any individual, who votes on behalf of any producer, feeder, seedstock producer, or first handler entity, shall certify that he or she is authorized by such entity to take such action. Upon request of the county FSA office, the person voting may be required to submit adequate evidence of such authority.

(c) *Joint and group interest*. A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation who engaged in the production, feeding, or slaughtering of lambs during the representative period as a producer, feeder, seedstock producer, or first handler entity shall be entitled to cast only one vote; provided, however, that any individual member of a group who is an eligible person separate from the group may vote separately.

§ 1280.623 Time and place of the referendum.

(a) The opportunity to vote in the referendum shall be provided during a 4-week period beginning and ending on a date determined by the Secretary. Eligible persons shall have the opportunity to vote following the procedures established in this subpart during the normal business hours of each county FSA office.

(b) Persons can determine the location of county FSA offices by contacting the nearest county FSA office, the State FSA office, or through an online search of FSA's Web site at *http://www.fsa.usda.gov/pas/default.asp*.

(c) Each eligible person shall cast a ballot in the county FSA office where FSA maintains the person's administrative farm records. For eligible persons not participating in FSA programs, the opportunity to vote will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, slaughtering, of lambs in more than one county will vote in the county FSA office where the person does most of his or her business.

§ 1280.624 Facilities.

Each county FSA office will provide:

(a) a voting place that is well known and readily accessible to persons in the county and that is equipped and arranged so that each person can complete and submit their ballot in secret without coercion, duress, or interference of any sort whatsoever, and

(b) a holding container of sufficient size so arranged that no ballot or supporting documentation can be read or removed without breaking seals on the container.

§ 1280.625 Certification and referendum form ballot form.

Form LS–86 shall be used to vote in the referendum and certify eligibility. Eligible persons will be required to complete a ballot in its entirety, vote ''yes'' or ''no'' to continue the program, enter the number of lambs (volume of production) owned and produced; owned and fed; or slaughtered during a representative period and provide documentation such as a sales receipt or remittance form showing that the person voting was engaged in the production, feeding, or slaughtering of lambs during the representative period. The person or authorized representative shall sign the ballot certifying that they or the entity they represent were engaged in the production, feeding, or slaughtering of lambs during the representative period and that the volume of production voted is true and accurate.

§ 1280.626 Certification and voting procedures.

(a) Each eligible person shall be provided the opportunity to cast a ballot during the voting period announced by the Secretary.

(1) Each eligible person shall be required to complete form LS–86 in its entirety, sign it, and provide evidence that they were engaged in the production, feeding, or slaughtering of lambs during the representative period. The person must legibly place his or her name and, if applicable, the entity represented, address, county, and telephone number. The person shall sign and certify on form LS–86 that:

(i) The person was engaged in the production, feeding, or slaughtering of lambs during the representative period;

(ii) The person voting on behalf of a corporation or other entity is authorized to do so;

(iii) The person has cast only one vote; and

(iv) The volume of production listed on the ballot is true and accurate.

(2) Only a completed and signed form LS–86 accompanied by supporting documentation showing that the person was engaged in the production, feeding, or slaughter of lambs during the representative period shall be considered a valid vote.

(b) To vote, eligible persons may obtain form LS–86 in-person, by mail, or by facsimile from county FSA offices or through the Internet during the voting period. A completed and signed form LS–86 and supporting documentation, such as a sales receipt or remittance form, must be returned to the appropriate county FSA office where FSA maintains and processes the person's administrative farm records. For a person not participating in FSA programs, the opportunity to vote in a referendum will be provided at the county FSA office serving the county where the person owns or rents land. A person engaged in the production, feeding, or slaughtering of lambs in more than one county will vote in the county FSA office where the person does most of his or her business. Forms obtained via the Internet will be located at *www.ams.usda.gov/lsmarketingprograms*.

(c) A completed and signed form LS–86 and the supporting documentation may be returned in-person, by mail, or facsimile to the appropriate county FSA office. Form LS–86 and supporting documentation returned in-person or by facsimile, must be received in the appropriate county FSA office prior to the close of the work day on the final day of the voting period to be considered a valid ballot. Form LS–86 and the accompanying documentation returned by mail must be postmarked no later than midnight of the final day of the voting period and must be received in the county FSA office on the 5th business day following the final day of the voting period.

(d) Persons who obtain form LS–86 in-person at the appropriate FSA county office may complete and return it the same day along with the supporting documentation.

[69 FR 77572, Dec. 27, 2004, as amended at 73 FR 76194, Dec. 16, 2008]

§ 1280.627 Canvassing voting ballots.

(a) Canvassing of form LS–86 shall take place at the county FSA offices on the 6th business day following the final day of the voting period. Such canvassing, acting on behalf of the Administrator, AMS, shall be in the presence of at least two members of the county committee. If two or more of the counties have been combined and are served by one county office, the canvassing of the requests shall be conducted by at least one member of the county committee from each county served by the county office. The FSA State committee or the State Executive Director, if authorized by the State Committee, may designate the County Executive Director (CED) and a county or State FSA office employee to canvass the ballots and report the results instead of two members of the county committee when it is determined that the number of eligible voters is so limited that having two members of the county committee present for this function is impractical, and designate the CED and/or another county or State FSA office employee to canvass requests in any emergency situation precluding at least two members of the county committee from being present to carry out the functions required in this section.

(b) Form LS–86 should be canvassed as follows:

(1) *Number of valid ballots.* A person has been declared eligible by FSA to vote by completing form LS–86 in its entirety, signing it, voting volume of production, and providing supporting documentation that shows the person who cast the ballot during the voting period was engaged in the production, feeding, or slaughtering of lambs during the representative period. Such ballot will be considered a valid ballot.

(2) *Number of ineligible ballots.* If FSA cannot determine that a person is eligible based on the submitted documentation or if the person fails to submit the required supporting documentation, the person shall be determined to be ineligible. FSA shall notify ineligible persons in writing as soon as practicable but no later than the 8th business day following the final day of the voting period.

(c) *Appeal.* A person declared to be ineligible by FSA can appeal such decision and provide additional documentation to the FSA county office within 5 business days after the postmark date of the letter of notification of ineligibility. FSA will then make a final decision on the person's eligibility and notify the person of the decision.

(d) *Invalid ballots.* An invalid ballot includes, but is not limited to the following:

(1) Form LS–86 is not signed or all required information has not been provided;

(2) Form LS–86 and supporting documentation returned in-person or by facsimile was not received by close of business on the last business day of the voting period;

(3) Form LS–86 and supporting documentation returned by mail was not postmarked by midnight of the final day of the voting period;

(4) Form LS–86 and supporting documentation returned by mail was not received in the county FSA office by the 5th business day following the final day of the voting period;

(5) Form LS–86 or supporting documentation is mutilated or marked in such a way that any required information on the form is illegible; or

(6) Form LS–86 and supporting documentation not returned to the appropriate county FSA office.

§ 1280.628 Counting ballots.

(a) Form LS–86 shall be counted by county FSA offices on the same day as the ballots are canvassed if there are no ineligibility determinations to resolve. For those county FSA offices that do have ineligibility determinations, the requests shall be counted no later than the 14th business day following the final day of the voting period.

(b) Ballots shall be counted as follows:

(1) Number of valid ballots cast;

(2) Number of persons favoring the Order;

(3) Number of persons not favoring the Order;

(4) Volume of production voted favoring the continuation of the Order;

(5) Volume of production voted not favoring the continuation of the Order; and

(6) Number of invalid ballots.

§ 1280.629 FSA county office report.

The county FSA office report shall be certified as accurate and complete by the CED or designee, acting on behalf of the Administrator, AMS, as soon as may be reasonably possible, but in no event shall submit no later than 18th business day following the final day of the specified period. Each county FSA office shall transmit the results in its county to the FSA State office. The results in each county may be made available to the public upon notification by the Administrator, FSA, that the final results have been released by the Secretary. A copy of the report shall be posted for 30 calendar days following the date of notification by the Administrator, FSA, in the county FSA office in a conspicuous place accessible to the public. One copy shall be kept on file in the county FSA office for a period of at least 12 months after notification by FSA that the final results have been released by the Secretary.

§ 1280.630 FSA State office report.

Each FSA State office shall transmit to the Administrator, FSA, as soon as possible, but in no event later than the 20th business day following the final day of the voting period, a report summarizing the data contained in each of the reports from the county FSA offices. One copy of the State summary shall be filed for a period of not less than 12 months after the results have been released and available for public inspection after the results have been released.

§ 1280.631 Results of the referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the ballots. USDA will issue an official press release announcing the results of referendum and publish the same results in the FEDERAL REGISTER. In addition, USDA will post the official results at the following Web site: *http://www.ams.usda.gov/LSMarketingPrograms* or such other Web site as announced by the Administrator of AMS. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch; Livestock and Seed Program, AMS, USDA, Room 2628–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems necessary, a State report or county report shall be reexamined and checked by such persons who may be designated by the Secretary.

[69 FR 77572, Dec. 27, 2004, as amended at 73 FR 76194, Dec.16, 2008]

§ 1280.632 Disposition of records.

Each FSA CED will place in sealed containers marked with the identification of the ''Lamb Checkoff Program Referendum,'' all of the form LS–86's along with the accompanying documentation and county summaries. Such records will be placed in a secure location under the custody of FSA CED for a period of not less than 12 months after the date of notification by the Administrator, FSA, that the final results have been announced by the Secretary. If the county FSA office receives no notice to the contrary from the Administrator, FSA, by the end of the 12 month period as described above, the CED or designee shall destroy the records.

§ 1280.633 Instructions and forms.

The Administrator, AMS, is authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart.

§ 1280.634 Confidentiality.

The names of persons voting in the referendum and ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and the counting of the votes but may not interfere with the process.

PART 1290—SPECIALTY CROP BLOCK GRANT PROGRAM

Sec.
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AUTHORITY: 7 U.S.C. 1621 note.

SOURCE: 71 FR 53307, Sept. 11, 2006, unless otherwise noted.

§ 1290.1 Purpose and scope.

Pursuant to the authority conferred by Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note) AMS will make grants to States to enhance the competitiveness of specialty crops in accordance with the terms and conditions set forth herein and other applicable federal statutes and regulations including, but not limited to, 7 CFR Part 3016.

§ 1290.2 Definitions.

(a) *AMS* means the Agricultural Marketing Service of the U. S. Department of Agriculture.

(b) *Application* means application for Specialty Crop Block Grant Program.

(c) ''*Enhancing the competitiveness*'' of specialty crops includes, but is not limited to: Research, promotion, marketing, nutrition, trade enhancement, food safety, food security, plant health programs, education, ''buy local'' programs, increased consumption, increased innovation, improved efficiency and reduced costs of distribution systems, environmental concerns and conservation, product development, and developing cooperatives.

(d) *Grant period* means the period of time from when the grant agreement is signed until the completion of all SCBGP projects submitted in the State plan.

(e) *Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant agreement.

(f) *Outcome measure* means an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public.

(g) *Project* means all proposed activities to be funded by the SCBGP.

(h) *Specialty crop* means fruits and vegetables, tree nuts, dried fruits, and nursery crops (including floriculture).

(i) *State* means the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(j) *State department of agriculture* means the agency, commission, or department of a State government responsible for agriculture within the State.

(k) *Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of funds provided.

§ 1290.3 Eligible grant applicants.

Eligible grant applicants are State departments of agriculture from the fifty states, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1290.4 Eligible grant project.

(a) To be eligible for a grant, the project(s) must enhance the competitiveness of specialty crops.

(b) To be eligible for a grant, the project(s) must be completed 3 calendar years after the grant agreement prescribed in § 1290.8 is signed. The grant period is established by the longest approved project submitted in the State plan. However, for cause, an extension of the grant period not to exceed three years may be granted by AMS on a case by case basis with a written request from the State.

§ 1290.5 Restrictions and limitations on grant funds.

(a) Grant funds may not be used to fund political activities in accordance with provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7324–7326).

(b) All travel expenses associated with SCBGP projects must follow Federal Travel Regulations (41 CFR Chapters 300 through 304) unless State travel requirements are in place.

(c) Grant funds shall supplement the expenditure of State funds in support of specialty crops grown in that State, rather than replace State funds.

§ 1290.6 Completed application.

Completed applications shall be clear and succinct and shall include the following documentation satisfactory to AMS.

(a) Completed applications must include an SF–424 ''Application for Federal Assistance''.

(b) Completed applications must also include one State plan to show how grant funds will be utilized to enhance the competitiveness of specialty crops. The state plan shall include the following:

(1) *Cover page*. Include the lead agency for administering the plan and an abstract of 200 words or less for each proposed project.

(2) *Project purpose*. Clearly state the specific issue, problem, interest, or need to be addressed. Explain why each project is important and timely.

(3) *Potential impact*. Discuss the number of people or operations affected, the intended beneficiaries of each project, and/or potential economic impact if such data are available and relevant to the project(s).

(4) *Financial feasibility*. For each project, provide budget estimates for the total project cost. Indicate what percentage of the budget covers administrative costs. Administrative costs should not exceed 10 percent of any proposed budget. Provide a justification if administrative costs are higher than 10 percent.

(5) *Expected measurable outcomes*. Describe at least two discrete, quantifiable, and measurable outcomes that directly and meaningfully support each project's purpose. The outcome measures must define an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public.

(6) *Goal(s)*. Describe the overall goal(s) in one or two sentences for each project.

(7) *Work plan*. Explain briefly how each goal and measurable outcome will be accomplished for each project. Be clear about who will do the work. Include appropriate time lines. Expected measurable outcomes may be long term that exceed the grant period. If so, provide a timeframe when long term outcome measure will be achieved.

(8) *Project oversight*. Describe the oversight practices that provide sufficient knowledge of grant activities to ensure proper and efficient administration.

(9) *Project commitment*. Describe how all grant partners commit to and work toward the goals and outcome measures of the proposed project(s).

(10) *Multi-state projects*. If the project is a multi-state project, describe how the States are going to collaborate effectively with related projects. Each State participating in the project should submit the project in their State plan indicating which State is taking the coordinating role and the percent of the budget covered by each State.

§ 1290.7 Review of grant applications.

Applications will be reviewed and approved or rejected as appropriate for conformance with the provisions in § 1290.6. AMS may request the applicant provide for additional information or clarification.

§ 1290.8 Grant agreements.

(a) After review and approval of a grant application, AMS will enter into a grant agreement with the State department of agriculture.

(b) AMS grant agreements will include at a minimum the following:

(1) The projects in the approved State plan.

(2) Total amount of Federal financial assistance that will be advanced.

(3) Terms and conditions pursuant to which AMS will fund the project(s).

§ 1290.9 Reporting and oversight requirements.

(a) An annual performance report will be required of all State departments of agriculture 90 days after the end of the first year of the date of the signed grant agreement and each year until the expiration date of the grant period. If the grant period is one year or less, then only a final performance

report (see paragragh (b) of this section) is required. The annual performance report shall include the following:

(1) Briefly summarize activities performed, targets, and/or performance goals achieved during the reporting period for each project.

(2) Note unexpected delays or impediments as well as favorable or unusual developments for each project.

(3) Outline work to be performed during the next reporting period for each project.

(4) Comment on the level of grant funds expended to date for each project.

(b) A final performance report will be required by the State department of agriculture within 90 days following the expiration date of the grant period. The final progress report shall include the following:

(1) An outline of the issue, problem, interest, or need for each project.

(2) How the issue or problem was approached via the project(s).

(3) How the goals of each project were achieved.

(4) Results, conclusions, and lessons learned for each project.

(5) How progress has been made to achieve long term outcome measures for each project.

(6) Additional information available (e.g., publications, Web sites).

(7) Contact person for each project with telephone number and e-mail address.

(c) A final SF–269A ''Financial Status Report (Short Form)'' (SF–269 ''Financial Status Report (Long Form)'' if the project(s) had program income) is required within 90 days following the expiration date of the grant period.

(d) AMS will monitor States, as it determines necessary, to assure that projects are completed in accordance with the approved State plan. If AMS, after reasonable notice to a State, finds that there has been a failure by the State to comply substantially with any provision or requirement of the State plan, AMS may disqualify, for one or more years, the State from receipt of future grants under the SCBGP.

(e) States shall diligently monitor performance to ensure that time schedules are being met, project work within designated time periods is being accomplished, and other performance measures are being achieved.

(f) State departments of agriculture shall retain records pertaining to the SCBGP for 3 years after completion of the grant period or until final resolution of any audit findings or litigation claims relating to the SCBGP.

§ 1290.10 Audit requirements.

The State is accountable for conducting a financial audit of the expenditures of all SCBGP funds. The State shall submit to AMS not later than 30 days after completion of the audit, a copy of the audit results.

PART 1291—SPECIALTY CROP BLOCK GRANT PROGRAM—FARM BILL

Sec.

1291.1 Purpose and scope.
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1291.9 Unobligated funds.
1291.10 Reporting and oversight requirements.
1291.11 Audit requirements.

AUTHORITY: 7 U.S.C. 1621 note, as amended.

SOURCE: 73 FR 51589, Sept. 4, 2008, unless otherwise noted.

§ 1291.1 Purpose and scope.

(a) Pursuant to the authority conferred by Section 101 of the Specialty Crops Competitiveness Act of 2004 (7 U.S.C. 1621 note), as amended by Section 10109 of the Food, Conservation, and Energy Act of 2008, Public Law 110–246, AMS will make grants to states to enhance the competitiveness of specialty crops in accordance with the terms and conditions set forth herein and other applicable federal statutes and regulations, including, but not limited to, 7 CFR part 3015 and part 3016.

(b) AMS encourages states to develop projects solely to enhance the competitiveness of specialty crops pertaining to the following issues affecting the specialty crop industry: increasing child and adult nutrition knowledge

and consumption of specialty crops; participation of industry representatives at meetings of international standard setting bodies in which the U.S. government participates; improving efficiency and reducing costs of distribution systems; assisting all entities in the specialty crop distribution chain in developing ''Good Agricultural Practices'', ''Good Handling Practices'', ''Good Manufacturing Practices'', and in cost-share arrangements for funding audits of such systems for small farmers, packers and processors; investing in specialty crop research, including organic research to focus on conservation and environmental outcomes; enhancing food safety; developing new and improved seed varieties and specialty crops; pest and disease control; and sustainability.

[74 FR 13316, Mar. 27, 2009]

§ 1291.2 Definitions.

(a) *AMS* means the Agricultural Marketing Service of the U.S. Department of Agriculture.

(b) *Application* means the application for the Specialty Crop Block Grant Program—Farm Bill (SCBGP–FB).

(c) *Beginning farmer or rancher* means an individual or entity who has not operated a farm or ranch for more than 10 years and substantially participates in the operation.

(d) *Capital expenditures* means expenditures for the acquisition cost of capital assets (equipment, buildings, land), or expenditures to make improvements to capital assets that materially increase their value or useful life. Acquisition cost means the cost of the asset including the cost to put it in place. Acquisition cost for equipment, for example, means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from the acquisition cost in accordance with the governmental unit's regular accounting practices.

(e) *Equipment* means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or $5000.

(f) *General purpose equipment* means equipment, which is not limited to research, scientific or other technical activities. Examples include office equipment and furnishings, telephone networks, information technology equipment and systems, reproduction and printing equipment, and motor vehicles.

(g) *Grant period* means the period of time from when the grant agreement is signed to the completion of all SCBGP-FB projects submitted in the State plan.

(h) *Grantee* means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant agreement.

(i) *Indirect costs* means those costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved.

(j) *Outcome measure* means an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public.

(k) *Project* means all proposed activities to be funded by the Specialty Crop Block Grant Program—Farm Bill.

(l) *Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group. A ''Socially Disadvantaged Group'' is a group whose members have been subject to discrimination on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program.

(m) *Special purpose equipment* means equipment which is used only for research, scientific, or other technical activities.

(n) *Specialty crop* means fruits and vegetables, tree nuts, dried fruits, horticulture and nursery crops (including floriculture).

(o) *State* means the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(p) *State department of agriculture* means the agency, commission, or department of a state government responsible for agriculture within the state.

(q) *Subgrantee* means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of funds provided.

[74 FR 13316, Mar. 27, 2009]

§ 1291.3 Eligible grant applicants.

Eligible grant applicants are State departments of agriculture from the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

§ 1291.4 Eligible grant project.

(a) To be eligible for a grant, the project(s) must solely enhance the competitiveness of U.S. grown or U.S. territory grown eligible specialty crops, in either domestic or foreign markets.

(b) To be eligible for a grant, the project(s) must be completed within three calendar years after the grant agreement prescribed in § 1291.8 of this part is signed. The grant period is established by the longest approved project submitted in the State plan. However, for cause, an extension of the grant period not to exceed three years may be granted by AMS on a case by case basis with a written request from the State.

(c) Projects should benefit the specialty crop industry and/or the public rather than a single organization, institution, individual, or commercial product. Single organizations, institutions, and individuals are eligible to participate as project partners.

(d) Multi-state projects that address solutions to problems that cross state boundaries are eligible.

[73 FR 51589, Sept. 4, 2008, as amended at 74 FR 13317, Mar. 27, 2009]

§ 1291.5 Restrictions and limitations on grant funds.

(a) Grant funds may not be used to fund political activities in accordance with provisions of the Hatch Act (5 U.S.C. 1501–1508 and 7321–7326).

(b) Development or participation in lobbying activities pursuant to 31 U.S.C. 1352 including costs of membership in organizations substantially engaged in lobbying are unallowable.

(c) Grant funds shall supplement the expenditure of State funds in support of specialty crops grown in that State, rather than replace State funds.

(d) Grantees and subgrantees must comply with 7 CFR Part 3015.

(e) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct and indirect charges.

(f) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of $5000 or more have the prior approval of AMS.

(g) Rental costs of buildings and equipment are allowable as direct costs in accordance with the cost principles in subpart T of 7 CFR part 3015.

[73 FR 51589, Sept. 4, 2008, as amended at 74 FR 13317, Mar. 27, 2009]

§ 1291.6 Completed application.

Completed applications shall be clear and succinct and shall include the following documentation satisfactory to AMS.

(a) One SF–424 ''Application for Federal Assistance''.

(b) SF–424A ''Budget Information—Non-Construction Programs'' showing the budget for each project.

(c) One SF–424B ''Assurances—Non-Construction Program''.

(d) Completed applications must also include one State plan to show how grant funds will be utilized solely to

enhance the competitiveness of specialty crops. The State plan shall include the following:

(1) *Cover page and granting processes.* Include the point of contact and lead agency for administering the plan. Provide a description of the affirmative steps taken to conduct outreach to socially disadvantaged farmers and beginning farmers. Describe how these groups were identified and the methods used to reach out to them. Identify if an award was made to either a socially disadvantaged farmer or a beginning farmer. If steps were not taken to conduct outreach to these groups, provide a justification for why not. Provide a description of the affirmative steps taken to conduct a competitive grant process. Include the steps taken to conduct outreach to specialty crop stakeholders to receive and consider public comment to identify their priority needs in enhancing the competiveness of specialty crops. Identify the methods used to solicit proposals that meet specialty crop stakeholders' needs, including any focus on multi-state projects. Include a description of the process used to review proposals in a fair and equitable manner. State departments of agriculture may also provide a copy of the issued request for proposals. If a competitive grant process was not used, provide a justification why not.

(2) *Project title and abstract.* Include the title of the project and an abstract of 200 or fewer words for each project.

(3) *Project purpose.* For each project, clearly state the purpose of the project. Describe the specific issue, problem, interest, or need to be addressed. Explain why the project is important and timely. If funding is being directed at a state marketing program, describe how the state will ensure that funding is being used solely to enhance the competitiveness of specialty crops as defined in § 1291.2(n). If a project builds on a previous Specialty Crop Block Grant Program (SCBGP) or SCBGP–FB project, indicate clearly how the new project compliments previous work. For each project, indicate if the project will be or has been submitted to or funded by another Federal or State grant program.

(4) *Potential impact.* Discuss the number of people or operations affected, the intended beneficiaries of each project, and/or potential economic impact if such data are available and relevant to the project.

(5) *Expected measurable outcomes.* For each project, describe at least one distinct, quantifiable, and measurable outcome-oriented objective that directly and meaningfully supports the project's purpose. The measurable outcome-oriented objective must define an event or condition that is external to the project and that is of direct importance to the intended beneficiaries and/or the public. Outcome measures may be long term that exceed the grant period. Describe how performance toward meeting outcomes will be monitored. For each project, include a performance-monitoring plan to describe the process of collecting and analyzing data to meet the outcome-oriented objectives.

(6) *Work plan.* For each project, explain briefly the activities that will be performed to accomplish the objectives of the project. Be clear about who will do the work. Include appropriate time lines.

(7) *Budget narrative.* The limit on indirect costs, not to exceed 10 percent, will be published in a FEDERAL REGISTER notice each fiscal year. Provide a justification if indirect costs exceed 10 percent or exceed that fiscal year's limit as announced in the FEDERAL REGISTER. Provide in sufficient detail information about the budget categories listed on SF–424A for each project to demonstrate that grant funds are being expended on eligible grant activities that meet the purpose of the program.

(8) *Project oversight.* Describe the oversight practices that provide sufficient knowledge of grant activities to ensure proper and efficient administration for each project.

(9) *Project commitment.* Describe how all grant partners commit to and work toward the goals and outcome measures of each proposed project(s).

(10) *Multi-state projects.* If the project is a multi-state project, describe how the states are going to collaborate effectively with related projects with one state assuming the coordinating role.

Indicate the percent of the budget covered by each state.

[74 FR 13317, Mar. 27, 2009]

§ 1291.7 Review of grant applications.

(a) Applications will be reviewed and approved or rejected as appropriate for conformance with the provisions in § 1291.6 of this part. AMS may request the applicant provide additional information or clarification.

(b) Incomplete applications as of the deadline for submission will not be considered.

§ 1291.8 Grant agreements.

(a) After approval of a grant application, AMS will enter into a grant agreement with the State department of agriculture.

(b) AMS grant agreements will include at a minimum the following:

(1) The projects in the approved State plan.

(2) Total amount of Federal financial assistance that will be advanced.

(3) Beginning and end dates of the grant agreement period.

(4) Terms and conditions pursuant to which AMS will fund the project(s).

§ 1291.9 Unobligated funds.

(a) States who do not apply for or do not request all available funding during the specified grant application period will forfeit all or that portion of available funding not requested for that application year.

(b) Funds not obligated will be allocated, by a date as determined by the Secretary, pro rata to the remaining States who applied during the specified grant application period to be solely expended on projects previously approved in their State plan.

§ 1291.10 Reporting and oversight requirements.

(a) An annual performance report will be required of all State departments' of agriculture within 90 days after the completion of the first year of the project(s), until the expiration date of the grant agreement. If the grant period is one year or less, then only a final performance report is required (See paragraph (b) of this section). The annual performance report shall include the following:

(1) *Activities Performed*. Briefly summarize activities performed, targets, and/or performance goals achieved during the reporting period to meet measurable outcomes for each project.

(2) *Problems and Delays*. Note unexpected delays or impediments for each project.

(3) *Future Project Plans*. Outline work to be performed during the next reporting period for each project.

(4) *Funding Expended To Date*. Comment on the level of grant funds expended to date for each project.

(b) A final performance report will be required of all State departments of agriculture within 90 days following the expiration date of the grant period. The final progress report shall include the following:

(1) *Project Summary*. An outline of the issue, problem, interest, or need for each project.

(2) *Project Approach*. How the issue or problem was approached via each project.

(3) *Goals and Outcomes Achieved*. How the performance goals and measurable outcomes were achieved for each project(s). If outcome measures were long term, summarize the progress that has been made towards achievement.

(4) *Beneficiaries*. Description and quantitative data for the number of people or operations that have benefited from the project's accomplishments, and/or the potential economic impact of each project.

(5) *Lessons Learned*. Lessons learned, results, conclusions, for each project. If outcome measures were not achieved, identify and share the lessons learned to help expedite problem-solving.

(6) *Contact Person*. List the contact person for each project with telephone number and email address.

(7) *Additional Information*. Include other relevant project information available (e.g. publications, Web sites, photographs).

(c) A final SF–269A ''Financial Status Report (Short Form)'' or SF–269 ''Financial Status Report (Long Form)'' if the project(s) had program income, is required within 90 days following the expiration date of the grant period.

(d) AMS will monitor States, as it determines necessary, to assure that

projects are completed in accordance with the approved State plan. If AMS, after reasonable notice to a State, and opportunity to be heard, finds that there has been a failure by the State to comply substantially with any provision or requirement of the State plan, AMS may disqualify, for one or more years, the State from receipt of future grants under the SCBGP or SCBGP–FB.

(e) States shall diligently monitor performance to ensure that time schedules are being met, project work within designated time periods is being accomplished, and other performance measures are being achieved.

[73 FR 51589, Sept. 4, 2008, as amended at 74 FR 13318, Mar. 27, 2009]

§ 1291.11 Audit requirements.

Each year that a State receives a grant under the SCBGP–FB, the State is required to conduct an audit of the expenditures of SCBGP–FB funds. If the Single Audit Act applies to an eligible grantee, the State shall submit the annual audit results to AMS within 30 days after completion of the audit. If the Single Audit Act does not apply, the State shall conduct an audit of all SCBGP–FB funds no later than 60 days after the end date of the grant agreement. The State shall submit to AMS not later than 30 days after completion of the audit, a copy of the audit results.