

Dated: November 18, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**7 CFR Parts 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1222, 1230, 1250, and 1260**

[Document Number AMS-DA-16-0101]

#### Provisions for Removing Commodity Research and Promotion Board Members and Staff

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposal would amend the research and promotion orders—or the regulations under the orders—overseen by the Agricultural Marketing Service (AMS) to provide uniform authority for the removal of board members and staff who fail to perform their duties or who engage in dishonest actions or willful misconduct. The removal provisions in 13 of the orders would be modified to allow the U.S. Department of Agriculture (USDA) to take action necessary to ensure the boards can continue to fulfill their intended purposes with minimal disruption. Removal provisions would be added to the six orders that do not currently provide for such action.

**DATES:** Comments must be received by December 8, 2016.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments may be submitted on the internet at: <http://www.regulations.gov>. Written comments may also be sent to Laurel L. May, Senior Marketing Specialist, Order Formulation and Enforcement Division, USDA/AMS/Dairy Program, 1400 Independence Avenue SW., Room 2967-S—Stop 0231, Washington, DC 20250-0231; facsimile: 202-690-0552. All comments should reference the document number and the date and page number of this issue of the **Federal Register**, and will be made available for public inspection in the above office during regular business hours, or may be viewed at: <http://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will

be made public on the internet at the address provided above.

#### FOR FURTHER INFORMATION CONTACT:

Laurel L. May, Senior Marketing Specialist, USDA/AMS/Dairy Program, telephone 202-690-1366, or email [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov); or Whitney Rick, Director; Promotion, Research, and Planning Division; USDA/AMS/Dairy Program; telephone 202-720-6961; or email [Whitney.Rick@ams.usda.gov](mailto:Whitney.Rick@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under 19 of the commodity research and promotion orders established under the following acts: Beef Promotion and Research Act of 1985 (7 U.S.C. 2901-2911); Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425); Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101-2118); Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501-4514); Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701-2718); Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401-6417); Hass Avocado Promotion, Research, and Information Act of 2000 (U.S.C. 7801-7813); Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101-6112); Popcorn Promotion, Research, and Consumer Information Act of 1996 (7 U.S.C. 7481-7491); Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611-2627); and Watermelon Research and Promotion Act (7 U.S.C. 4901-4916). These acts are collectively referred to as “commodity research and promotion laws” or “acts.”

The preceding acts provide that administrative proceedings must be exhausted before parties may file suit in court. Under those acts, any person subject to an order may file a petition with the Secretary of Agriculture (Secretary) stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with laws and request a modification of the order or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which the person is an inhabitant, or has his or her principal place of business, has the jurisdiction to review the Secretary's rule, provided a complaint is filed within 20 days from the date of the entry of the ruling. There are no administrative proceedings that must be exhausted prior to any judicial

challenge to the provision of the Beef Promotion and Research Act of 1985.

#### Executive Order 12866 and Executive Order 13563

USDA is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process.

#### Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

#### Executive Order 12988

*Beef Promotion and Research Act of 1985*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Beef Promotion and Research Act of 1985 (7 U.S.C. 2910) provides that it shall not preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State.

*Commodity Promotion, Research, and Information Act of 1996*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

*Cotton Research and Promotion Act of 1966*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect.

*Dairy Production Stabilization Act of 1983*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect. Section 1221 of the Dairy Production Stabilization Act of 1983 provides that nothing in this Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

*Egg Research and Consumer Information Act of 1974*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect.

*Fluid Milk Promotion Act of 1990*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect.

*Hass Avocado Promotion, Research, and Information Act of 2000*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1212(c) of the Hass Avocado Promotion, Research, and Information Act of 2000 (7 U.S.C. 7811) provides that nothing in this Act may be construed to preempt or supersede any program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a State.

*Mushroom Promotion, Research, and Consumer Information Act of 1990*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of the Mushroom Promotion, Research, and Information Act of 1990 (7 U.S.C. 6109) provides that nothing in this Act may be construed to preempt or supersede any program relating to mushroom promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a State.

*Popcorn Promotion, Research, and Consumer Information Act of 1996*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 580 of the Popcorn Promotion, Research, and Information Act of 1996 (7 U.S.C. 7489) provides that nothing in this Act may be construed to preempt or supersede any program relating to popcorn promotion organized and operated under the laws of the United States or of a State.

*Potato Research and Promotion Act of 1971*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

*Pork Promotion, Research, and Consumer Information Act of 1985*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1628 of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4817) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers. The regulation of such activity (other than a regulation or requirements relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Pork Act may not be imposed by a State.

*Watermelon Research and Promotion Act*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

**Proposed Rule**

USDA is proposing amendments to the orders and/or rules and regulations for 19 of the 22 national commodity research and promotion programs overseen by AMS. Each of the programs is administered by a board or council comprised of industry stakeholders, who are appointed by the Secretary to chart the course of the promotion and research activities undertaken by each commodity research and promotion program. The boards and councils hire staffs to carry out the day-to-day business operations of the programs. The proposed amendments would establish uniform provisions across all the programs for removing board and council members and their employees

as necessary to preserve program integrity.

Currently, 16 of AMS's 22 research and promotion programs specify provisions for removing board and council members or their staff employees when they are unwilling or unable to perform their duties properly or when they engage in prohibited or illegal activities or other willful misconduct. Some of the programs require the board or council to first make a recommendation for removal to the Secretary, who then determines whether such action is appropriate. Six of the programs include no removal provisions.

The need to remove board and council members and staff from service is infrequent; but situations do arise that require immediate AMS action to ensure program integrity is maintained and to mitigate damage from illegal or inappropriate behavior. Examples of such situations include, but are not limited to, those occasions when board or council members find that they cannot commit enough time to board or council business and are unable to consistently attend meetings or fulfill program assignments. In such cases, it may be difficult for the board or council to meet quorum requirements or make urgent business decisions. In other situations, board or council members or their employees might violate program policies regarding lobbying and influencing government action or policy or violate anti-discrimination, anti-harassment, or anti-trust laws, all of which impede program integrity and the ability to conduct normal business. Board or council members or their employees might mishandle program funds or commit other dishonest acts injurious to all program participants. In each case, the Secretary must have the ability to initiate removal actions, applying consistent criteria and procedures across all programs. Improved AMS oversight would ensure these industry boards and councils can continue to fulfill their appointed purposes.

Currently, three of AMS's research and promotion orders (for soybeans, sorghum, and lamb) contain identical language related to removing board and council members and staff that would be appropriate for use in the other 19 programs. The language authorizes the Secretary to initiate removal action against any person (board or council member or employee) for failure or refusal to perform his or her duties properly or for engaging in acts of dishonesty or willful misconduct. The Secretary is authorized to remove that person if the he or she determines that

person’s continued service would be detrimental to the purposes of the act under which the program is established.

This proposed rule would amend 11 of the orders by replacing current

provisions with the language used in the soybean, sorghum, and lamb orders, to provide identical authority for the Secretary to take appropriate removal

action when necessary to preserve program integrity. Specifically, the following sections in each order would be amended:

Mango Promotion, Research, and Information Order .....	§ 1206.33(b).
Processed Raspberry Promotion, Research, and Information Order .....	§ 1208.43(b).
Mushroom Promotion, Research, and Consumer Information Order .....	§ 1209.35(c).
Honey Packers and Importers Research, Promotion, Education and Information Order .....	§ 1212.43(b).
Christmas Tree Promotion, Research, and Information Order .....	§ 1214.43(b).
Popcorn Promotion, Research, and Consumer Information Order .....	§ 1215.26.
Softwood Lumber Research, Promotion, Consumer Education, and Industry Information Order .....	§ 1217.43(b).
Blueberry Promotion, Research and Information Order .....	§ 1218.43(b).
Paper and Paper-Based Packaging Promotion, Research, and Information Order .....	§ 1222.43(a).
Pork Promotion, Research, and Consumer Information Order .....	§§ 1230.35 and 1230.55.
Beef Promotion and Research Order .....	§ 1260.213.

Additionally, this proposed rule would suspend the current removal authority under two orders. The language proposed for use in all the other orders, as currently provided in

the orders for soybeans, sorghum, and lamb, would be added to the rules and regulations under the three orders to provide identical authority for the Secretary to take appropriate removal

action when necessary to preserve program integrity. Specifically, new regulations would be added to replace language suspended in the following sections:

Watermelon Research and Promotion Plan .....	§ 1210.324(b)
Hass Avocado Promotion, Research and Information Order .....	§ 1219.36(b)

Finally, this proposed rule would add removal authority to the six orders or the rules and regulations under the orders that do not currently specify such provisions. The language proposed for

use in all the other orders, as currently provided in the orders for soybeans, sorghum, and lamb, would be added to provide identical authority for the Secretary to take appropriate removal

action when necessary to preserve program integrity. Specifically, removal language would be added to each of the following:

Dairy Promotion and Research Order .....	§ 1150.136.
National Fluid Milk Processor Promotion Order .....	§ 1160.25.
Cotton Research and Promotion—Cotton Board Rules and Regulations .....	§ 1205.506 (new).
Potato Research and Promotion Plan .....	§ 1207.324.
Peanut Promotion, Research, and Information Order .....	§ 1216.44.
Egg Research and Promotion Order .....	§ 1250.331.

This proposed rule is intended to strengthen AMS’s oversight of the commodity research and promotion programs to protect the interests of the regulated industries. The proposed removal language to be applied to all of the orders would not preclude the ability of the boards or councils to initiate action to remove members if they become aware of situations requiring such action. Nevertheless, board or council recommendations regarding removals would not be required for AMS to take action, as they currently are under some of the orders. AMS would be able to take immediate action to investigate possible violations of order provisions, policies, and laws without waiting for a formal request to do so from the board or council. AMS would also be able to apply consistent criteria for board or council member removal across all the programs as necessary to ensure program integrity.

**Initial Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis.

Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201).

Research and promotion programs established under the various commodity research and promotion acts, and the rules and regulations

issued thereunder, are uniquely brought about through group action of essentially small entities acting on their own behalf. The boards and councils that administer the programs are largely comprised of producers, handlers, processors, manufacturers, and importers of the regulated commodities, who are nominated by their industries and selected by the Secretary to recommend, plan, and conduct generic promotion and research projects that will benefit all industry members, regardless of size.

In most cases, board and council members are nominated by their peers in specific regions or states where the commodity is produced to represent those areas. Some programs may provide for board or council representation according to the member’s production volume. Every effort is made to ensure that boards and councils are composed of diverse members of all business sizes in order to assure proper representation of all

segments of the regulated industries. Thus, across the 19 boards and councils that would be affected by this proposed rule, there are any number of large or small entities serving as members at any one time.

This rule is intended to facilitate the removal of individual board and council members, or employees of the boards and councils, who are no longer able to perform their duties or who have engaged in dishonest acts or other willful misconduct. The proposed removal criteria and procedures would pertain to the removal of any board or council member, regardless of the size of the business entity they represent, or any employee of the boards or councils, whose continued service would be detrimental to the programs.

No negative or disproportionate impacts on large or small entities are anticipated in connection with this proposed rule. The positive impacts, which are expected to accrue to all industry members, both large and small, are improved AMS oversight of the commodity research and promotion programs and the improved integrity and effectiveness of those programs, which are designed to benefit all commodity producers, handlers, importers, and consumers, regardless of size.

AMS considered alternatives to this proposed rule, including variations to the removal provision language to be applied to all the orders, or doing nothing at all. After consideration, AMS opted to propose the provision language that would give the boards, councils, and the Secretary the ability to initiate and carry out removal proceedings when necessary. The proposal would also allow AMS to apply uniform oversight across all programs. In this way, AMS would be able to provide more effective oversight of the 22 commodity research and promotion programs.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large entities. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements of the 19 affected commodity research and promotion programs (7 CFR parts 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1222, 1230, 1250, and 1260) have previously been approved by the Office of Management and Budget (OMB) under those orders. All reports and forms used in the AMS research and promotion programs are periodically reviewed to reduce information requirements and

duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

Interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

While this proposed rule has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the Commodity Promotion, Research, and Information Act of 1996, for the programs to which the Act is applicable.

A 15-day comment period for the proposed rule is provided to allow interested persons to submit written comments on the proposed changes to the provisions for removing research and promotion board and council members, or board and council employees, from service. All comments timely received will be considered before a final determination is made on this matter.

#### List of Subjects

##### 7 CFR Part 1150

Administrative practice and procedure, Dairy products, Reporting and recordkeeping requirements, Research.

##### 7 CFR Part 1160

Administrative practice and procedure, Fluid milk products, Promotion, Reporting and recordkeeping requirements.

##### 7 CFR Part 1205

Administrative practice and procedure, Advertising, Agricultural research, Cotton, Reporting and recordkeeping requirements.

##### 7 CFR Part 1206

Administrative practice and procedure, Advertising, Agricultural research, Mango, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 1207

Advertising, Agricultural research, Imports, Potatoes, Reporting and recordkeeping requirements.

##### 7 CFR Part 1208

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Raspberry promotion, Reporting and recordkeeping requirements.

##### 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Imports, Mushrooms, Reporting and recordkeeping requirements.

##### 7 CFR Part 1210

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

##### 7 CFR Part 1212

Administrative practice and procedure, Advertising, Consumer education, Honey and honey products, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

##### 7 CFR Part 1214

Administrative practice and procedure, Advertising, Christmas trees, promotion, Consumer information, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 1215

Administrative practice and procedure, Advertising, Agricultural research, Popcorn, Reporting and recordkeeping requirements.

##### 7 CFR Part 1216

Administrative practice and procedure, Advertising, Agricultural research, Peanuts, Reporting and recordkeeping requirements.

##### 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Promotion, Reporting and recordkeeping requirements, Softwood lumber.

##### 7 CFR Part 1218

Administrative practice and procedure, Advertising, Agricultural research, Blueberries, Reporting and recordkeeping requirements.

##### 7 CFR Part 1219

Administrative practice and procedure, Advertising, Agricultural research, Hass avocados, Reporting and recordkeeping requirements.

##### 7 CFR Part 1222

Administrative practice and procedure, Advertising, Consumer

information, Marketing agreements, Paper and paper-based packaging promotion, Reporting and recordkeeping requirements.

7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Pork and pork products, Reporting and recordkeeping requirements.

7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

7 CFR Part 1260

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1222, 1230, 1250, and 1260 are proposed to be amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

■ 1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 2. In § 1150.136, redesignate the introductory text as paragraph (a), and add a new paragraph (b) to read as follows:

§ 1150.136 Vacancies.

\* \* \* \* \*

(b) 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.

PART 1160—FLUID MILK PROMOTION PROGRAM

■ 3. The authority citation for 7 CFR part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417 and 7 U.S.C. 7401.

■ 4. In § 1160.205, redesignate the introductory text as paragraph (a), and

add a new paragraph (b) to read as follows:

§ 1160.205 Vacancies.

\* \* \* \* \*

(b) 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.

PART 1205—COTTON RESEARCH AND PROMOTION

■ 5. The authority citation for 7 CFR part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

■ 6. Add § 1205.506 under the undesignated center heading "General" in the Subpart—Cotton Board Rules and Regulations to read as follows:

§ 1205.506 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.

PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION

■ 7. The authority citation for 7 CFR part 1206 continues to read as follows:

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

■ 8. In § 1206.33, revise paragraph (b) to read as follows:

§ 1206.33 Vacancies.

\* \* \* \* \*

(b) 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.

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PART 1207—POTATO RESEARCH AND PROMOTION PLAN

■ 9. The authority citation for 7 CFR part 1207 continues to read as follows:

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

■ 10. In § 1207.324, redesignate the introductory text as paragraph (a), and add a new paragraph (b) to read as follows:

§ 1207.324 Vacancies.

\* \* \* \* \*

(b) 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.

PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 11. The authority citation for 7 CFR part 1208 continues to read as follows:

Authority: 7 U.S.C. 7411–7425; 7 U.S.C. 7404.

■ 12. In § 1208.43, revise paragraph (b) to read as follows:

§ 1208.43 Vacancies.

\* \* \* \* \*

(b) 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 Council 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.

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PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER

■ 13. The authority citation for 7 CFR part 1209 continues to read as follows:

Authority: 7 U.S.C. 6101–6112 and 7 U.S.C. 7401.

■ 14. In § 1209.35, revise paragraph (c) to read as follows:

§ 1209.35 Vacancies.

\* \* \* \* \*

(c) 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 Council 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.

#### **PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN**

■ 15. The authority citation for 7 CFR part 1210 continues to read as follows:

**Authority:** 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

■ 16. In § 1210.324, suspend paragraph (b) indefinitely.

■ 17. Add § 1210.503 under the undesignated center heading “General” in Subpart C—Rules and Regulations to read as follows:

##### **§ 1210.503 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.

#### **PART 1212—HONEY PACKERS AND IMPORTER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER**

■ 18. The authority citation for 7 CFR part 1212 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 19. In § 1212.43, revise paragraph (b) to read as follows:

##### **§ 1212.43 Removal and Vacancies.**

\* \* \* \* \*

(b) 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.

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#### **PART 1214—CHRISTMAS TREE PROMOTION, RESEARCH, AND INFORMATION ORDER**

■ 20. The authority citation for 7 CFR part 1214 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 21. In § 1214.43, revise paragraph (b) to read as follows:

##### **§ 1214.43 Vacancies.**

\* \* \* \* \*

(b) 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.

#### **PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

■ 22. The authority citation for 7 CFR part 1215 continues to read as follows:

**Authority:** 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

■ 23. Revise § 1215.26 to read as follows:

##### **§ 1215.26 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.

#### **PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION ORDER**

■ 24. The authority citation for 7 CFR part 1216 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 25. In § 1216.44, redesignate the introductory text as paragraph (a), and add paragraph (b) to read as follows:

##### **§ 1216.44 Vacancies.**

\* \* \* \* \*

(b) 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.

#### **PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION, AND INDUSTRY INFORMATION ORDER**

■ 26. The authority citation for 7 CFR part 1217 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

■ 27. In § 1217.43, revise paragraph (b) to read as follows:

##### **§ 1217.43 Removal and Vacancies.**

\* \* \* \* \*

(b) 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.

\* \* \* \* \*

#### **PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER**

■ 28. The authority citation for 7 CFR part 1218 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 28. In § 1218.43, revise paragraph (b) to read as follows:

##### **§ 1218.43 Vacancies.**

\* \* \* \* \*

(b) 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 Council 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.

\* \* \* \* \*

#### **PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION**

■ 29. The authority citation for 7 CFR part 1219 continues to read as follows:

**Authority:** 7 U.S.C. 7801–7813 and U.S.C. 7401.

- 30. In § 1219.36, suspend paragraph (b) indefinitely.
- 31. Add § 1219.204 under Subpart C—Rules and Regulations to read as follows:

**§ 1219.204 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.

**PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER**

- 32. The authority citation for 7 CFR part 1222 continues to read as follows:

**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

- 33. In § 1222.43, revise paragraph (a) to read as follows:

**§ 1222.43 Removal and vacancies.**

(a) 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.

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**PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

- 34. The authority citation for 7 CFR part 1230 continues to read as follows:

**Authority:** 7 U.S.C. 4801–4819 and 7 U.S.C. 7401.

- 35. Add § 1230.40, to read as follows:

**§ 1230.40 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 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.

- 36. Add § 1230.59, to read as follows:

**§ 1230.59 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.

**PART 1250—EGG RESEARCH AND PROMOTION**

- 37. The authority citation for 7 CFR part 1250 continues to read as follows:

**Authority:** 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

- 38. Add § 1250.511 under the undesignated section heading “General” in Subpart—Rules and Regulations to read as follows:

**§ 1250.511 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.

**PART 1260—BEEF PROMOTION AND RESEARCH**

- 39. The authority citation for 7 CFR part 1260 continues to read as follows:

**Authority:** 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

- 40. Revise § 1260.213 to read as follows:

**§ 1260.213 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 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.

Dated: November 16, 2016.

**Elanor Starmer,**

*Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 101**

[Docket No. FDA–2016–D–3401]

**Scientific Evaluation of the Evidence on the Beneficial Physiological Effects of Isolated or Synthetic Non-Digestible Carbohydrates Submitted as a Citizen Petition; Draft Guidance for Industry; Availability**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notification of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance entitled “Scientific Evaluation of the Evidence on the Beneficial Physiological Effects of Isolated or Synthetic Non-digestible Carbohydrates Submitted as a Citizen Petition (21 CFR 10.30).” The draft guidance, when finalized, will describe our views on the scientific evidence needed and the approach to evaluating the scientific evidence on the physiological effects of isolated or synthetic non-digestible carbohydrates that are added to foods that are beneficial to human health.

**DATES:** Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on the draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on this document by January 23, 2017.

**ADDRESSES:** You may submit comments as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <http://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a