

regulations without negative impact, and that the costs associated with the order outweigh the benefits. The Committee also believes that the overall decline in the scope and volume of the fresh prune industry in Washington and Oregon supports order termination. As a consequence, in action taken on June 1, 2010, the Committee unanimously recommended that USDA terminate the order.

Section 924.64 of the order provides that USDA terminate or suspend any or all provisions of the order when a finding is made that the order does not tend to effectuate the declared policy of the Act. Furthermore, § 608c(16)(A) of the Act provides that USDA shall terminate or suspend the operation of any order whenever the order or provision thereof obstructs or does not tend to effectuate the declared policy of the Act. An additional provision requires that Congress be notified not later than 60 days before the date the order would be terminated.

The proposed termination of the order is a regulatory relaxation and would consequently reduce the costs to both handlers and producers (while marketing order requirements are applied to handlers, the costs of such requirements are often passed on to producers). Furthermore, the Committee has determined, through its analysis of the four year period of regulatory suspension, that termination would not negatively impact the marketing of fresh prunes. The Committee considered alternatives to this rule including leaving the order active but continuing with regulatory suspension, and suspending the order rather than terminating it. Interest was not shown for either option, however, and the Committee subsequently recommended that the order be terminated.

This proposed rule is intended to solicit input and other available information from interested parties on whether the order should be terminated. USDA will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the information collection requirements being suspended were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Fruit Crops. Termination of the reporting requirements under the order is expected to reduce the reporting burden on Washington-Oregon prune handlers by 2.92 hours, and should further reduce industry expenses. Handlers are no longer required to file forms with the Committee. This proposed rule would

thus not impose any additional reporting or recordkeeping requirements on either small or large prune handlers. As with all Federal marketing order programs, reports and forms 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.

The Committee's meeting was widely publicized throughout the Washington-Oregon fresh prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the June 1, 2010, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Additionally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the proposed termination of Marketing Order 924, which regulates the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. All written comments received in a timely manner will be considered before a final determination is made on this matter.

Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 924.64 of the order, USDA is considering termination of the order. If USDA decides to terminate the order, trustees would be appointed to conclude and liquidate the affairs of the Committee, and would continue in that capacity until discharged by USDA. In addition, USDA would notify Congress 60 days in advance of termination pursuant to § 608c(16)(A) of the Act.

## List of Subjects in 7 CFR Part 924

Prunes, Marketing agreements, Reporting and recordkeeping requirements.

## PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON—[REMOVED]

For the reasons set forth in the preamble, under the authority of 7 U.S.C. 601–674, 7 CFR part 924 is proposed to be removed.

Dated: November 2, 2010.

**David R. Shipman,**  
*Acting Administrator.*

[FR Doc. 2010-28046 Filed 11-5-10; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1214

[Document No. AMS-FV-10-0008-PR-1A]

**RIN 0581-AD00**

### Proposed Christmas Tree Promotion, Research, and Information Order

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This proposed rule invites comments on the establishment of an industry-funded promotion, research, and information program for fresh cut Christmas trees. The proposed Christmas Tree Promotion, Research, and Information Order (Proposed Order), was submitted to the Department of Agriculture (Department) by the Christmas Tree Checkoff Task Force, an industry wide group of producers and importers that support this proposed program. Under the Proposed Order, producers and importers of fresh cut Christmas trees would pay an initial assessment of \$0.15 per tree, which would be paid to the proposed Christmas Tree Promotion Board (Board). This Board would be responsible for administration and operation of the proposed Order. Producers and importers that domestically produce or import less than 500 Christmas trees annually would be exempt from the assessment. The proposed program is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). A referendum will be conducted, among producers and importers, three years after the

collection of assessments begin to determine if Christmas tree producers and importers favor the continuation of this program. This proposed rule also announces the Agricultural Marketing Service's (AMS) intention to request approval of new Christmas tree information collection requirements by the Office of Management and Budget (OMB) for the operation of the Proposed Order.

**DATES:** Comments must be received by February 7, 2011. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden that would result from this proposal must be received by February 7, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments on the Internet at <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632-S, Washington, DC 20250-0244; fax: (202) 205-2800. All comments should reference the docket 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 can be viewed at <http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

Pursuant to PRA, comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, should be sent to the above address. In addition, comments concerning the information collection should also be sent to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Room 0632, Stop 0244, Washington, DC 20250-0244; telephone: (301) 334-2891; or facsimile: (301) 334-2896; or e-mail: [Patricia.Petrella@ams.usda.gov](mailto:Patricia.Petrella@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

#### **Executive Order 12866**

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

#### **Executive Order 12988**

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 1996 Act provides that it shall not affect or preempt any other Federal or state law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the 1996 Act, a person subject to an order may file a written petition with the Department stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and requesting a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Department's final ruling.

#### **Executive Order 13132**

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Executive Order directs agencies to construe, in regulations and otherwise, a Federal Statute to preempt State law only when the statute contains an express preemption provision. Section 524 of the 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

The proponent, the Christmas Tree Checkoff Task Force is an industry wide group of producers and importers that

support this proposed program. They have conducted meetings throughout the United States with several State and multi-State Christmas tree organizations. The proposed program is not intended to duplicate any State program. The proponents have determined that they need a mechanism that would be sustainable over time. A national Christmas tree research and promotion program would accomplish this goal.

#### **Summary**

This proposed rule invites comments on the establishment of an industry-funded promotion, research, and information program for fresh cut Christmas trees. The proposed Christmas Tree Promotion, Research, and Information Order (Proposed Order), was submitted to the Department of Agriculture (Department) by the Christmas Tree Checkoff Task Force (Task Force), an industry wide group of producers and importers that support this proposed program. Under the Proposed Order, producers and importers of fresh cut Christmas trees would pay an initial assessment of \$0.15 cents per tree, which would be paid to the Christmas Tree Promotion Board (Board). This Board would be responsible for administration and operation of the Proposed Order. Producers and importers that domestically produce or import less than 500 Christmas trees annually would be exempt from the assessment. The proposed program is authorized under the 1996 Act.

A referendum will be conducted, among producers and importers, three years after the collection of assessments begin to determine if Christmas tree producers and importers favor the continuation of this program. This proposed rule also announces the Agricultural Marketing Service's (AMS) intention to request approval of new Christmas tree information collection requirements by the OMB for the operation of Proposed Order.

#### **Authority in 1996 Act**

The proposed Order is authorized under the 1996 Act which authorizes USDA to establish agricultural commodity research and promotion orders which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. As defined under section 513(1)(D) of the 1996 Act, agricultural commodities include the products of

forestry. The proposed Order would provide for the development and financing of a coordinated program of research, promotion, and information for Christmas trees.

The 1996 Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the 1996 Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the 1996 Act provides for orders applicable to (1) Producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if imports are subject to assessments). Section 516 states that an order may include an exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; coverage of research, promotion, and information activities to expand, improve, or make more efficient the marketing or use of an agricultural commodity in both domestic and foreign markets; provision for reserve funds; provision for credits for generic and branded activities; and assessment of imports.

In addition, section 518 of the 1996 Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board or council from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

### Industry Background

Christmas trees have been commercially sold in the United States since about 1850, when most were cut from wild stands. In the last 55 to 60 years, Christmas trees have been farmed and harvested as an agricultural row crop. Most Christmas trees are now grown on or selected and cut by consumers on tree farms. The U.S. Christmas tree industry consists of over 12,000 farms producing over 17 million Christmas trees per year. The best selling Christmas trees are Scotch pine, Douglas fir, noble fir, Fraser fir, Virginia pine, balsam fir and white pine.

Christmas trees are grown for retail sale in almost all U.S. states. Oregon, Michigan, Wisconsin, North Carolina and Pennsylvania together produce more than 75 percent of the trees produced each year. During 2007, 47 out of the 50 States contributed to the production of Christmas trees.

### Competition

The fresh cut Christmas tree industry competes directly with the artificial Christmas tree industry. Artificial Christmas tree companies advertise heavily throughout the fall and Christmas seasons. According to data supplied by the proponents artificial tree purchases have increased from 9.8 million in 2003 to 17.4 million in 2007.

### Imports

According to U.S. Department of Commerce, U.S. Census Bureau, Foreign Trade Statistics, imports of Christmas trees from 2006 through 2008 averaged about 1.9 million trees. During those years, imports from Canada accounted for 99.72 percent of the total imports. Italy, Colombia and Mali comprised about .28 million trees or less than one percent. For the same period, these imports were valued at 27.427 million dollars.

### Prices

According to the Task Force, in 2007 the average price per tree for a Noble was approximately \$18.00 and the average price per tree for a Douglas was \$11.00. By averaging these two types of Christmas trees, prices would be approximately \$15 per tree. With 31 million trees cut in 2007, the value would be approximately \$465 million (value at point of first sale).

### Need for a Program

A national research and promotion program for Christmas trees would help the industry to address the many market problems it currently faces. According to the Task Force, two main factors currently affecting Christmas tree sales, both in the domestic market and abroad, are increased competition and changing consumer habits.

According to additional data supplied by the Task Force, the market share of fresh Christmas trees in the U.S. from 1965 to 2008 has declined by 6 percent. In comparison, the market share of artificial trees has increased 655 percent from 1965 to 2008.

According to the proponent data, sales of fresh cut Christmas trees decreased by 15 million trees from 37 million trees sold in 1991 down to 22 million trees sold in 2002. The industry saw an increase in sales in 2003 through 2007 when the industry conducted a voluntary marketing campaign which was lead by a small group of producers and retailers. This voluntary marketing campaign saw sales rebound by 9 million trees—from 22 million trees sold in 2002 to 31 million trees sold in 2007. Even with the strong sales response to the marketing efforts, the

voluntary marketing program suffers from a lack of funding.

The Christmas tree industry has tried three different times to conduct promotional programs based on voluntary contributions. Each time, after about three years, the revenue declined to a point where the programs were ineffective. The decline in revenue is attributable to the voluntary nature of these programs. Therefore, the proponents have determined that they need a mechanism that would be sustainable over time. They believe that a national Christmas tree research and promotion program would accomplish this goal.

### Specific Provisions

#### Definitions

Pursuant to section 513 of the 1996 Act, sections 1214.1 through 1214.30 of the proposed Order define certain terms that would be used throughout the Order. Several of the terms are common to all research and promotion programs authorized under the 1996 Act while other terms are specific to the proposed Christmas tree Order.

Section 1214.1 would define the term “Act” to mean the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

Section 1214.2 would define the term “Christmas Tree Promotion Board” to mean the administrative body established pursuant to § 1214.40.

Section 1214.3 would define the term “Christmas tree” to mean any tree of the coniferous species that is severed or cut from its roots and marketed as a Christmas tree. The coniferous species include the botanical group of trees that have needle-like or scale-like leaves.

Section 1214.5 would define the term “crop year” to mean August 1 through July 31.

Section 1214.6 would define the term “Customs” to mean the U.S. Customs and Border Protection or U.S. Customs Service, an agency of the U.S. Department of Homeland Security.

Section 1214.8 would define the term “fiscal period” or “fiscal year” to mean the period August 1 through July 31.

Section 1214.9 would define the term “importer” to mean any person importing Christmas trees into the United States in a fiscal period as a principal or agent, broker, or consignee of any person who domestically produces Christmas trees outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such Christmas trees.

Section 1214.10 would define the term “information” to mean activities or

programs designed to disseminate the results of research, new and existing marketing programs, new and existing marketing strategies, new and existing uses and applications, and to enhance the image of Christmas trees.

Section 1214.11 would define the term “marketing” to mean the sale or other disposition of Christmas trees in interstate, foreign, or intrastate commerce.

Section 1214.13 would define the terms “part” and “subpart.” The term “part” would mean the Christmas Tree Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order would be a “subpart” of the part.

Section 1214.15 would define the terms programs, plans, and projects to mean research, promotion and information programs, plans, or projects established under the Order.

Section 1214.16 would define “produce” to mean to engage in the cutting and selling of Christmas trees for the holiday market.

Section 1214.17 would define “producer” to mean any person who is engaged in the production of Christmas trees in the United States, and who owns, or shares the ownership and risk of loss of production of Christmas trees or a person who is engaged in the business of producing, or causing to be domestically produced, Christmas trees beyond personal use and having value at first point of sale.

Section 1214.18 would define the term “promotion” to mean any action taken, including paid advertising, public relations and other communications, and promoting the results of research, that presents a favorable image of Christmas trees to the public and to any and all consumers and those who influence consumption of Christmas trees with the intent of improving the perception, markets and competitive position of Christmas trees and stimulating sales of Christmas trees.

Section 1214.19 would define the term “research” to mean any activity that advances the position of Christmas trees in the market place that includes, but is not limited to any type of test, study, or analysis designed to advance the image, desirability, use, marketability, sales, product development, or quality of Christmas trees; and the effectiveness of market development and promotion efforts including competitiveness, efficiency, pest and disease control, and other aspects of Christmas tree production.

Sections 1214.4, 1214.7, 1214.12, 1214.14, 1214.20, 1214.21, 1214.22, 1214.23, and 1214.24 would define the

terms “conflict of interest,” “Department or USDA,” “Order,” “person,” “Secretary,” “State,” “suspend,” “terminate,” and “United States,” respectively. The definitions are the same as those specified in section 513 of the Act.

#### **Establishment of the Board**

Pursuant to section 515 of the 1996 Act, §§ 1214.40 through 1214.47 of the proposed Order would detail the establishment and membership of the proposed Christmas Tree Promotion Board, nominations and appointments, the term of office, removal and vacancies, procedure, reimbursement and attendance, powers and duties, and prohibited activities.

Section 1214.40 would specify the Board establishment and membership. The Board would be composed of 12 members. Eleven members would be domestic producers and would be allocated to three regions in the United States based on the volume of Christmas trees domestically produced from each respective region. The total number of Board members could not be increased. The 11 members would be allocated as follows: Region number 1 (Western Region), 5 members; region number 2 (Central Region), 2 members; and region number 3 (Eastern Region), 4 members. Specific States and territories within each domestic region would be specified in § 1214.40(a)(1) of the proposed Order. One member would be an importer who imports Christmas trees into the United States.

The Task Force recommended that the Board have no alternate Board members. It wants to ensure that industry members who seek representation and serve on the Board are committed to their service and participate in all Board meetings.

Every 5 years, but no more often than once every 3 years, the Board must review, based on a 3-year average, the geographical distribution of the production of Christmas trees within the United States and the number of Christmas trees imported into the United States. If warranted, the Board would recommend to the Secretary that the Board membership be reapportioned appropriately to reflect such changes. Any changes in Board composition would be implemented by the Secretary through rulemaking.

Section 1214.41 of the proposed Order would specify Board nominations and appointments. The initial nominations would be conducted by the Department. The Department would publicize the nomination process, using trade press or other means it deems appropriate, and outreach to all sizes of

Christmas tree producers for the U.S. market. The Department could use regional caucuses, mail or other methods to elicit potential nominees. The Secretary would select the members of the Board from the nominations.

Regarding subsequent nominations, the Board staff would solicit nominations as described in the preceding paragraph. Nominees would have the opportunity to provide the Board a short background statement outlining their qualifications and desire to serve on the Board. Nominees for the initial and subsequent Boards must domestically produce 500 or more Christmas trees during the crop year to be eligible to serve on the Board.

Producers who domestically produce Christmas trees in more than one region could seek nomination in the region where the majority of their trees are produced. The names of producers would be placed on a ballot by region. The ballots along with the background statements would be mailed to producers in each respective region for a vote. Producers who produce in more than one region could only vote in the region in which they produce a majority of their Christmas trees. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees.

Importer nominees would be solicited by the Board from those importers who have paid their assessments to the Board in the most recent fiscal period. They also must have imported more than 500 Christmas trees during the fiscal period. The names of importer nominees would then be placed on a ballot. The ballots along with the background statements would be mailed to importers for a vote. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees. If there is an insufficient number of nominees from whom to appoint members to the Board, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

The Board would submit nominations to the Secretary 90 days before the new Board term begins. The Secretary would select the members of the Board from the nominations submitted by the Board (through the balloting process). In order to provide the Board flexibility, the Board could recommend to the Secretary modifications to its nomination procedures. Any such modifications would be implemented

through rulemaking by the Secretary. Section 1214.42 of the proposed Order would specify the term of office. With the exception of the initial Board, each Board member would serve a three-year term or until the Secretary selected his or her successor. Each term of office would begin on January 1 and end on December 31. No member could serve more than two consecutive terms, excluding any term of office less than three years. For the initial board, the terms of Board members would be staggered for two, three, and four years.

Section 1214.43 of the proposed Order would specify criteria for the removal of members and for filling vacancies. If a Board member ceased to work for a producer or importer or ceased to do business in the region he or she represented, such position would become vacant. Additionally, the Board could recommend to the Secretary that a member be removed from office if the member consistently refused to perform his or her duties or engaged in dishonest acts or willful misconduct. The Secretary could remove the member if he or she finds that the Board's recommendation shows adequate cause. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

If a position became vacant, nominations to fill the vacancy would be conducted using the nominations process as proposed in § 1214.41 of the Order. A vacancy would not be required to be filled if the unexpired term is less than six months.

Section 1214.44 of the proposed Order would specify procedures of the Board. A majority of the Board members (7) would constitute a quorum. If participation by telephone or other means were permitted, members participating by such means would count towards the quorum requirements or other voting requirements as authorized under the Order. Proxy voting would not be permitted. A motion would carry if supported by a majority of Board members present.

The proposed Order would also provide for the Board to take action by mail, telephone, electronic mail, facsimile, or any other electronic means when the chairperson believes it is necessary. Actions taken under these procedures would be valid only if all members and the Secretary were notified of the meeting and all members

were provided the opportunity to vote and a majority of the members present voted in favor of the action. Additionally, all votes would have to be confirmed in writing and recorded in Board minutes.

Section 1214.45 of the proposed Order would specify that Board members or committee members would serve without compensation. However, Board members or committee members would be reimbursed for reasonable travel expenses, as approved by the Board, incurred when performing Board business.

Section 1214.46 of the proposed Order would specify powers and duties of the Board. These are similar to promotion programs authorized under the 1996 Act. They include, among other things, to administer the Order and collect assessments; to develop bylaws and recommend regulations necessary to administer the Order; to select a chairperson and other Board officers; to create an executive committee and form other committees and subcommittees as necessary; to hire staff or contractors; to provide appropriate notice of meetings to the industry and USDA and keep minutes of such meetings; to develop programs and enter into contracts to implement programs; to submit a budget to USDA for approval within 60 calendars days after assessments are due; to borrow funds necessary to cover startup costs of the Order; to invest Board funds appropriately; to recommend changes in the assessment rate as appropriate and within the limits of the Order; to have its books audited by an outside certified public accountant at the end of each fiscal period and at other times as requested by the Secretary; to report its activities to manufacturers for the U.S. market; to make public an accounting of funds received and expended; to receive, investigate and report to the Secretary complaints of violations of the Order; and to recommend amendments to the Order as appropriate.

Section 1214.47 of the proposed Order would specify prohibited activities that appear in other promotion programs authorized under the 1996 Act. In summary, neither the Board nor its employees and agents could engage in actions that would be a conflict of interest; use Board funds to lobby (influencing legislation or governmental action or policy, by local, state, national, and foreign governments or subdivisions thereof, other than recommending to the Secretary amendments to the Order); or engage in any advertising or activities that may be false, misleading or disparaging to another agricultural commodity.

## Expenses and Assessments

Pursuant to sections 516 and 517 of the 1996 Act, §§ 1214.50 through 1214.56 of the proposed Order detail requirements regarding the Board's budget and expenses, financial statements, assessments, and exemption from assessments. Within 60 days after assessments are due to the Board, and as necessary during the year, the Board would submit a budget to USDA covering its projected expenses. The budget must include a summary of anticipated revenue and expenses for each program along with a breakdown of staff and administrative expenses. Except for the initial budget, the Board's budgets should include comparative data for at least one preceding fiscal period.

Assessments are due to the Board on February 15th of each crop year. Providing the Board sixty days after assessments are due to develop and submit a budget allow enough time for the budget to be approved prior to the beginning of the fiscal period (August 1). Also, this allows the Board to have knowledge of the monies available to develop promotion, research, or information programs for the upcoming fiscal period.

Each budget must provide for adequate funds to cover the Board's anticipated expenses. Any amendment or addition to an approved budget must be approved by USDA, including shifting of funds from one program, plan or project to another. Shifts of funds that do not result an increase in the Board's approved budget would not have to have prior approval from USDA. For example, if the Board's approved budget provided for \$1 million in consumer advertising and \$500,000 in research projects, a shift of \$50,000 from consumer advertising to research would require USDA approval. However, a shift within the \$1 million consumer advertising line item would not require prior USDA approval.

The Board would be authorized to incur reasonable expenses for its maintenance and functioning. During its first year of operation, the Board could borrow funds for startup costs and capital outlay. Any borrowed funds would be subject to the same fiscal, budget and audit controls as other funds of the Board.

The Board could also accept voluntary contributions and seek other funding sources to carry out activities authorized under the Order. Any contributions received by the Board would be free from encumbrances by the donor and the Board would retain control over use of the funds. However,

the Board could receive funds from outside sources targeted for specific authorized projects. For example, the Board could receive Federal grant funds, subject to approval by the Secretary, for a specific research project. The Board would also be required to reimburse USDA for costs incurred by USDA in overseeing the Order's operations, including all costs associated with referenda.

The Board would be limited to spending no more than 10 percent of its available funds for administration, maintenance, and the functioning of the Board. Reimbursements to USDA would not be considered administrative costs. As an example, if the Board received \$2 million in assessments during a fiscal period, and had available \$500,000 in reserve funds, the Board's available funds would be \$2,500,000. In this scenario, the Board would be limited to spending no more than \$250,000 ( $.10 \times \$2.5$  million) on administrative costs. While section 515 of the 1996 Act limits such spending to 15 percent of a board's budget, the Task Force believes that 10 percent is appropriate.

The Board could also maintain a monetary reserve and carry over excess funds from one fiscal period to the next. However, such reserve funds could not exceed one fiscal period's budgeted expenses. For example, if the Board's budgeted expenses for a fiscal period were \$2 million, it could carry over no more than \$2 million in reserve. With approval of the Secretary, reserve funds could be used to pay expenses.

The Board could invest its revenue collected under the Order in the following: (1) Obligations of the United States or any agency of the United States; (2) general obligations of any State or any political subdivision of a State; (3) interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve; and (4) obligations fully guaranteed as to principal interest by the United States.

The Board would be required to submit to USDA financial statements on a quarterly basis, or at any other time as requested by the Secretary. Financial statements should include, at a minimum, a balance sheet, an income statement, and an expense budget.

#### *Assessments*

The Board's programs and expenses would be funded through assessments on producers, importers, donations, other income, and other funds available to the Board. The Order would provide for an initial assessment rate of \$0.15 per Christmas tree domestically

produced or imported into the United States.

This assessment rate will be reviewed by the Board after the initial referendum is conducted (3 years after assessments first begin). The assessment rate cannot be changed during the first three years of operation of the Order. The assessment rate may be increased or decreased no more than 2 cents per Christmas tree during the fiscal period. Any change in the assessment rate within this range would be subject to rulemaking by the Secretary. The assessment rate shall not exceed 20 cents per Christmas tree, nor shall it be less than 10 cents per Christmas tree, unless a majority of producers and importers approve such other levels of assessments through a referendum conducted pursuant to this subpart.

The number of entities assessed under the program would be approximately 3,263. Estimated revenue is expected at \$2 million of which 10 percent is expected from imported product and 90 percent from domestic product.

Producers would be required to pay their assessments owed to the Board by February 15th of each fiscal period. Importer assessments would be collected through Customs. The Order would specify a list of numbers of the Harmonized Tariff Schedule of the United States that would identify Christmas trees subject to assessments. If Customs did not collect the assessment from an importer, then the importer would be responsible for paying the assessment directly to the Board within 30 calendar days after importation.

The Order would provide authority for the Board to impose a late payment charge and interest for assessments overdue to the Board. The late payment charge and rate of interest would be prescribed in the Order's regulations issued by the Secretary.

#### *Exemptions*

The Order would provide for two exemptions. First, producers who produce domestically less than 500 Christmas trees or importers that import less than 500 Christmas trees during a fiscal period would be exempt from paying assessments. Producers or importers would apply to the Board for an exemption prior to the start of the fiscal period. This would be an annual exemption; entities would have to reapply each year. They would have to certify that they expect to produce domestically or import less than 500 Christmas trees for the applicable fiscal period. The Board could request past sales or import data to support the exemption request. The Board would

then issue, if deemed appropriate, a certificate of exemption to the eligible producer or importer. Once approved, producers would not have to pay assessments to the Board for the applicable fiscal period. Approved importers would have their assessments as collected by Customs refunded by the Board within 60 calendar days after receipt of such assessments by the Board. No interest would be paid on the assessments collected by Customs.

Producers who did not apply to the Board for an exemption and domestically produced or imported less than 500 Christmas trees during the fiscal period would receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal period. Producers who receive an exemption certificate but domestically produce or import more than 500 Christmas trees during the fiscal period would have to pay the Board the applicable assessments owed within 30 calendar days after the end of the fiscal period and submit any necessary reports to the Board.

The Board could develop additional procedures to administer the exemption as appropriate. Such procedures would be implemented through rulemaking by the Secretary.

The second exemption under the proposed Order would be for organic Christmas trees. A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, only domestically produces Christmas trees that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation would be exempt from payment of assessments. Likewise, an importer who imports only Christmas trees that is eligible to be labeled as 100 percent organic under the NOP and who does not import any nonorganic Christmas trees would be exempt from the payment of assessments.

#### *Refunds*

Pursuant to section 518 of the 1996 Act, section 1214.54 of the proposed Order would specify the refund procedures if the initial referendum does not pass. The Task Force has proposed that the proposed Order be voted in a referendum of producers and importers three years after assessments first begin under the Order. The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to 10 percent of the assessments collected during the period beginning on the

effective date of the Order and ending on the date the Secretary announces the results of the required referendum.

If the required referendum fails, the Board shall promptly pay refunds of assessments to all producers and importers that have paid assessments during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in the proposed Order. Producers and importers shall notify the Board, in a manner specified by the Secretary, within 30 days after the announcement of the referendum of their demand to receive a refund.

If the amount deposited in the escrow account is less than the amount of all refunds that producers and importers subject to the Order have a right to receive, the Board shall prorate the amount deposited in such account among all producers and importers who desire a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

If the proposed Order is approved by the required referendum conducted under this section, the Board will close the escrow account and all funds will be available to the Board under section 1214.50.

#### **Promotion, Research and Information**

Pursuant to section 516 of the 1996 Act, §§ 1214.60 through 1214.62 of the proposed Order would detail requirements regarding promotion, research and information projects authorized under the Order. The Board would develop and submit to the Secretary for approval plans and programs regarding promotion, research, education, and other activities, including consumer and industry information and advertising designed to, among other things, build markets for Christmas trees, and enhance the image and reputation of Christmas trees. The Board would be required to evaluate each plan and program to ensure that it contributes to an effective promotion program. Christmas trees of all origins would have to be treated equally by the Board, and no program, plan, or project could be false, misleading, or disparage against another agricultural commodity.

The Order would also require that, at least once every five years, the Board fund an independent evaluation of the effectiveness of the Order and programs conducted by the Board. Finally, the Order would specify that any patents, copyrights, trademarks, inventions, product formulations and publications developed through the use of funds received by the Board would be the

property of the U.S. Government, as represented by the Board. These along with any rents, royalties and the like from their use would be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and could be licensed with approval of the Secretary.

#### **Reports, Books and Records**

Pursuant to section 515 of the 1996 Act, §§ 1214.70 through 1214.72 specify the reporting and recordkeeping requirements under the proposed Order as well as requirements regarding confidentiality of information.

Producers and importers would be required to submit periodically to the Board certain information as the Board may request. Specifically, producers and importers would submit a report to the Board that would include, but not be limited to, the producers' or importers' name and address; the number of trees produced or imported; the number of Christmas trees on which the assessment was paid; and the date the assessment was paid. Producers and importers would submit this report at the same time they remit their assessments to the Board. Producers or importers who received a certificate of exemption from the Board would not have to submit such a report to the Board. Importers who paid their assessments through Customs would not have to submit such reports to the Board because Customs would collect this information upon entry. However, exempt producers or importers who domestically produced or imported over the exemption threshold of 500 Christmas trees during the fiscal period would have to submit such reports to the Board with the payment of assessments as specified in § 1214.53.

The Board would have the flexibility to request additional information from producers and importers as deemed appropriate to administer the Order. Additionally, producers and importers, including those who were exempt, would be required to maintain books and records needed to verify any required reports. Such books and records must be made available during normal business hours for inspection by the Board's or USDA's employees or agents. Producers and importers would be required to maintain such books and records for two years beyond the applicable fiscal period.

The Order would also require that all information obtained from persons subject to the Order as a result of proposed recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Board and USDA.

Such information could only be disclosed if the Secretary considered it relevant, and the information were revealed in a judicial proceeding or administrative hearing brought at the direction or at the request of the Secretary or to which the Secretary or any officer of USDA were a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to the Order, if the statements did not identify the information furnished by any person, or the publication, by direction of the Secretary, of the name of any person violating the Order and a statement of the particular provisions of the Order violated.

#### **Miscellaneous Provisions**

##### **Referenda**

Pursuant to section 518 of the 1996 Act, § 1214.81(a)(1) of the proposed Order specifies that the program would be implemented and a referendum conducted three years after assessments first begin under the Order. The Order would not continue unless it is approved by a majority of those persons voting in the referendum for approval.

Section 1214.81(b) of the proposed Order specifies criteria for subsequent referenda. Under the Order, a referendum would be held to ascertain whether the program should continue, be amended, or be terminated. This section specifies that a referendum would be held every seven years to determine whether producers and importers favor continuation of the Order. The Order would continue if favored by a majority of producers and importers voting in the referendum.

Additionally, a referendum could be conducted at the request of the Board. A referendum could also be conducted at the request of 10 percent or more of the number of persons eligible to vote in a referendum under the Order. Finally, a referendum could be conducted at any time as determined by the Secretary.

##### **Other Miscellaneous Provisions**

Section 1214.80 and §§ 1214.82 through 1214.88 describe the rights of the Secretary; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after termination; address personal liability, separability, and amendments; and provide OMB control numbers. These provisions are common to all research and promotion programs authorized under the 1996 Act.



### 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 the proposed rule on small entities. Accordingly, AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (producers and importers) as those having annual receipts of no more than \$7.0 million.

Under these criteria, the majority of the producers that would be affected by this Proposed Order would be considered small entities, while most importers would not. Producers and importers who domestically produce or imported less than 500 Christmas trees annually would be exempt from the assessment. Organic producers and importers also would be exempt from assessments. The number of entities assessed under the program would be approximately 3,263. Estimated revenue is expected at \$2 million of which 10 percent is expected from imported product and 90 percent from domestic product.

According to the Task Force, based on data from the 2007 Census of Agriculture, there were approximately 12,255 Christmas tree farms that produced Christmas trees in the United States. Approximately 25 percent of the producers, or 3,100 Christmas tree producers, would be subject to the assessment based on the exemption of those producing less than 500 trees would be exempt from assessments. Approximately 95 percent of these producers subject to the assessment would be considered small entities under SBA criteria. During 2007, 47 out of 50 States produced Christmas trees in the United States. Oregon, Michigan, Wisconsin, North Carolina, and Pennsylvania together produced more than 75 percent of the trees produced in 2007. In 2008, there were approximately 200 importers. Based on the 2008 U.S. Customs data, 163 importers that imported more than 500 Christmas trees would be subject to the assessment rate under the proposed Order.

This proposed rule invites comments on a proposed industry-funded research, promotion, and information program for

fresh cut Christmas trees. The program would be financed by an assessment on Christmas tree producers and importers and would be administered by a board of industry members selected by the Secretary. The initial assessment rate would be \$0.15 per Christmas tree domestically produced or imported to the United States and could be increased to \$0.20 per Christmas tree. Entities that domestically produce or import less than 500 Christmas trees within a crop year would be exempt. The purpose of the program would be to strengthen the position of Christmas trees in the marketplace, and maintain and expand markets for Christmas trees. A referendum would be held among eligible producers and importers to determine whether they favor implementation of the program three years after the first assessments begin. The Order would continue if favored by a majority of producers and importers voting in the referendum. The program is authorized under the 1996 Act.

Regarding the economic impact of the proposed Order on affected entities, Christmas tree producers and importers would be required to pay assessments to the Board. As previously mentioned, the initial assessment rate would be \$0.15 per Christmas tree domestically produced or imported to the United States and could be increased to no more than \$0.20 per Christmas tree.

Regarding the impact on the industry as a whole, the proposed program is expected to help stabilize prices and grow demand for fresh cut Christmas trees. The Christmas tree industry hopes to achieve a stable funding base to promote Christmas now and into the future.

Regarding alternatives, the Christmas tree industry has already considered and implemented voluntary programs, but based on past experience, these programs only worked in the short term; until monies were depleted.

This action would impose additional reporting and recordkeeping burden on producers and importers of fresh cut Christmas trees. Producers and importers interested in serving on the Board may be asked to submit a nomination form to the Board indicating their desire to serve or nominating another industry member to serve on the Board. Interested persons would also submit a background statement outlining their qualifications to serve on the Board. Producers and importers would have the opportunity to cast a ballot and vote for candidates to serve on the Board. Producer and importer nominees to the Board would have to submit a background form to the

Secretary to ensure they are qualified to serve on the Board.

Additionally, producers and importers who domestically produce or import less than 500 Christmas trees annually could submit a request to the Board for an exemption from paying assessments on this volume. Producers and importers also would report regarding their sales/imports that would accompany their assessments paid to the Board. Producers and importers who would qualify as 100 percent organic under the NOP could submit a request to the Board for an exemption from assessments.

Finally, producers and importers who wanted to participate in a referendum to vote on whether the Order should continue would have to complete a ballot for submission to the Secretary. These forms are being submitted to OMB for approval under OMB Control No. 0581–NEW. Specific burdens for the forms are detailed later in this document in the section titled Paperwork Reduction Act. As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed 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.

Regarding outreach efforts, as previously mentioned, the Task Force conducted sessions throughout the United States in different States and regions. These were held in conjunction with regional and state organization meetings. Approximately 50 sessions were held across the United States. Input regarding the proposed program was incorporated into the Task Force's proposal.

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), AMS announces its intention to request an approval of a new information collection and recordkeeping requirements for the proposed Christmas tree program.

*Title:* Research and Promotion Background Information.

*OMB Number for background form AD-755:* (Approved under OMB No. 0505–0001).

*Expiration Date of Approval:* Awaiting renewal.



*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581-NEW.

*Expiration Date of Approval:* 7/31/2012.

*Type of Request:* New information collection for research and promotion programs.

*Abstract:* The information collection requirements in the request are essential to carry out the intent of the 1996 Act. The information collection concerns a proposal received by USDA for a national research and promotion program for the Christmas tree industry. The program would be financed by an assessment on Christmas tree producers and importers and would be administered by a board of industry members selected by the Secretary. The program would provide for an exemption for producers and importers that domestically produce or import less than 500 Christmas trees during the year. A referendum would be held among eligible producers and importers to determine whether they favor continuation of the program three years after assessments first begin. The purpose of the program would be to help increase demand for fresh cut Christmas trees.

In summary, the information collection requirements under the program concern Board nominations, refunds of assessments, exemption applications, and the collection of assessments. For Board nominations, producers and importers interested in serving on the Board would be asked to submit a "Nomination Form" to the Board indicating their desire to serve or to nominate another industry member to serve on the Board. Producers and importers would have the opportunity to submit a "Nomination Ballot" to the Board where they would vote for candidates to serve on the Board. Nominees would also have to submit a background information form, "AD-755," to the Secretary to ensure they are qualified to serve on the Board.

Regarding assessments, producers and importers who domestically produce or import less than 500 Christmas trees annually could submit a request, "Application for Exemption from Assessments," to the Board for an exemption from paying assessments. Producers and importers may be asked to submit a "Sales/Import Report" that would accompany their assessments paid to the Board and report the quantity of Christmas trees domestically produced or imported during the applicable period, the quantity for which assessments were paid, and the port of entry (for imports). As previously mentioned, the majority of

importer assessments would be collected by Customs. Customs would remit the funds to the Board along with this information. Finally, producers and importers who would qualify as 100 percent organic under the NOP could submit an "Organic Exemption Form" to the Board and request an exemption from assessments.

Producers and importers would also file a form to request a refund of assessments paid if the referendum fails to pass. A referendum is proposed to be conducted three years after the assessments first begin to determine if producers and importers favor the continuance of the Order.

There would also be an additional burden on producers and importers voting in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Information collection requirements that are included in this proposal include:

*(1) Background Information Form AD-755 (OMB Form No. 0505-0001)*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hour per application.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 8 (24 for initial nominations to the Board, 8 in subsequent years).

*Estimated Number of Responses per Respondent:* 1 every 3 years (0.3).

*Estimated Total Annual Burden on Respondents:* 12 hours for the initial nominations to the Board and 4 hours annually thereafter.

*(2) Sales/Import Report by Each Producer or Importer of Christmas Trees*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per producer reporting on Christmas trees produced.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 3,110.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1,555 hours.

*(3) An Exemption Application for Producers and Importers Who Are Exempt From Assessments*

*Estimate of Burden:* Public reporting burden for this collection of information

is estimated to average 0.25 hours per producers or importer reporting on Christmas trees sold or imported. Upon approval of an application, producers and importers will receive exemption certification.

*Respondents:* Exempt producers and importers.

*Estimated Number of Respondents:* 9,192.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2,298 hours.

*(4) Application for Reimbursement of Assessment*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per request for reimbursement.

*Respondents:* Importers.

*Estimated Number of Respondents:* 37.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 9.25 hours.

*(5) A Requirement To Maintain Records Sufficient To Verify Reports Submitted Under the Order*

*Estimate of Burden:* Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

*Recordkeepers:* Producers and importers.

*Estimated Number of Recordkeepers:* 12,455.

*Estimated Total Recordkeeping Hours:* 6,227.5 hours.

*(6) Nomination Form*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 40.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 10.00 hours.

*(7) Background Statement*

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hour per application.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 40.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 10.00.

**(8) Nomination Ballot**

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.25 hours per application.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 1,200.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 300 hours.

**(9) Organic Exemption Form**

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per exemption form.

*Respondents:* Producers and importers.

*Estimated Number of Respondents:* 5.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 2.5 hours.

**(10) Application for Refund Form**

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.5 hours per refund form.

*Respondents:* Producers, importers and organic producers and importers.

*Estimated Number of Respondents:* 325.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 162.5.

As noted above, under the proposed program, producers and importers would be required to pay assessments and file reports with and submit assessments to the Board (importers through Customs). While the proposed Order would impose certain recordkeeping requirements on producers and importers, information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

An estimated 12,455 respondents would provide information to the Board (12,255 producers and 200 importers). The estimated cost of providing the information to the Board by respondents would be \$348,975. This total has been estimated by multiplying 10,575 total hours required for reporting and recordkeeping by \$33, the average mean hourly earnings of various occupations involved in keeping this information.

Data for computation of this hourly rate was obtained from the U.S. Department of Labor Statistics.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements, including efforts to utilize information already submitted under other programs administered by USDA and other state programs.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the 1996 Act. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Board. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly would coincide with normal industry business practices. The timing and frequency of collecting information are intended to meet the needs of the industry while minimizing the amount of work necessary to fill out the required reports. The requirement to keep records for two years is consistent with normal industry practices. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers and importers who are subject to the provisions of the 1996 Act. Therefore, there is no practical method for collecting the required information without the use of these forms.

**Request for Public Comment Under the Paperwork Reduction Act**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the proposed Order and USDA's oversight of the proposed Order, including whether the information would have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) the accuracy of USDA's estimate of the principal producing areas in the United States for Christmas trees; (d) the accuracy of USDA's estimate of the number of producers and importers of Christmas trees that would be covered under the program; (e) ways to enhance the quality, utility, and clarity of the information to be collected; and (f) ways

to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581-NEW. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the same addresses referenced in the **ADDRESSES** section of this proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

USDA made modifications to the proponent's proposal to conform with other similar national research and promotion programs implemented under the 1996 Act.

While the proposal set forth below has not received the approval of USDA, it is determined that this proposed Order is consistent with and would effectuate the purposes of the 1996 Act.

A 90-day comment period is provided to allow interested persons to respond to this proposal. All written comments received in response to this proposed rule by the date specified will be considered prior to finalizing this action.

**List of Subjects in 7 CFR Part 1214**

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

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended by adding part 1214 to read as follows:

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

**Subpart A—Christmas Tree Promotion, Research, and Information Order**

**Definitions**

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1214.2 Board.

1214.3 Christmas tree.

1214.4 Conflict of interest.

1214.5 Crop year.

1214.6 Customs.

- 1214.7 Department.
- 1214.8 Fiscal period.
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- 1214.10 Information.
- 1214.11 Marketing.
- 1214.12 Order.
- 1214.13 Part and subpart.
- 1214.14 Person.
- 1214.15 Programs, plans, and projects.
- 1214.16 Produce.
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- 1214.18 Promotion.
- 1214.19 Research.
- 1214.20 Secretary.
- 1214.21 State.
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#### **Christmas Tree Promotion Board**

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- 1214.41 Nominations and appointments.
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- 1214.44 Procedure.
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- 1214.50 Budget and expenses.
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#### **Promotion, Research, and Information**

- 1214.60 Programs, plans, and projects.
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- 1214.80 Right of the Secretary.
- 1214.81 Referenda.
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- 1214.83 Proceedings after termination.
- 1214.84 Effect of termination or amendment.
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#### **Subpart B—[Reserved]**

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

#### **Subpart A—Christmas Tree Promotion, Research, and Information Order**

##### **Definitions**

##### **§ 1214.1 Act.**

*Act* means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425), and any amendments thereto.

##### **§ 1214.2 Board.**

*Board* or the Christmas Tree Promotion Board means the administrative body established pursuant to § 1214.40.

##### **§ 1214.3 Christmas tree.**

*Christmas tree* means any tree of the coniferous species, that is severed or cut from its roots and marketed as a Christmas tree for holiday use.

##### **§ 1214.4 Conflict of interest.**

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

##### **§ 1214.5 Crop year.**

*Crop year* means the period August 1 through July 31.

##### **§ 1214.6 Customs.**

*Customs* means the United States Customs and Border Protection or U.S. Customs Service, an agency of the United States Department of Homeland Security.

##### **§ 1214.7 Department.**

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

##### **§ 1214.8 Fiscal period.**

*Fiscal period* means the period August 1 through July 31.

##### **§ 1214.9 Importer.**

*Importer* means any person importing Christmas trees into the United States in a fiscal period as a principal or as an agent, broker, or consignee of any person who domestically produces Christmas trees outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such Christmas trees.

##### **§ 1214.10 Information.**

*Information* means information, program, and activities that are designed to increase efficiency in processing, enhance the development of new markets and marketing strategies, increase market efficiency, and enhance the image of Christmas trees and the Christmas tree industry in the United States.

##### **§ 1214.11 Marketing.**

*Marketing* means to sell or otherwise dispose of Christmas trees in interstate, foreign or intrastate commerce.

##### **§ 1214.12 Order.**

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

##### **§ 1214.13 Part and subpart.**

*Part* means the Christmas Tree Promotion, Research, and Information Order and all rules, regulations, and supplemental orders issued pursuant to the Act and the Order. The Order shall be a subpart of such part.

##### **§ 1214.14 Person.**

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

##### **§ 1214.15 Programs, plans, and projects.**

*Programs, plans and projects* mean those research, promotion and information programs, plans, or projects established pursuant to this Order.

##### **§ 1214.16 Produce.**

*Produce* means to engage in the cutting and selling of Christmas trees for the holiday market.

##### **§ 1214.17 Producer.**

*Producer* means any person who is engaged in the production of Christmas trees in the United States, and who owns, or shares the ownership and risk of loss of the production of Christmas trees or a person who is engaged in the business of producing, or causing to be domestically produced, Christmas trees beyond personal use and having value at first point of sale.

##### **§ 1214.18 Promotion.**

*Promotion* means any action, including paid advertising and public relations that presents a favorable image of Christmas trees to the general public with the intent of improving the perception and competitive position of Christmas trees and stimulating sales of Christmas trees.

##### **§ 1214.19 Research.**

*Research* means any type of test, systematic study, study, investigation, analysis and/or evaluation designed to advance the image, desirability, use, marketability, quality, product development, or production of Christmas trees, including but not limited to research related to cost of production, market development, testing the effectiveness of market development and promotional efforts, new species of Christmas trees and environmental issues relating to the Christmas tree industry.

**§ 1214.20 Secretary.**

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

**§ 1214.21 State.**

*State* means any of the several 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

**§ 1214.22 Suspend.**

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

**§ 1214.23 Terminate.**

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

**§ 1214.24 United States.**

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

**Christmas Tree Promotion Board****§ 1214.40 Establishment and membership.**

(a) *Establishment of the Christmas Tree Promotion Board.* There is hereby established a Christmas Tree Promotion Board, composed of no more than twelve (12) members as follows:

(1) Producer members from each of the following regions:

(i) Five producer members from Region #1—Western Region (states from the Pacific Ocean east to the Rocky Mountains): Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and all U.S. Territories located in the Pacific Ocean.

(ii) Two producer members from Region #2—Central Region (states east of the Rocky Mountains to the Great Lakes): Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Texas, and Wisconsin.

(iii) Four producer members from Region #3—Eastern Region (states east of the Great Lakes): Alabama, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, New York, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, North Carolina, Pennsylvania, Rhode Island,

South Carolina, Tennessee, Virginia, Vermont, Washington, D.C., West Virginia, and all U.S. Territories located in the Atlantic Ocean and Caribbean Sea, including but not limited to Puerto Rico.

(2) One Importer member.

(b) *Adjustment of membership.* At least once every five years upon implementation of the Order, but not more frequently than once every three years, the Board will review the geographic distribution of United States production of Christmas trees and the quantity and source of Christmas tree imports. The review will be conducted through State crop production figures and Board assessment records, including the amount of assessments collected from importers, or other government data. If warranted, the Board will recommend to the Secretary that membership on the Board be altered to reflect any changes in geographic distribution of domestic Christmas tree production and the quantity of imports. *Provided*, that there shall be at least one importer member on the Board. Such adjustments shall not increase the total number of Board members. The adjustments to the Board membership would be submitted to the Secretary by Board recommendation and be implemented by the Secretary through rulemaking.

**§ 1214.41 Nominations and appointments.**

(a) Voting for producer members will be made by mail ballot, electronic mail, in person, or by facsimile.

(b) Nominations for the initial Board will be conducted by the Department. Subsequent nominations will be conducted by the Board.

(c) The Board shall outreach to all segments of the Christmas tree industry and solicit nominations as described in paragraphs (d) and (e) of this section. Nominees must domestically produce or import more than 500 Christmas trees during the most recent fiscal period.

(d) Nomination of producer members will be conducted by the Board. The Board staff will seek nominations for each vacant producer seat from each region from producers who have paid their assessments to the Board in the most recent fiscal period. Producers who produce Christmas trees in more than one region may seek nomination only in the region in which they produce the majority of their Christmas trees. For selection to the initial Board, the Secretary would notify producers to request nominations to the Board. Subsequent nominations will be submitted to the Board office and placed on a ballot that will be sent to producers in each region for a vote. Producers who

produce Christmas trees in more than one region may only vote in the region in which they produce the majority of their Christmas trees. The nominee receiving the highest number of votes and the nominee receiving the second highest number of votes shall be submitted to the Department as the producers' first and second choice nominees. The Board shall submit nominations to the Secretary not less than 90 days prior to the expiration of the term of office.

(e) Nominations for the importer member(s) will be conducted by the Board. The Board will solicit importer nominations from those importers who have paid their assessments to the Board in the most recent fiscal period. For selection to the initial Board, the Secretary would notify importers to request nominations to the Board. Subsequent nominations will be submitted to the Board office and placed on a ballot that will be sent to importers for a vote. The Board shall submit those nominations to the Secretary not less than 90 days prior to the expiration of the term of office. Two nominees for each importer position will be submitted to the Secretary for consideration.

(f) From the nominations, the Secretary shall select the members of the Board for each position on the Board. Members will serve until their successors have been appointed by the Secretary.

**§ 1214.42 Term of office.**

Board members will serve for a term of three years and be able to serve a maximum of two consecutive three-year terms. When the Board is first established, the members will be assigned initial terms of two, three, and four years. Initial terms will be staggered to assure continuity of the Board. The term of office will begin on January 1 and conclude on December 31. Members serving the initial term of two and four years will be eligible to serve a second term of three years. Thereafter, each of the positions will carry a full three year term. Board members shall serve during the term of office for which they have been appointed and qualified, and until their successors are appointed and have qualified.

**§ 1214.43 Vacancies.**

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

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary may remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, including the failure by a member to submit reports or remit assessments required under this part, if the Secretary determines that such member's continued service would be detrimental to the achievement of the purposes of the Act.

(c) Should any member position become vacant, successors for the unexpired terms of such member shall be appointed in the manner specified in § 1214.41. A vacancy will not be required to be filled if the unexpired term is less than six months.

#### **§ 1214.44 Procedure.**

(a) At a Board meeting, it will be considered a quorum when a majority of the Board members is present.

(b) All Board members will receive a minimum of 14 days advance notice of all Board and committee meetings, except when emergency circumstances exist and meetings need to be held prior to the advance notice.

(c) Each member of the Board will be entitled to one vote on any matter put to the Board. For any action of the Board to pass, at least a majority of the Board members present must vote in support of such action.

(d) The Board may appoint committees as necessary. It will be considered a quorum at a committee meeting when at least a majority of those appointed to the committee are present. Committees may consist of persons other than Board members, and such persons may vote in committee meetings as the Board shall determine. These committee members shall serve without compensation, but shall be reimbursed for reasonable travel expenses, as approved by the Board.

(e) In lieu of voting at a properly convened meeting, and when, in the opinion of the Board's chairperson, such action is considered necessary, the Board may take action by mail, telephone, electronic mail, facsimile, or any other means of communication. Any action taken under this procedure is valid only if:

(1) All members and the Secretary are notified and the members are provided the opportunity to vote;

(2) A majority of the members vote in favor of the action; and

(3) All votes are promptly confirmed in writing and recorded in the Board minutes.

(f) There shall be no voting by proxy.

(g) The chairperson shall be a voting member.

#### **§ 1214.45 Compensation and reimbursement.**

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

#### **§ 1214.46 Powers and duties.**

The Board shall have the following powers and duties:

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

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

(c) To meet, organize, and select from among the members of the Board a chairperson, other officers, committees, and subcommittees, as the Board determines to be appropriate, provided that the committee and subcommittee members may also include individuals other than Board members;

(d) To notify producers and importers of all Board meetings through press releases or other means;

(e) To give the Secretary the same notice of meetings of the Board and committees as is given to members, including committee members if committee members are not members of the Board, in order that the Secretary's representative(s) may attend such meetings, and to keep and report minutes of each meeting of the Board and all committees to the Secretary;

(f) To appoint and convene, from time to time, committees that may include importers, exporters, producers or other members of the Christmas tree industry and public to assist in the development of research, promotion, advertising, and information programs for Christmas trees;

(g) To employ persons, other than members, as the Board considers necessary to assist the Board in carrying out its duties and to determine the compensation and specify the duties of such persons;

(h) To act as intermediary between the Secretary and any producer or importer;

(i) To furnish to the Secretary any information or records that the Secretary may request;

(j) To receive, investigate, and report to the Secretary complaints of violations of the Order;

(k) To maintain such records and books and prepare and submit such reports and records from time to time to the Secretary as the Secretary may require and to make the records available to the Secretary for inspection and audit; to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it; and to keep records that accurately reflect the actions and transactions of the Board;

(l) To recommend to the Secretary such amendments to the Order as the Board considers appropriate;

(m) To develop and carry out generic promotion, research, and information activities relating to Christmas trees;

(n) To work to achieve an effective, continuous, and coordinated program of promotion, research, evaluation, and information designed to strengthen the Christmas tree industry's position in the marketplace; maintain and expand existing markets for Christmas trees; and to carry out programs, plans, and projects designed to provide maximum benefits to the Christmas tree industry;

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

(1) The contractor or agreeing party shall develop and submit to the Board a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports

to the Board of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Board may require;

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

(4) Any subcontractor who enters into a contract with a Board contractor and who receives or otherwise uses funds allocated by the Board shall be subject to the same provisions as the contractor;

(p) To prepare and submit for approval of the Secretary, within 60 days after assessments are due to the Board, rates of assessment and a fiscal period budget of the anticipated expenses to be incurred in the administration of the Order, in accordance with § 1214.50;

(q) To borrow funds necessary for the startup expenses of the order;

(r) To invest assessments collected under this part in accordance with § 1214.50;

(s) To pay the cost of the activities with assessments collected under § 1214.52;

(t) To recommend adjustments to the assessments as provided in § 1214.52;

(u) To periodically prepare, make public and to make available to producers and importers, reports of its activities and, at least once each fiscal period, to make public an accounting of funds received and expended; and

(v) To cause its books to be audited by an independent certified public accountant at the end of each fiscal period and at such other times as the Secretary may request, and to submit a report of the audit directly to the Secretary.

#### **§ 1214.47 Prohibited activities.**

The Board may not engage in, and shall prohibit the employees and agents of the Board from engaging in:

(a) Any action that would be a conflict of interest;

(b) Using funds collected by the Board under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, by local, state, national, and foreign governments or any subdivision thereof, other than recommending to the Secretary amendments to the Order; and

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

#### **Expenses and Assessments**

##### **§ 1214.50 Budget and expenses.**

(a) Within 60 days after assessments are due to the Board, and as may be

necessary thereafter, the Board shall prepare and submit to the Secretary a budget for the fiscal period covering its anticipated expenses and disbursements in administering this part. Each budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data or at least one preceding year, except for the initial budget;

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

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

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

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another.

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

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

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

(g) In accordance with § 1214.54, the Board shall deposit funds in a refund escrow account and shall not use such funds for expenses, except as provided for in that section.

(h) The Board may also receive funds provided through the Department's Foreign Agricultural Service or from other sources, with the approval of the Secretary, for authorized activities.

(i) The Board shall reimburse the Secretary for all expenses incurred by

the Secretary in the implementation, administration, enforcement, and supervision of the Order, including all referendum costs in connection with the Order.

(j) The Board may not expend for administration, maintenance, and functioning of the Board in any fiscal period an amount that exceeds 10 percent of the assessments and other income received by or available to the Board for that fiscal period. Reimbursements to the Secretary required under paragraph (i) of this section are excluded from this limitation on spending.

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

(l) Pending disbursement of assessments and all other revenue under a budget approved by the Secretary, the Board may invest assessments and all other revenues collected under this section in:

(1) Obligations of the United States or any agency of the United States;

(2) General obligations of any State or any political subdivision of a State;

(3) Interest bearing accounts or certificates of deposit of financial institutions that are members of the Federal Reserve System; or

(4) Obligations fully guaranteed as to principal interest by the United States.

##### **§ 1214.51 Financial statements.**

(a) The Board shall prepare and submit quarterly financial statements to the Secretary, or at any other time requested by the Secretary. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 45 days after the end of the time period to which it applies.

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

##### **§ 1214.52 Assessments.**

(a) The funds to cover the Board's expenses shall be paid from assessments on producers, importers, and donations

from any person including those not subject to assessments under this Order, and other funds available to the Board including those collected pursuant to § 1214.62 and subject to the limitations contained therein.

(b) The payment of assessments on domestic Christmas trees that are cut and sold will be the responsibility of the producer who produces the Christmas trees or causes the trees to be cut.

(c) Each importer of Christmas trees shall pay the assessment to the Board on Christmas trees imported for marketing in the United States, through Customs. If Customs does not collect an assessment from an importer, the importer would be responsible for paying the assessment directly to the Board 30 calendar days after importation.

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

(2) The import assessment shall be uniformly applied to imported Christmas trees that are identified by the numbers 0604.91.00.20, 0604.91.00.40, and 0604.91.00.60 in the Harmonized Tariff Schedule of the United States or any other numbers used to identify Christmas trees in that schedule.

(3) The assessments due on imported Christmas trees shall be paid when they enter into the United States.

(d) Such assessments shall be levied at an initial rate of 15 cents per Christmas tree domestically produced or imported into the United States. The assessment rate will be reviewed by the Board, after the initial referendum is conducted pursuant to this subpart. The assessment rate may be increased or decreased no more than 2 cents per Christmas tree during the fiscal period. Any change in the assessment rate shall be subject to rulemaking by the Department. The assessment rate shall not exceed 20 cents per Christmas tree, nor shall it be less than 10 cents per Christmas tree, unless a majority of producers and importers approve such other levels of assessment through a referendum conducted pursuant to this subpart.

(e) All assessment payments and reports will be submitted to the office of the Board. All assessment payments are to be received no later than February 15 of the crop year following for producers and importers of Christmas trees. A late payment charge, may be imposed on any producer or importer who fails to remit to the Board, the total amount for which any such producer or importer is liable on or before the due date established by the Board. In addition to

the late payment charge, an interest charge may be imposed on the outstanding amount for which the producer or importer is liable. The rate for late payment and interest charges shall be specified by the Secretary through rulemaking.

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

(g) The Board may authorize other organizations, to collect assessments on its behalf with the approval of the Secretary.

#### **§ 1214.53 Exemption from and refunds of assessments.**

(a) *Producers that domestically produce and importers that import less than 500 Christmas trees.* (1) Any producer who domestically produces less than 500 Christmas trees who desires to claim an exemption from assessments as provided in § 1214.52 shall file an application on a form by the Board, for a certificate of exemption. Such producer shall certify that he/she will domestically produce less than 500 trees for the fiscal period for which the exemption is claimed. It is the responsibility of the producer to retain a copy of the certificate of exemption.

(2) Any importer who imports less than 500 trees in a fiscal period who desires to claim an exemption from assessments as provided in § 1214.52 shall file an application on a form by the Board, for a certificate of exemption. Such importer shall certify that the importer's total imports of Christmas trees are fewer than 500 trees for the fiscal period for which the exemption is claimed. It is the responsibility of the importer to retain a copy of the certificate of exemption.

(3) On receipt of an exemption application, the Board shall determine whether an exemption may be granted. The Board will then issue, if deemed appropriate, a certificate of exemption to the producer or importer which is eligible to receive one.

(4) The Board, with the Secretary's approval, may require persons receiving an exemption from assessments to provide to the Board reports on the disposition of exempt Christmas trees and, in the case of importers, proof of payment of assessments.

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

(6) Producers and importers who received an exemption certificate from the Board but domestically produced or imported more than 500 Christmas trees during the fiscal period shall pay the Board the applicable assessments owed

and submit any necessary reports to the Board pursuant to § 1214.70.

(7) The Board may develop additional procedures as it deems necessary for accurately accounting for this exemption. Such procedures shall be implemented through rulemaking by the Secretary.

(b) *Assessment refunds to importers.*

(1) Importers who are exempt from assessment shall be eligible for a refund of assessments collected by Customs during the applicable fiscal period. No interest will be paid on assessments collected by Customs. The Board shall refund such importers their assessments as collected by Customs no later than 60 calendar days after receipt by the Board.

(c) *Organic.* (1) Organic Act means section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(2) A producer who domestically produces Christmas trees under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produces only products that are eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from payment of assessments. To obtain an organic exemption, an eligible producer shall submit a request for exemption to the Board, on a form provided by the Board, at any time initially and annually thereafter on or before the start of the fiscal period as long as such producer continues to be eligible for the exemption. The request shall include the following: The producer's name and address; a copy of the organic operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary. The Board shall have 30 calendar days to approve the exemption request. If the exemption is not granted, the Board will notify the applicant and provide reasons for the denial within the same time frame.

(3) An importer who imports only Christmas trees that are eligible to be labeled as 100 percent organic under the NOP and is not a split operation shall be exempt from the payment of assessments. To obtain an organic exemption, an eligible importer must submit documentation to the Board and request an exemption from assessment on 100 percent of organic Christmas trees, on a form provided by the Board, at any time initially and annually thereafter on or before the beginning of the fiscal period as long as the importer continues to be eligible for the



exemption. This documentation shall include the same information as required by producers in paragraph (c)(2) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule of the United States (HTSUS) classification valid for 1 year from the date of issue. This HTSUS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic Christmas trees bearing this HTSUS classification assigned by the Board will not be subject to assessments.

(4) Importers who are exempt from assessment in paragraph (c)(3) of this section shall also be eligible for reimbursement of assessments collected by Customs and may apply to the Board for a reimbursement. The importer would be required to submit satisfactory proof to the Board that the importer paid the assessment on exempt organic products.

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

#### **§ 1214.54 Refund escrow accounts.**

(a) The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to 10 percent of the assessments collected during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum.

(b) If the Order is not approved by the required referendum, the Board shall promptly pay refunds of assessments to all producers and importers that have paid assessments during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of all refunds that producers and importers subject to the Order have a right to receive, the Board shall prorate the amount deposited in such account among all producers and importers who desire a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

(d) Any producer or importer requesting a refund shall submit an

application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer or importer but no later than the date the results of the required referendum are announced by the Secretary. The producer and importer shall also submit documentation to substantiate that assessments were paid. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

(e) If the Order is approved by the required referendum conducted under § 1214.71 then:

(1) The escrow account shall be closed; and,

(2) The funds shall be available to the Board for disbursement under § 1214.50.

#### **Promotion, Research, and Information**

##### **§ 1214.60 Programs, plans, and projects.**

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

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

(2) The establishment and conduct of research with respect to the image, desirability, use, marketability, quality, product development or production of Christmas trees, to the end that the marketing and use of Christmas trees may be encouraged, expanded, improved, or made more acceptable and to advance the image, desirability, or quality of Christmas trees.

(b) A program, plan, or project may not be implemented prior to approval of the program, plan, or project by the Secretary. Once a program, plan, or project is so approved, the Board shall take appropriate steps to implement it.

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

##### **§ 1214.61 Independent evaluation.**

The Board shall, not less often than once every five years, authorize and fund, from funds otherwise available to the Board, an independent evaluation of the effectiveness of the Order and programs conducted by the Board pursuant to the Act. The Board shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

##### **§ 1214.62 Patents, copyrights, trademarks, information, publications, and product formulations.**

Patents, copyrights, trademarks, information, publications, and product formulations developed through the use of funds received by the Board under this subpart shall be the property of the U.S. Government as represented by the Board and shall, along with any rents, royalties, residual payments, or other income from the rental, sales, leasing, franchising, or other uses of such patents, copyrights, trademarks, information, publications, or product formulations, inure to the benefit of the Board, shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board, and may be licensed subject to approval by the Secretary. Upon termination of this subpart, § 1214.73 shall apply to determine disposition of all such property.

#### **Reports, Books, and Records**

##### **§ 1214.70 Reports.**

(a) Each producer and importer subject to this subpart shall be required to provide to the Board periodically such information as required by the Board, with the approval of the Secretary, which may include but not be limited to the following:

(1) Number of trees produced or total imports;

(2) Number of Christmas trees on which an assessment was paid;

(3) Name and address of producer or importer; and

(4) Date assessment was paid on each Christmas tree produced or imported.

(b) All reports required under § 1214.70 are due to the Board by February 15 of the crop year.

(c) This report shall accompany the payment of the collected assessments.

##### **§ 1214.71 Books and records.**

Each producer and importer subject to this subpart, including those who are exempt under this subpart, shall maintain any books and records necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as

are necessary to verify any reports required. Such books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

#### **§ 1214.72 Confidential treatment.**

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

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

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

#### **Miscellaneous**

#### **§ 1214.80 Right of the Secretary.**

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

#### **§ 1214.81 Referenda.**

(a) *Required referendum.* For the purpose of ascertaining whether the persons subject to this Order favor the continuation, suspension, amendment, or termination of this Order, the Secretary shall conduct a referendum among persons subject to assessments under § 1214.52 who, during a

representative period determined by the Secretary, have engaged in the production or importation of Christmas trees:

(1) The first referendum shall be conducted not later than 3 years after assessments first begin under the Order;

(2) The order will be approved in a referendum if a majority of producers and importers vote for approval in the referendum.

(b) *Subsequent referenda.* The Secretary shall conduct subsequent referenda:

(1) For the purpose of ascertaining whether producers and importers favor the continuation, suspension, or termination of the Order;

(2) Every seven years the Secretary shall hold a referendum to determine whether producers and importers of Christmas trees favor the continuation of the Order. The Order shall continue if it is favored by a majority of producers and importers voting for approval in the referendum who have been engaged in the production or importation of Christmas trees;

(3) At the request of the Board established in this Order;

(4) At the request of 10 percent or more of the number of persons eligible to vote in a referendum as set forth under the Order; or

(5) At any time as determined by the Secretary.

#### **§ 1214.82 Suspension or termination.**

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

(b) The Secretary shall suspend or terminate this subpart at the end of the fiscal period whenever the Secretary determines that its suspension or termination is favored by a majority of producers and importers voting in a referenda who, during a representative period determined by the Secretary, have been engaged in the production or importation of Christmas trees.

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

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

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

#### **§ 1214.83 Proceedings after termination.**

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

(b) The said trustees shall:

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

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

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

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

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

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

#### **§ 1214.84 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder.

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder.

(c) Affect or impair any rights or remedies of the United States, or of the

Secretary or of any other persons, with respect to any such violation.

#### **§ 1214.85 Personal liability.**

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

#### **§ 1214.86 Separability.**

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

#### **§ 1214.87 Amendments.**

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

#### **§ 1214.88 OMB control numbers.**

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, is OMB control number 0505-0001, and OMB control number 0581-NEW.

#### **Subpart B—[Reserved]**

Dated: November 2, 2010.

**David R. Shipman,**  
*Acting Administrator.*

[FR Doc. 2010-28038 Filed 11-5-10; 8:45 am]

**BILLING CODE 3410-02-P**

### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 1214**

[Document No. AMS-FV-10-0008-PR]

**RIN 0581-AD00**

#### **Proposed Christmas Tree Promotion, Research, and Information Order; Referendum Procedures**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on procedures for conducting a referendum to determine whether the issuance or continuation of the

proposed Christmas Promotion, Research, and Information Order (Proposed Order) is favored by domestic producers and importers of Christmas trees. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The 1996 Act allows for a referendum to be conducted determining if domestic producers and importers favor the proposed order and also providing that a referendum be conducted up to three years after the effective date of the Proposed Order. The program would be implemented or continued if approved by a simple majority of the eligible domestic producers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Proposed Order, if it is approved in the initial referendum. The Proposed Order is being published separately in this issue of the **Federal Register**. This proposed rule also announces the Agricultural Marketing Service's (AMS) intent to request approval by the Office of Management and Budget (OMB) of new information collection requirements to implement the program.

**DATES:** Comments must be received by February 7, 2011. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by February 7, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments can be made on the Internet at <http://www.regulations.gov> or to the Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; Fax (202) 205-2800; Toll Free (888) 720-9917. Comments should reference the docket number, title of action, date, and page number of this issue of the **Federal Register** and will be made available for public inspection at the above address during regular business hours or at <http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or

other forms of information technology, or any other aspect of this collection of information, to the above address and to the Desk Office for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW., Room 725, Washington, DC 20503.

#### **FOR FURTHER INFORMATION CONTACT:**

Patricia A. Petrella, Marketing Specialist, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 0634-S, 1400 Independence Avenue, SW., Washington, DC 20250-0244; telephone 202-720-9915 or (888) 720-9917 (toll free) or e-mail: [Patricia.Petrella@ams.usda.gov](mailto:Patricia.Petrella@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

#### **Executive Order 12866**

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### **Executive Order 12988**

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 1996 Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under Section 519 of the 1996 Act, a person subject to an order may file a petition with the Department (USDA) stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law. In the petition, the person may request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Department will issue a ruling on the petition. The 1996 Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that