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stewardship association

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April 19, 2017

Heather Pichelman, Division Director
Promotion and Economics Division, Specialty Crops Program,
AMS, USDA
1400 Independence Avenue SW., Room 1406-S, Stop 0244
Washington, DC 20250-0244

RE: Docket No. AMS-SC-16-0112; PR-B; RIN 0581-AD55
(original Request for Comment)

Docket No. AMS-SC-16-0112-2266 (Extension of
Comment Period)

Comments on the Proposed Organic Research, Promotion
and Information Order; Referendum Procedures

Submitted electronically via <http://www.regulations.gov>

Dear Ms. Pichelman:

The Carolina Farm Stewardship Association (CFSA) provides the following comments on Agricultural Marketing Services' proposed rule for Organic Research, Promotion and Information Order; Referendum Procedures. CFSA is a member-based 501(c)(3) organization representing 2,500 farmers, businesses and consumers in North and South Carolina, with a mission to advocate, educate and build the systems to support a sustainable regional food system centered on organic agriculture and local food.

Founded in 1979, CFSA is the oldest sustainable agriculture organization in the Southeast. Our farm and business members range from the largest organic egg processors in the nation, to small scale operations selling organic fruits and vegetables, eggs and poultry through direct marketing; from mid-scale dairy and grain farms selling in organic commodity markets, to organic distribution companies serving independent farmers; from five-plus- generation farm families, to young people from urban backgrounds and second-career farmers who have transitioned from successful businesses in non-food industries.

This diverse membership means that we are able to bring a wide range of farming and food experience and knowledge to bear in forming policy positions related to agricultural research and marketing, including the function of research and marketing programs. CFSA has been actively involved in supporting policies and programs that provide organic farmers in the Carolinas with access to research and education that meets their needs, and has provided marketing education to farmer members to improve consumer understanding of what organic farming means.

CFSA is a highly regarded leader on organic policy. CFSA teaches farmers how the NOP will impact their on-farm practices, provides guidance in appropriate record-keeping and on-farm mapping, and provides review of farmer's applications for certification. CFSA also works with farmers on Conservation Activity Plans. These plans are integral to obtaining organic certification, and give farmers access cost share through EQIP-OI to implement best management practices to improve water quality, address erosion and increase animal health.

CFSA plays an important role building the local, organic supply chain in order to better enable farmers to meet consumer demand, including establishing and then spinning off an organic produce distribution company, Eastern Carolina Organics, which now moves certified organic produces from the Carolinas up and down the east coast. CFSA manages a certified organic incubator farm in Cabarrus County in North Carolina, Lomax Farm. CFSA trains a new generation of organic farmers at Lomax. Finally, CFSA hosts two annual conferences; our annual Sustainable Agriculture Conference draws about 1000 people to learn about local, organic agriculture, and the Organic Commodities and Livestock Conference (OCLC).

The technical assistance and training that CFSA provides to transitioning and organic farmers informs the work the organization does on organic policy. From our advocacy for publicly funded organic research, to our efforts to encourage state departments of agriculture and commerce to make the organic supply chain more robust, CFSA promotes and supports the work our member farmers do every day.

CFSA understands that organic farmers need more research tailored to the particular challenges they face, and that a research and promotion program like the one proposed stands to raise funds to fund this research. While the proposed rule could increase funding for organic research, the referendum procedures AMS proposes exempt many certified producers in the Carolinas whose businesses will be expected to pay assessments in future years, prohibit some of those producers from participating in future referenda, and fail to take into account that many certified producers in the Carolinas don't get their agricultural information in the same way that conventional producers do.

More specifically, CFSA recommends the following changes to the proposed rule.

Voting

Establishing a Research and Promotion Program

Too many producers are carved out voting in both the initial and all ongoing referenda under this proposal. Here, we provide examples of how the voting procedures set out in the proposal will

keep many certified organic producers in the Carolinas from having a say in an assessment that may end up impacting many of them and proposes some alternatives.

Section 524 of the Commodity Promotion, Research, and Information Act of 1996 (Act) provides three ways to determine approval for a new research and promotion program: by majority of those voting, by persons voting for approval who represent a majority of the volume of an agricultural commodity, or by majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. See 7 U.S.C. 7417(e). The Act operates on the assumption that volume is a good proxy for the impact an order will have on a particular producer's bottom line. Since that is not the case for an order that would cover a vast array of commodities ranging from melons to beef, from cheese to blueberries, volume makes no sense as a method to weigh votes for an organic research and promotion program.

The proposal, sensibly, therefore, selects the first option as the method to determine industry approval for the program; a simple majority of those voting will decide. However simple a majority vote sounds under the Act, this proposal complicates matters. Section 1255.101 of this proposal defines an Assessed Entity as, "any certified organic producer or certified organic handler that has gross organic sales in excess of \$250,000 for the previous marketing year. . . and any voluntarily assessed entity." AMS' own evaluation finds that approximately 75% of certified organic producers fall outside this definition, as they gross less than \$250,000 in any given marketing year. Organic Research, Promotion, and Information Order, 82 Fed. Reg. 11 (Jan. 18, 2017) at 5769.

It follows that this proposal will allow somewhere between 12.5% and 25% of certified organic producers to decide for all certified producers whether to approve a research and promotion program. We and our member farmers have concerns with the application of this pool of eligible voters in the initial referendum, because it is not only those who will face assessment in the first year of the program whose businesses will be affected should the program be approved.

First, this proposal does permit otherwise exempt producers to vote in the initial referendum if they voluntarily agree to pay assessments for the majority of years between the initial referendum and the first subsequent referendum, should the initial referendum approve the program. This places exempt producers in a terrible position. Particularly for those producers who object to the creation of a research and promotion program, this proposal requiring them to agree to make at least four years of payments to a program they don't want in order to tell AMS that they don't want it is exactly the type of scenario that makes a number of producers in the Carolinas feel that research and promotion programs are not designed for their benefit.

Second, some producers in the Carolinas have been exempt from another research and promotion programs by virtue of their certified organic status. These producers of dual covered commodities will lose their exempt status should the proposed research and promotion program be approved, regardless of their gross income. Despite this, the voting procedures outlined in this proposal do not give producers of dual covered commodities the right to participate in the referendum if their gross receipts are below \$250,000. Instead, these producers are permitted to participate in the initial referendum only if they agree to be assessed should the program be

approved. In setting these producers up to pay into either the commodity-specific or the organic research and promotion program, regardless of the amount of their gross receipts, the voting procedures should permit them to vote—also regardless of the amount of their gross receipts. It is possible that, should the referendum result in approval of the program, that these producers could decide to pay into the commodity-specific program rather than the organic program. Producers of dual covered commodities with gross income under \$250,000 should not have to promise to pay into the organic program in order to vote in any organic research and promotion program referendum.

Third, all certified organic producers will be effected should the program be approved regardless of whether they assessed entities, voluntarily assessed entities or exempt from assessment. The program, if approved, will require all organic producers to maintain records and submit them to the Board—whether to document the amount of their assessment or to document their eligibility for an exemption certificate. Requiring this paperwork farmers who are not freely permitted to register their opinion about the creation of the program is unfair.

We recommend that the proposal be modified to allow all certified organic producers, regardless of gross income, to vote in the initial referendum. While all certificate holders should be permitted to vote in the initial referendum, we feel particularly strongly that all producers of dual covered commodities be eligible to vote in the initial referendum, regardless of their gross income.

Subsequent Referenda

This proposal describes subsequent referenda which will be conducted in the same way as the proposed initial referendum. “The procedures would also be used for any subsequent referendum under the proposed order.” Organic Research, Promotion, and Information Order; Referendum Procedures, 82 Fed. Reg. 11 (Jan. 18, 2017) at 5441. This proposal conflicts with the proposal for the research and promotion order itself, and presents some problems when it comes to implementing future referenda, particularly for organic producers who expand their operations between referenda, and producers whose gross income fluctuates around \$250,000 per year.

First, we bring to AMS’ attention a discrepancy between the two proposed rules regarding the organic research and promotion program. Eligibility to vote in subsequent referenda requires that a certificate-holder be “in good standing.” See Organic Research, Promotion, and Information Order; Referendum Procedures, 82 Fed. Reg. 11 (Jan. 18, 2017). See also Organic Research, Promotion, and Information Order, 82 Fed. Reg. 11 (Jan. 18, 2017). The proposed Referendum Procedures and the proposed Order contain conflicting descriptions of what “good standing” means. Compare proposed §1255.81(b)(2)(iii) with proposed §1255.102(e)(3). The first requires that new certificate-holders pay the assessment each year since they received their certificate in order to be eligible to vote in subsequent referenda. This proposal does not require that new certificate-holders pay assessments in the years between certification and the subsequent referendum in order to be in good standing. AMS should align the two sections so that both describe identical in order for new certificate-holders to be in good standing for subsequent referenda. We encourage AMS to use the definition found in this proposal, §1255.102(e)(3),

which permits new certificate-holders to be in good standing and vote in subsequent referenda without requiring that they pay assessments before having the opportunity to vote.

Regardless of how AMS decides to resolve the discrepancy between the two proposals' definitions of good standing, we urge AMS to include at least two additional ways for producers to meet the good standing requirement. One to account for producers who experience fluctuations in their gross income such that receipts are sometimes above and sometimes below \$250,000, and another to account for producers whose operations expand such that they have gross receipts below \$250,000 in one or more years after a referendum and gross receipts above that threshold in one or more years leading up to a referendum.

Many farms in the Carolinas experience fluctuations in income around \$250,000. This proposal imagines only four ways for producers to be in good standing, a requirement to vote in subsequent referenda. None of the four ways allow producers with fluctuating income to participate in subsequent referenda unless they decide to be voluntarily assessed in years when their gross income is below the threshold. Producers who are sometimes assessed entities who oppose the research and promotion program will be required to be voluntarily assessed in years when their gross income does not meet the threshold in order to vote, under this proposal. Requiring producers be voluntarily assessed in order to record their objection to being (mandatorily) assessed is unfair. Dual –covered and voluntarily assessed entities need pay assessments in a majority of years in order to be in good standing.

We call on AMS to add another test for good standing to the proposed 1255.102(e): Any entity that has been an assessed entity at least one time in the years since the last referendum must demonstrate that it has paid into the organic research and promotion program in those years when it was required to do so since the last referendum.

This proposal does not permit growing operations to be in good standing unless they were voluntarily assessed in all years before exceeding the gross income threshold. In the Carolinas, we see organic producers' operations growing as the supply chain becomes more robust, and as consumer demand for organic products grows. For these reasons, and others we haven't mentioned here, a producer with gross sales below \$250,000 in the year or years following a referendum could have gross sales in excess of that amount by the time of a subsequent referendum.

Given the potential Carolina producers have to expand their operations, it is troubling that the good standing test doesn't appear to account for a growing operation to participate in a subsequent referendum if that growth happened between one referendum and the next. If, in the year of a referendum, the producer is an assessed entity, the proposed program requires that the entity have paid into the program in every year since the last referendum in order to be in good standing. This would require a producer to predict their expansion and be voluntarily assessed in the years before achieving gross income above the threshold in order to vote in subsequent referenda. This is unfair and discourages producers from expanding their operations in years

between referenda. As written, this proposal requires producers to pay into the program for up to 13 years before they are eligible to vote in a subsequent referendum.¹

We call on AMS to add another test to allow producers to be “in good standing” under the proposed 1255.102(e): An assessed entity must demonstrate that it paid into the organic research and promotion program for every year since exceeding the gross income threshold of \$250,000 since the most recent referendum.

Instructions

This proposal prohibits the Administrator from incurring any expense to provide public notice of the referendum. This could prove problematic in the Carolinas. There has been a significant reduction in the quality and number of daily and weekly newspapers in rural parts of the Carolinas over the years. We’ve heard from our members that many of them no longer pay for a local paper because the coverage is too thin to be a worthwhile expense. Furthermore, with the advent of podcasts, many producers prefer to download radio programs from the internet rather than listening to the few radio stations available in rural areas. Furthermore, certified organic producers in the Carolinas do not necessarily frequent the same ag supply stores, co-ops, grain elevators, slaughter facilities as conventional producers. Organic producers often have a more tenuous connection with their local FSA offices than their conventional counterparts, too. USDA has recognized this and has begun an effort to have organic producers apply for organic certification cost share through their FSA offices to strengthen the connection between local FSA offices and organic producers. 2017 is the first year of this effort, and, in the Carolinas, applications may still be made through the state departments of agriculture, in recognition of the fact that many organic producers will be more comfortable continuing the process they’ve used for years.

For these reasons, we caution AMS that refusing to incur expense in advertising a referendum could mean that certificate-holders are not made aware of the referendum. We encourage AMS to consider expending resources to determine how best to reach organic producers and potentially paying to promote the referendum in places where organic producers are likely to get their information.

¹ A producer grosses \$225,000 in the year after the initial referendum and chose not to be voluntarily assessed. In years 2-7, the producer grossed \$300,000 per year. In each of those years, the producer was an assessed entity and made payments to the program, as required. In year 7, the producer is not eligible to participate in the referendum because the producer is not in good standing. “An assessed entity that does not meet any of the above descriptions must demonstrate that it has paid into the organic research and promotion program in every year since the most recent referendum.” Proposed §1255.102(e)(4). This producer cannot meet that test since she did not pay into the program in year one. Because the producer is not in good standing, she cannot vote in the referendum in year 7. If those who are in good standing choose to continue the program, this producer will continue to pay into the program for another 7 years before she is eligible to vote, paying into the program for a total of 13 years before gaining the right to vote.

Ballots

Section 1255.105 of the proposal describes the methods by which ballots are collected and challenged. Neither the Act nor this proposal provide much detail about the process of challenging ballots. Who may make a challenge? Is the certificate-holder made aware of the challenge? On what bases may a challenge be made? May the certificate-holder respond to the challenge? Who conducts the investigation to determine whether the ballot should be counted or not? Is the certificate-holder made aware of the investigation and its outcome? May the certificate-holder contest the outcome, and if so, in what manner? This section is too vague and could result in the inappropriate invalidation of ballots. We call on AMS to be clearer about the processes around ballot challenges.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Roland', followed by a long horizontal line extending to the right.

Roland McReynolds
Executive Director