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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-16-0112-2265 (Extension of
Comment Period)
Comments on the Proposed Organic Research, Promotion
and Information Order

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, should AMS decide to move forward with publication of an organic research and promotion program.

Organic Research and Promotion Board

§1255.40 Establishment and Membership

This proposal calls for a 17 member Board including 1 non-voting member. One member of the Board has to be a mandatorily or voluntarily assessed certified organic producer from the following list of states: Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, North Carolina,

Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia. This presents a problem for organic producers in the Carolinas.

Some producers in the Carolinas are inclined to support the creation of an organic research and promotion program because they see the clear need for more research funding directed toward organic production. Without more research, organic producers will have difficulty reaching the top potential that organic farming practices can provide. This proposal is unlikely to result in research that increases the production capacity of organic producers in the Carolinas.

The Carolinas, and the Southeastern United States in general, face disease, pest and weed pressures that are unique to our climate. These are not the same pressures faced by producers in Delaware, Illinois, Indiana, Maryland, Michigan, Missouri, New Jersey, Ohio, or Pennsylvania. One member representing the research and promotion needs of nearly half of the United States is unlikely to accrue benefit to farmers in the Carolinas. It is, after all, the Board—one member of which represents 21 states, including but not limited to the entire Southeast—that determines how assessments will be disbursed to pay for programs, plans, and projects.

We call on AMS to reconsider the way representation is apportioned in recognition of the fact that, to the extent that producers in the Carolinas support an organic research and promotion program, that support exists in order to expand organic research that increases their success. The Board is more likely to allocate funds for research to benefit farmers in the Carolinas specifically and the Southeast generally if the Southeast is specifically represented on the Board. One seat on the Board should be occupied by a certified organic producer from Georgia, North Carolina, South Carolina, and Virginia. This region experiences similar pest, disease and weed pressure and should be represented distinct from other Southeastern states, let alone from states in the Mid-West and Mid-Atlantic regions.

§1255.47 Prohibited Activities

This research and promotion program, because it would be run through the USDA, prohibits promotion that is “disparaging to another agricultural commodity.” This makes it difficult for this program to promote certified organic products, because any promotion would be unable to compare them to conventional products in terms of their impact on the environment, public health, farmer and farmworker health, nutrient content, etc. These reflect some of the chief reasons consumers choose to buy organic over conventional produce. Prohibiting promotion of organic produce on exactly those grounds to convince consumers to purchase certified organic products defeats the reason allocating assessment fees to promotion. For this reason among others, we encourage AMS to allocate a larger share of assessment dollars to research by requiring a smaller (or no) allocation to promotion.

Expenses and Assessments

§1255.50 Budget and Expenses

The USDA estimates that assessments from the program will total \$25.3 million in the first year.

The Board is tasked with determining how the funds collected will be used, within certain parameters:

- No less than 25% will be used for research and at least 50% of that will be used for agricultural research.
- 25% will be allocated to information with at least 50% of that allocated to producer information. This includes extension activities like disseminating research to FSA or producers.
- 25% is allocated to promotion.
- 25% is discretionary.

In terms of dollars, this means that out of the over \$25 million that USDA estimates will be collected, the minimum amount to be spent on agricultural research—the chief reason why any organic farmers in the Carolinas are even considering supporting an organic research and promotion program—is \$2.65 million dollars. The maximum, assuming the entire research allocation and all discretionary funds are spent on agricultural research is less than half of the total amount collected through assessments—\$10.6 million.

Funds for agricultural research are badly needed. Organic producers in the Carolinas and across the nation have seen organic research funding decrease or remain stagnant at the federal and state levels for years. We urge AMS to reconsider the allocation of funds, moving all discretionary funds into agricultural research, moving at least half of the funds designated for promotion into agricultural research, and requiring that at least 80% of research funds be dedicated to agricultural research.

§1255.52 Assessments

Certified organic farmers are currently exempt from participation in conventional research and promotion programs. If implemented as written, this proposal will end that exemption, regardless of a farmer's gross income. USDA has made clear that farmers with gross income under \$250,000 may not opt into the organic research and promotion program in order to opt out of paying into the organic research and promotion program. This means that farmers grossing under \$250,000 will have to pay into either the conventional commodity program or the organic program.

Certified organic farmers have been opting out of conventional programs because their spending on marketing and research don't tend to benefit organic farmers. Forcing farmers who grow or raise a product covered by a conventional program to pay into the organic program even as other

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farms of similar size aren't required to participate isn't right, and could push small scale and beginning farmers out of crops and livestock covered by conventional checkoff programs. We call on AMS to give producers with annual gross income under \$250,000 the same choice their neighbors get; a choice to participate or not regardless of what they raise or grow.

This section also addresses the impact net income has on the assessment paid. Assessed producers pay one tenth of one percent of their net income in assessment fees. This proposal defines net organic sales as total gross sales in organic products minus (a) the cost of feed and agricultural inputs used in the production of certified products and (b) the cost of any non-organic agricultural ingredients used in the production of certified products. This proposal goes on to define agricultural inputs as all substances or materials used in the production or handling of organic agricultural products (e.g. fertilizer, lime, soil conditioners, agricultural chemicals, beneficial insects, other approved materials for pest control, seed, plants, vines, trees, feed purchased for livestock, etc.).

The manner in which net income is calculated is at odds with a basic premise of organic agriculture, which is to reduce the need to use off-farm inputs by implementing management practices that increase soil fertility and resistance to pests. By allowing farmers to reduce their gross income by the cost of off-farm purchased feed and amendments when calculating how much they will be assessed, this proposal fails to take into account the value that many organic farmers place on creating their own soil amendments by composting on site, and on pasture-based livestock operations that reduce a farmer's feed costs, or farmers who raise their own feed. In addition, organic farmers have to engage in integrated pest management, which involves practices that reduce the need for herbicides or pesticides. This proposal will allow farmers who do less to meet the long term goals and ideals of organic farming to deduct more from their gross income—and pay a lower assessment—that a farmer who has invested for decades to reach a point where their input purchases are low.

We urge AMS to research the best way to value a standard deduction from gross income for farmers who are engaged in organic practices that reduce the need to purchase off-farm inputs like fertilizers, herbicides, pesticides and fungicides. This will ensure that farmers' investments in best practices have a value when calculating net income and assessment fees.

§1255.53 Exemption from Assessment

This section of the proposal describes the paperwork and recordkeeping requirements for certified organic producers who are exempt from assessment; namely, those grossing less than \$250,000 in a given year. This includes roughly 75% of all organic farms in the United States, according to AMS' own statement. Thus, these are recordkeeping requirements imposed on certified producers who will not be permitted to vote in the proposed referendum to approve this proposal.

Exempt producers and handlers are required to apply to the Board each year for an exemption certificate. The application requires these producers and handler to supply proof that they had gross organic sales of under \$250,000 in the previous year by submitting to the Board past

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shipment/sales data that would document gross organic sales. Exempt producers and handlers would need to maintain books and records that document the amount of gross sales, and retain those records for at least two years beyond the applicable calendar year.

This is an onerous addition to the recordkeeping already required of small-scale organic producers. All these producers are already keeping records as required by their certifier documenting the timing, amount, and manner of inputs on the farm, in addition to other record keeping requirements.

We call on AMS to permit *all* certified organic producers and handlers to participate in the initial referendum on this program without strings attached. This section of the proposal demonstrates that all certificate holders will be impacted, so all certificate-holders should have the opportunity to vote without promising to pay into the program should it be approved.

Promotion, Research and Information

§1255.60 Programs, plans and projects

Roughly 75% of all USDA Certified Organic farms have gross income of under \$250,000 per year, meaning that the vast majority of US organic farms will not be represented in this checkoff program. This will give an outsized voice to a small number of industrial scale farms, organic food importers and large scale organic processors. As a result, the research and promotion conducted with these funds is unlikely to benefit the majority of certified organic farms.

Furthermore, the research needs of Southeastern producers are less likely to be met than those of other regions, because Southeastern farmers are represented on the Board by one certificate-holder who represents nearly half of all the United States (21 states), many of which are not in the Southeast. This reduces the possibility that research of benefit to the farmers CFSA serves in NC and SC will ever be conducted. Without an advocate for the needs of Southeastern producers on the Board, the region's potential to access the funds collected through the proposed program is very limited.

AMS should restructure the Board to include more representation of small-scale producers to reflect the important role that small producers play in the NOP. This will increase the likelihood that the Board will fund research of benefit to small scale producers, helping to ensure that research that will tend to spur consolidation in the industry—as we've seen with other research and promotion programs—is not the outcome of this proposal. Along similar lines, we encourage AMS again to create a seat on the Board specifically for a Southeastern farmer. These states have unique research needs, and should not be lumped in with other states in the Mid-West and Mid-Atlantic regions.

§1255.70 Reports

This proposal requires a burdensome amount of paperwork, not only of assessed producers, but of all producers. This section requires that certified organic producers and certified organic

handlers provide the Board with “the value of net organic sales of organic products.” Note that this requirement is not imposed on assessed producers and handlers, but on all certified organic producers and handlers. This is overly burdensome, particularly for producers who are exempt from assessment by virtue of their gross income. It appears that this overbroad requirement was unintentional, since this section of the proposal requires that the information about net income accompany the producer or handler’s annual assessment fee.

We call on AMS to revise this section, ensuring that the value of net income only be required of assessed or voluntarily assessed entities, not all certificate-holders.

In addition to the overbroad requirement imposed on all certificate-holders to keep onerous records, we point out that keeping track of gross vs. net income for purposes of this program will likely prove onerous for many producers. Producers will need to calculate not only their gross income, but also their net—which will require keeping track of which inputs AMS has deemed will reduce their gross income along with the amount spent on those specific inputs. It gets even more complicated and onerous for farmers whose products are covered by a conventional program, requiring them to seek an exemption from the conventional program, or, for certain commodities like dairy, apply for a refund of automatically collected fees.

Many organic farms in the Southeast run split operations where some production is conventional and some is organic. The added layer of paperwork that this proposal will impose on split operations to keep track of which expenses are for their organic as opposed to their conventional production, and to determine their net income for both parts of the operation separately, could add a burden for those farms that are already keeping track of different production practices to the satisfaction of their certifier.

We again encourage AMS to conduct research to determine if a standard deduction from gross income could be offered to reduce the paperwork burden on certificate-holders and to make it possible for farmers who have split operations, or reduced off farm inputs in accordance with the goals of organic agriculture to obtain financial recognition of their stewardship.

We also ask that AMS consider whether it would be less onerous for producers if AMS required certified organic producers to opt in to (rather than out of) a conventional program and provide evidence that they have done so to AMS in lieu of providing documentation of income and an annual assessment fee for the organic research and promotion program.

§1255.81 Referenda

Initial referendum

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. See 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 effected 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

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

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.

Thank you for considering these comments.

Sincerely,



Roland McReynolds
Executive Director

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.