

IMPORT ASSESSMENT TABLE—  
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[Raw cotton fiber]

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DEPARTMENT OF AGRICULTURE  
Agricultural Marketing Service

7 CFR Part 1214

[Doc. No. AMS-FV-10-0008-FR-1A]

RIN 0581-AD00

**Christmas Tree Promotion, Research, and Information Order**

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an industry-funded promotion, research, and information program for fresh cut Christmas trees. The Christmas Tree Promotion, Research, and Information Order (Order) is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The Order will establish a national Christmas Tree Promotion Board (Board) comprised of 11 producers and one importer. Under the Order, producers and importers of fresh cut Christmas trees will pay an initial assessment of fifteen cents per Christmas tree. Producers and importers that produce or import less than 500 Christmas trees annually will be exempt from the assessment. 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.

**DATES:** Effective November 9, 2011.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella, Marketing Specialist, Research and Promotion Division, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Room 1406, Stop 0244, Washington, DC 20250-0244; *telephone:* (301) 334-2891; or *facsimile:* (301) 334-2896; or *email:* [Patricia.Petrella@ams.usda.gov](mailto:Patricia.Petrella@ams.usda.gov).

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

As part of this rulemaking process, a proposed rule was published in the **Federal Register** on November 8, 2010 (75 FR 68512). That rule provided for a 60-day comment period which ended on February 7, 2011. Five hundred comments were received. As requested by a member of Congress and several North Carolina producers, the comment period was reopened for 15 days (76 FR 9695, February 22, 2011). That comment

HTS No.	Conv. fact.	Cents/kg
630210008	1.1073	1.4024
630210015	1.1073	1.4024
6302213010	1.1073	1.4024
6302213020	1.1073	1.4024
6302213030	1.1073	1.4024
6302213040	1.1073	1.4024
6302213050	1.1073	1.4024
6302215010	0.7751	0.9817
6302215020	0.7751	0.9817
6302215030	0.7751	0.9817
6302215040	0.7751	0.9817
6302215050	0.7751	0.9817
6302217010	1.1073	1.4024
6302217020	1.1073	1.4024
6302217030	1.1073	1.4024
6302217040	1.1073	1.4024
6302217050	1.1073	1.4024
6302219010	0.7751	0.9817
6302219020	0.7751	0.9817
6302219030	0.7751	0.9817
6302219040	0.7751	0.9817
6302219050	0.7751	0.9817
6302221010	0.5537	0.7012
6302221020	0.3876	0.4909
6302221030	0.5537	0.7012
6302221040	0.3876	0.4909
6302221050	0.3876	0.4909
6302221060	0.3876	0.4909
6302222010	0.3876	0.4909
6302222020	0.3876	0.4909
6302222030	0.3876	0.4909
6302290020	0.2215	0.2805
6302313010	1.1073	1.4024
6302313020	1.1073	1.4024
6302313030	1.1073	1.4024
6302313040	1.1073	1.4024
6302313050	1.1073	1.4024
6302315010	0.7751	0.9817
6302315020	0.7751	0.9817
6302315030	0.7751	0.9817
6302315040	0.7751	0.9817
6302315050	0.7751	0.9817
6302317010	1.1073	1.4024
6302317020	1.1073	1.4024
6302317030	1.1073	1.4024
6302317040	1.1073	1.4024
6302317050	1.1073	1.4024
6302319010	0.7751	0.9817
6302319020	0.7751	0.9817
6302319030	0.7751	0.9817
6302319040	0.7751	0.9817
6302319050	0.7751	0.9817
6302321010	0.5537	0.7012
6302321020	0.3876	0.4909
6302321030	0.5537	0.7012
6302321040	0.3876	0.4909
6302321050	0.3876	0.4909
6302321060	0.3876	0.4909
6302322010	0.5537	0.7012
6302322020	0.3876	0.4909
6302322030	0.5537	0.7012
6302322040	0.3876	0.4909
6302322050	0.3876	0.4909
6302322060	0.3876	0.4909
6302390030	0.2215	0.2805
6302402010	0.9412	1.1921
6302511000	0.5537	0.7012
6302512000	0.8305	1.0518
6302513000	0.5537	0.7012

HTS No.	Conv. fact.	Cents/kg
6302514000	0.7751	0.9817
6302593020	0.5537	0.7012
6302600010	1.1073	1.4024
6302600020	0.9966	1.2622
6302600030	0.9966	1.2622
6302910005	0.9966	1.2622
6302910015	1.1073	1.4024
6302910025	0.9966	1.2622
6302910035	0.9966	1.2622
6302910045	0.9966	1.2622
6302910050	0.9966	1.2622
6302910060	0.9966	1.2622
6302931000	0.4429	0.5610
6302932000	0.4429	0.5610
6302992000	0.2215	0.2805
6303191100	0.8859	1.1220
6303910010	0.6090	0.7713
6303910020	0.6090	0.7713
6303921000	0.2768	0.3506
6303922010	0.2768	0.3506
6303922030	0.2768	0.3506
6303922050	0.2768	0.3506
6303990010	0.2768	0.3506
6304111000	0.9966	1.2622
6304113000	0.1107	0.1402
6304190500	0.9966	1.2622
6304191000	1.1073	1.4024
6304191500	0.3876	0.4909
6304192000	0.3876	0.4909
6304193060	0.2215	0.2805
6304910020	0.8859	1.1220
6304910070	0.2215	0.2805
6304920000	0.8859	1.1220
6304996040	0.2215	0.2805
6505901515	1.1189	1.4170
6505901525	0.5594	0.7085
6505901540	1.1189	1.4170
6505902030	0.9412	1.1921
6505902060	0.9412	1.1921
6505902545	0.5537	0.7012
6507000000	0.3986	0.5049
9404901000	0.2104	0.2665
9404908020	0.9966	1.2622
9404908040	0.9966	1.2622
9404908505	0.6644	0.8415
9404908536	0.0997	0.1262
9404909505	0.6644	0.8415
9404909570	0.2658	0.3366

\* \* \* \* \*  
**Authority:** 7 U.S.C. 2101-2118.

Dated: November 1, 2011.

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

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period ended on March 9, 2011. An additional 65 comments were received. All comments are addressed later in this rule.

#### **Executive Order 12866**

This final 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 final 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 final rule has been reviewed under Executive Order 13132, Federalism. 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 rule establishes an industry-funded promotion, research, and information program for fresh cut Christmas trees. The Christmas Tree Promotion, Research, and Information Order (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 program. Under the Order, producers and importers of fresh cut Christmas trees will pay an initial assessment of \$0.15 cents per tree, which would be paid to the Christmas Tree Promotion Board (Board). This Board will be responsible for administration and operation of the Order. Producers and importers that produce or import less than 500 Christmas trees annually will be exempt from the assessment. The 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. A final rule on the referendum procedures will be published in the **Federal Register** at a later time. The rule also announces the Agricultural Marketing Service's (AMS) approval of new Christmas tree information collection requirements by the OMB for the operation of the Order.

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

The 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 fresh cut Christmas trees. The Order will 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, Columbia 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 suffered 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 of a Program**

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

Sections 1214.47 of the Order will detail the establishment and membership of the Christmas Tree Promotion Board, nominations and appointments, the term of office, removal and vacancies, procedure, reimbursement and attendance, powers and duties, and prohibited activities.

Sections 1214.50 through 1214.56 of the Order will detail requirements regarding the Board's budget and expenses, financial statements, assessments, and exemption from assessments.

The Board's programs and expenses will be funded through assessments on producers, importers, donations from any person including those not subject to assessments, other income, and other funds available to the Board. The Order will provide for an initial assessment rate of \$0.15 per Christmas tree cut and sold domestically 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 will 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. Importers who import 500 Christmas trees or more would be required to pay assessments to the Board, if not collected by Customs.

Importer assessments will be collected through Customs. The Order will specify a list of numbers of the Harmonized Tariff Schedule of the United States that will identify Christmas trees subject to assessments.

The Order will 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 will be prescribed in the Order's regulations issued by the Secretary.

Sections 1214.60 through 1214.62 of the Order will detail requirements regarding promotion, research and information projects authorized under the Order.

Sections 1214.70 through 1214.72 specify the reporting and recordkeeping requirements under the Order as well as requirements regarding confidentiality of information.

Section 1214.81(a)(1) of the Order specifies that the program will be implemented and a referendum conducted three years after assessments first begin under the Order. The Order will not continue unless it is approved by a majority of those persons voting in the referendum for approval.

Section 1214.81(b) of the Order specifies criteria for subsequent referenda. Under the Order, a referendum will be held to ascertain whether the program should continue, be amended, or be terminated.

Section 1214.80 and sections 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 program authorized under the 1996 Act.

#### **Regulatory Flexibility Act Analysis**

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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 will be affected by this Order will be considered small entities, while most importers will not. Producers and importers who cut and sell or imported less than 500 Christmas trees annually will be exempt from the assessment. Organic producers and importers would also be exempt from assessments. The number of entities assessed under the program will be approximately 3,263. Estimated revenue is expected to be approximately \$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 harvested Christmas trees in the United States. Approximately 25 percent of the producers or 3,100 Christmas tree producers will be subject to the assessment based on the exemption of those producing less than 500 trees will be exempt from assessments.

Approximately 95 percent of the producers subject to the assessment qualified under the definition for small business owners. According to the Task Force the average price for 6 to 7 foot Douglas and Noble fir trees is \$11.00 and \$18.00, respectively. 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 harvested 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 are subject to the assessment rate under the Order.

This rule establishes an industry-funded research, promotion, and information program for fresh cut Christmas trees. The program will be financed by an assessment on Christmas tree producers and importers and will be administered by a board of industry members selected by the Secretary. The initial assessment rate will be \$0.15 per Christmas tree cut and sold or imported to the United States and could be increased to \$0.20 per Christmas tree. Entities that cut and sell or import less than 500 Christmas trees will be exempt. The purpose of the program will be to strengthen the position of Christmas trees in the marketplace, and maintain and expand markets for Christmas trees. A referendum will 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 will continue if

avored 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 Order on affected entities, Christmas tree producers and importers will be required to pay assessments to the Board. As previously mentioned, the initial assessment rate will be \$0.15 per Christmas tree cut and sold 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 Order is expected to 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 experiences, these programs only worked in the short term; until monies were depleted.

This action will impose an 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 will also submit a background statement outlining their qualifications to serve on the Board. Producers and importers will have the opportunity to cast a ballot and vote for candidates to serve on the Board. Producer and importer nominees to the Board will 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 will report regarding their sales/imports that will accompany their assessments paid to the Board. Producers and importers who will qualify as 100 percent organic under the NOP could submit a request to the Board for an exemption from assessments.

Finally, producers and importer who wanted to participate in a referendum to vote on whether the Order should continue will have to complete a ballot for submission to the Secretary. These forms were approved by OMB under OMB Control No. 0581-0267 and 0581-0268. 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 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), the reporting and recordkeeping provisions generated by this rule have been preapproved by the Office of Management and Budget (OMB).

*Title:* Research and Promotion Background Information.

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

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

*Title:* Christmas Tree Promotion, Research, and Information Program (Order).

*OMB Numbers:* 0581-0268.

*Expiration Date of Approval:* 12/31/2013.

*Type of Request:* Approval of a preapproved collection.

*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 will be financed by an assessment on Christmas tree producers and importers and will be administered by a board of industry members selected by the Secretary. The program will provide for an exemption for producers and importers that cut and sell or import less than 500 Christmas trees during the year. A referendum will 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 will 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 will 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 will have the opportunity to submit a "Nomination Ballot" to the Board where they will vote for candidates to serve on the Board. Nominees will 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 cut and sell 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 will accompany their assessments paid to the Board and report the quantity of Christmas trees cut and sold or imported during the applicable period, the quantity for which assessments were paid, and the port of entry (for imports). Importer assessments will be collected by Customs. If Customs collects the assessment and the importer does not reach the assessable threshold, the Board will refund such assessments no later than 60 calendar days after receipt from the Board. Customs will remit the funds to the Board along with this information. Finally, producers and importers who will 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 will 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 will 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 final rule on referendum procedures which will be published in the **Federal Register** at a later time.

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 sold.

*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 domestically 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 record keeper 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 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 program, producers and importers will be required to pay assessments and file reports with and submit assessments to the Board (importers through Customs). While the Order will impose certain recordkeeping requirements on producers and importers, information required under the 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 will provide information to the Board (12,255 producers and 200 importers). The estimated cost of providing the information to the Board by respondents will 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 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 forms will 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 will be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

Collecting information quarterly will 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.

#### Analysis of Comments

The previous proposed rule concerning this action published in the **Federal Register** on November 8, 2010, provided for a 60-day comment period which ended on February 7, 2011. The comment period was reopened for 15 days (76 FR 9695, February 22, 2011), as requested by a member of Congress and several North Carolina producers. That comment period ended on March 9, 2011. A total of 565 comments were received during the two comment periods. Of the 565 comments received, 19 were from U.S. State or regional organizations representing Christmas tree producers. Two of these organizations representing Texas and Vermont were in opposition to the proposal, while the others supported the proposal. Three regional producer organizations from Canada submitted comments in favor of the proposal. In addition, two State Universities and one State Department of Agriculture submitted comments in favor of Christmas tree program.

Of the 565 comments submitted, 398 were in favor of the proposal, 147 were in opposition, nine were duplicates, six were neither for or against, four requested an extension of the comment period, and one had no comment. Comments were received from interested parties in 35 different States in the United States with the majority of those comments from North Carolina, Oregon, Michigan, and Wisconsin. Also, comments were received from interested parties in four Canadian provinces and the United Kingdom.

#### General Comments in Support

The majority of the comments that supported the Order suggested that the pooling of resources was a significant benefit of a national mandatory Christmas tree promotion program. Several commenters mentioned the

need to promote the environmental and green benefits of Christmas trees and how providing education to the public of these aspects will result in the possible increase in sales. Many commented that they have seen the successes of other promotional programs and how beneficial it was to that industry. Commenters suggested promoting Christmas tree traditions of choosing a Christmas tree as a family experience.

Some commenters stated that there should not be a 500 Christmas tree threshold for payment of assessments. These commenters suggested that all Christmas tree producers should pay the assessment and share in the cost of promotion.

Section 516(a)(1) of the 1996 Act provides authority for the Secretary to exempt from an order any *de minimis* quantity of an agricultural commodity otherwise covered by the order. However, the 1996 Act does not define the term *de minimis* and USDA is not limited to using the definition of *de minimis* as specified in another law or agreement. The *de minimis* quantity is defined for a particular program and industry. The Task Force reviewed various options for the exemption and determined that 500 Christmas trees would be appropriate because such a level would still provide the Board with resources to have a program that could be successful. USDA agrees that this exemption level is appropriate and reasonable.

#### Comments in Support With Modifications

There were 11 comments in support of the Order with modifications.

An association that includes all of the members of the Task Force and a national association promoting Christmas trees supported the proposal in general with some suggested modifications.

The first five modifications suggested changes to the Order language that are not adopted in this final rule. The first modification was to allow 10 percent of the assessments paid under this program by producers that are members of State/multi-State associations to be directed to the State/multi-State associations to carry out local programs without competing to raise additional funds. This was originally proposed to USDA by the proponents as a way to foster better cooperation with associations, however it was not included in the proposed Order by USDA.

USDA believes that with a mandatory requirement to set aside a specific percent of the funds collected under the

program for State/multi-State associations, there may not be adequate funds remaining to achieve the Board's goals of promoting for the entire Christmas tree industry as this program expects to raise only 2 million dollars in assessments. Including this language in the order provisions does not prevent the Board from funding projects with State or multi-State organizations that they determine could benefit the entire Christmas tree industry. Therefore, no changes are being made to the Order language to reflect these comments.

Another suggested modification would change section 1214.46(g) to allow the Board to contract with companies or organizations for their staffing needs. Adding this authority to allow the Board to contract with companies or organizations would provide more flexibility in meeting its needs for staffing. Such authority already exists in the proposed Order and permits such contracting under section 1214.46(o) and therefore, no changes are being made to the Order language to reflect these comments.

The proponents requested elimination of the organic exemption. This change was also requested by other commenters. Under authority provided by 7 U.S.C., the Order exempts producers who operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan, produce only products that are eligible to be labeled as 100 percent organic under the NOP, and are not a split operation, from paying assessments. Thus, 100 percent organic Christmas trees would be exempt from assessment under the Order. Therefore, no changes are being made to the Order language to reflect these comments.

The fourth modification would provide clarifying language in section 1214.50(c) as provided in the preamble of the proposed rule. The commenters wanted this section clarified as stated in the preamble of the proposed Order in regard to shifting of funds from one program, plan, or project to another. The recently modified Guidelines for AMS Oversight of Commodity Research and Promotion Programs require approval by AMS of shifts in program funds from one major area to another. Therefore, no changes are being made to the Order language to reflect these comments.

The fifth and last change to the Order concerns the preamble of the proposed Order which states that 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. The comment indicated that in section 1214.41 nominees must domestically

produce or import more than 500 Christmas trees during the most recent fiscal year. That is an eligibility requirement for Board members, but does not preclude members from being employees of companies that may be producers or importers assessed under this order. Therefore, the preamble (75 FR 68516) and Order language correctly specify the eligibility requirements for Board members. Therefore, no changes are being made to the Order language to reflect these comments.

The proponents also suggested two modifications that could be adopted by the Board through informal rulemaking, and therefore require no changes to the Order language. The first modification would be to provide for Certificates of Exemptions to be issued every five years instead of annually. The proponents indicated that production of individual farms do not vary greatly from year to year because of the nature of the Christmas trees crop. It normally takes an average of 4 to 10 years to produce a marketable Christmas tree. The proponents indicated that about 9,000 producers could be eligible for an exemption. In addition, the proponents indicated that exemption forms could require a producer to acknowledge that if a producer's situation changes it would their responsibility to inform the Board. Accordingly, no changes are made as a result of this suggestion.

The next modification would increase administrative costs from 10 percent, as proposed, to 15 percent as allowable under the Act. The commenter requested this increase because the start-up costs are likely to be higher than operating costs in later years with the need to educate producers about the program. In addition, the commenter believes a strong compliance element will be important to collecting assessments and assuring sustainability of the program. USDA is of the view if indeed there is concern in the industry that the administrative cost cap be increased to 15 percent, then as authorized by the 1996 Act, upon recommendation of the Board such a change could be accomplished through informal rulemaking. Therefore, no change to Order language is made as a result of this suggestion.

The proponents suggested six other modifications that would require changes to the Order language. The first change will add the refund procedure to the Order language as described in the preamble. The procedure would state that producers and importers that produced or imported 500 Christmas trees or less and did not apply for an exemption shall receive a refund from the Board within 30 calendar days after

the end of the fiscal period. This procedure was outlined in the preamble of the proposed Order but not in the Order language. Therefore, section 1214.53(a)(7) was added to the Order language to clarify the procedure described in the preamble.

The second change would provide that for the initial crop year's budget which could be largely administrative that repayment of such expenses would not be considered an administrative expense in subsequent years. The Act provides that for fiscal years beginning 3 or more years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in a fiscal year an amount that exceeds 15 percent of the assessment and other income received by the Board. The proposed Order contains 10 percent as the limit. This language, therefore, permits the Board to expend more funds in the first three years of startup of the Order for administration, maintenance and functioning of the Board. This recommendation is reasonable and the appropriate Order language will be added to the section reflect this change.

Another change would delete erroneous section numbers from the table of contents of the Order. The table of contents for the Order included sections 1214.55 Refunds and 1214.56 Procedures for obtaining a refund. Provision for these sections is in section 1214.53; therefore, the reference to these section numbers is removed from the table of contents.

The fourth change would provide clarification in section 1214.52(e) regarding the assessments due date. The commenters indicated that the wording in section 1214.52(e) could be construed as saying that assessments would not be due until the crop year following the sale of Christmas trees, or more than 14 months later. This is not the intent of the language. For the purpose of this program, crop year is defined as August 1 through July 31, accordingly, producers or importers that domestically produced or imported over 500 Christmas trees are to pay their assessments no later than February 15 of the crop year in which they are produced or imported. Therefore, section 1214.52(e) has been revised to clarify this change.

Another change would correct an erroneous section number in section 1214.62. In section 1214.62, section 1214.73 is erroneously referenced. The reference section number should be section 1214.83.

The last change would correct an erroneous sentence in the Order language regarding the time producers

and importers could receive refunds if the delayed referendum fails. The preamble of the proposed rule specified a procedure that producers and importers shall notify the Board within 30 days after the announcement of the referendum (that it has failed) of their demand to receive a refund. The Order language in section 1214.54(d) specifies that any producer or importer requesting 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 preamble language is correct. Therefore, the Order language in section 1214.54(d) has been corrected to be consistent with this language.

Finally, one modification was suggested that would clarify language in the preamble. There is a phrase in the preamble of the proposed Order (75 FR 68516) that indicates the Board is to report its activities to manufacturers for the U.S. market. This language was not correct and should not have appeared in the preamble of the proposed Order.

#### *Comments in Opposition*

There were 21 comments in opposition to the proposal that suggested key points in the areas of assessments, exemptions, promotion, referenda, reporting, and other issues. Based on our evaluation of these comments, no changes will be made the Order. These comments are discussed below.

#### *Assessments*

A commenter expressed concern that the government should assess or tax imports of artificial trees instead of taxing or assessing domestically produced Christmas trees. Research and promotion programs are self help programs that promote an agricultural commodity. The Christmas tree industry decided to propose under the authority under the 1996 Act, a program to promote domestic and imported fresh cut Christmas trees.

The commenter was also concerned about assessing Christmas trees that are given to charity or trees lost to disease. If Christmas trees are donated to charity or lost to disease and therefore not sold into the marketplace, they will not be assessed under the Order.

#### *Exemptions*

A commenter also stated that not assessing producers or importers that produce or import less than 500 Christmas trees is the way for the proponents to get the program passed in

a referendum. The commenter also stated that the initial exemption for Christmas tree producers was 2500 Christmas trees and the amount in the proposed Order is 500 Christmas trees. The Task Force reviewed various options for the exemption and determined that 500 Christmas trees would be appropriate because such a level would still provide the Board with resources to have a program that could be successful. USDA concurs with this exemption level because this level would exempt small operations that would otherwise be burdened by the assessment. Therefore, an exemption for producers and importers of less than 500 trees is authorized under the program and consistent with the Act's provisions.

The commenter questioned how the 500 Christmas tree exemptions would be applied. Under the Order, producers and importers of fewer than 500 Christmas trees would not be assessed under this Order. Producers and importers of 500 or more Christmas trees will be assessed on the total production number of Christmas trees produced or imported.

#### *Promotion*

A commenter also stated that the Task Force cited an increase in sales when a similar marketing program was in existence. The commenter stated that this is merely a correlation, and no further evidence is provided establishing that the marketing program caused the increase in sales. Other commenters also stated that the benefits would not outweigh the cost of the program.

The Task Force provided that the main reason for the marketing program's demise was that it was voluntary in nature. Under the proposed Order, the assessments to fund the program would be mandatory, therefore, providing consistent funding by stakeholders. In addition, several comments in favor of the proposed Order supported the consistent funding which would provide the industry with a workable program to increase sales. Furthermore, a third party five-year evaluation is required of all research and promotion programs to determine the benefits to their industries under section 515(h) of the 1996 Act. These evaluations are available from the Boards and are posted on the AMS Web site. The industry may terminate the program if the first evaluation does not show a benefit to the Christmas tree industry.

A commenter also stated that if USDA promulgates this rule they should solicit data from other sources, develop a definitive plan for how to boost

Christmas tree sales, and make a projection for the increase in fresh-cut Christmas tree sales and a cost benefit analysis. The Act provides authority for the Secretary to appoint a Board consisting of industry members. The Act states that such a Board must develop a plan under USDA oversight to promote Christmas trees. USDA approves the Board's annual budget and marketing plan. In addition, the Board must conduct a third party program evaluation every five years to evaluate the effectiveness of the program's activities. All these documents are discussed at Board meetings, are public information and available on the Board's Web site. The program evaluation is also available on AMS's Web site. These documents provide the road map for the Boards operations and assist the industry in determining if the program is effective.

Another issue some commenters raised was how much of the funds will be spent on administrative costs, USDA management, research and other projects. The Act authorizes that up to 15 percent of the assessments collected could be used for administrative expenses. However, the proponent group decided to limit the administrative expenses to 10 percent of the funds collected. USDA costs are based on the time spent by the USDA on oversight of the program. The majority of the funds are used for research and promotion of the commodity.

Several of the comments addressed the issue of promotion proposed under the Order. Some Christmas tree producers stated their opposition to perceived government intervention in their Christmas tree operations. They also stated that they preferred to do their own promotion and did not have any problems selling all of their trees, thus they did not see any benefit in the proposed program. Additionally, one commenter stated their belief that the program was illegal stating that the government can't promote private individuals' Christmas trees.

The 1996 Act provides the authority for agricultural industries to develop programs for research and promotion. These programs are initiated by members of the industry. USDA provides oversight of these programs and their activities. However, industry Boards that manage these programs develop their own budgets and marketing plans and conduct strategic planning for the programs. Although these programs are mandatory in nature, they do not preclude individuals from promoting their own commodity.

Another opposition comment stated the belief that Christmas trees were a



differentiated product and not an agricultural commodity and therefore, could not be promoted generically under this program. The 1996 Act states that the term agricultural commodity means, among other things, the products of forestry and other commodities raised or produced in farms. USDA does not agree with this comment and believes Christmas trees are an agricultural commodity and can be promoted under the Act authority.

The commenter also stated their belief that "choose and cut" producers who provide trees to a distinct market may not realize the benefits of such a program because generic promotions would not attract customers to their operations. Various other commenters also stated that the government should not compel an industry with a variety of interests to speak with one voice when many are not in agreement.

This Board will consider the views and concerns of every segment of the industry and provide a marketing plan that benefits the whole Christmas tree industry. Producers in all sectors have diversified to provide different types of activities to increase sales and promote their product. A Christmas tree generic promotion program will not hinder any producer from continuing this type of activity. A generic promotion program can work in conjunction with other marketing activities that individual producers and importers already have developed or want to develop.

The commenter also suggested that the type of promotion the Board pursues may not be agreed upon by such commenter and that a one size fits all advertising campaign blurs distinctions among products in their industry. Additional commenters stated that the program should cover research but not promotion efforts. Research and promotion boards represent all sectors of the industry and the members will bring different backgrounds and expertise to the Board when developing marketing strategies. In addition, all meetings are open to the public. The Board would determine the kinds of activities conducted under the program based on those authorized under the Act. No changes have been made to reflect these comments.

The same commenter questioned whether the program will insure that large stores will water and properly care for Christmas trees to maintain quality. Many research and promotion programs include an educational component to those that handle the product. The Board may decide that one of the needs of the industry is to provide information, education and training on

the handling of Christmas trees to assure quality of the product to the consumer.

#### Referenda

A commenter questioned the criteria to determine the referendum vote. Other commenters did not agree with having a delayed referendum or having one vote per entity without regard to the volume produced or imported. Section 518 of the Act provides for a referendum to be conducted either before the program is in place or three years after assessments first begin under the order. The proponent group chose the delayed referendum option. The Act also provides for three options to the vote: By a majority of those persons voting, by persons voting for approval who represent a majority of the volume of the agricultural commodity, or by a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. The proponent group recommended counting by vote in order to attempt to ensure that small businesses have the same vote as large firms. Accordingly, the Order will be approved in a referendum if a majority of producers and importers voting in the referendum vote for approval.

Another commenter expressed the opinion that such voting was unfair. The commenter stated that one farm one vote does not adequately represent the producers that would be funding the program. The commenter also stated that the assessment should be on seedling nurseries since there is no true first handler. In addition, the commenter stated that there is no control on increasing the assessment.

The Act provides three methods for determining the vote in referendum. The proponents chose a majority of those persons voting as the voting method. The proponents also chose to assess producers and importers since these will directly benefit from the program. Further, the Order provides that the assessment can only be increased or decreased by 2 cents during the fiscal period and subject to rulemaking by the USDA; and it cannot exceed 20 cents or drop below 10 cents per fiscal period. In order to make any changes in the assessment rate, the Board would have to make that recommendation to USDA and the USDA will request comments for the industry before implementing any change in the assessment rate. No changes have been to the Order to reflect these concerns.

#### Reporting

Another issue raised by commenters concerns the reporting burden under the

Order. A commenter stated that the proposed program involves too much paperwork and that forms should be web-based to allow easy access. The commenter stated concern that Christmas tree producers were already reporting information to the other Federal agencies. The commenter was also concerned that the Board would be counting stumps. Goals under this program are to minimize reporting burden and eliminate duplication as much as possible. The Board could coordinate with other agencies to help insure there are no duplicative efforts. The Board also may opt to provide the required forms electronically in order to further reduce the reporting burden to producers and importers.

Another commenter was concerned that the reporting requirements would require producers to furnish customer information to the Board. The information required under the program does not contain producer or importer customer information. Furthermore, pursuant to section 515 of the 1996 Act, any information collected under the program is kept confidential.

Another commenter stated concern about how difficult it may be to terminate such a program once implemented. This program requires that a referendum be conducted 3 years after implementation and every 7 years thereafter to determine if producers and importers support continuation of the program. The industry may also request a referendum if 10 percent of those covered under the program request it. The Secretary can also suspend or terminate an order or a provision of an order if the Secretary finds that an order or a provision obstructs or does not tend to effectuate the purposes of the Act.

#### Other Issues

Some commenters raised constitutionality concerns. One commenter raised concerns about a perceived unequal burden of taxation. The commenter suggested that the exemption provision could affect producers that produce 500 trees or less because this creates unequal taxation treatment of Christmas tree producers. However, the assessment provided for in this type of program is not a tax nor does it yield revenue for the Federal government. These producer and importers funds raised by producers and importers are for the benefit of producers and importers.

The commenter also stated that some Texas producers were not in favor of the proposed Order, that Texas is a sovereign State, and therefore Texas Christmas tree producers should not be included in the Order. The 1996 Act

provides that programs under the Act would be applicable to agricultural commodities produced in the United States, which is defined as collectively the 50 States, the District of Columbia, the Commonwealth of Puerto Rico and the territories and possessions of the United States.

Another commenter in opposition raised concerns that the proposed Order may violate the Establishment Clause. The commenter stated that government speech cannot advocate religion or religious symbols.

USDA considers Christmas trees to be an agricultural commodity which is reported as such in various USDA crop reports and statistical data reports (*e.g.* 2007 Census of Agriculture, National Agricultural Statistics Service). The Act in section 512 provides for the establishment of generic promotion, research and information activities for agricultural commodities, including Christmas trees.

Another commenter in opposition concluded that the rule would fall outside the purpose of the 1996 Act by favoring one domestic industry—Christmas tree farming—to the detriment of another domestic industry—artificial tree manufacturing. The 1996 Act was developed to provide agricultural industries with a way to develop and expand markets of agricultural commodities. Promoting fresh cut Christmas trees is within the scope of the 1996 Act.

Another commenter stated that the proposed rule should be withdrawn as it was an inappropriate use of government power citing free markets, limited government, and individual freedom. The Proposed program was presented to the Department by an industry wide group of producers and importers who requested that such an industry-funded program be implemented. USDA has concluded that a research and promotion program for fresh cut Christmas trees is within the scope of its authority under the 1996 Act, and therefore is establishing this industry supported program.

Another comment in opposition stated concern that the Board makeup unfairly represents big business by its geographic areas and trees produced. USDA believes that the geographical representation proposed by the proponent group fairly divides the U.S. production and imports of Christmas trees. It is USDA policy that the Board consider for nomination, the diversity of the population served and the knowledge, skills, and abilities of the members to serve a diverse population, size of the operations, methods of production and distribution, and other

distinguishing factors to ensure that the Board represents the diverse interest of persons responsible for paying assessments, and others in the marketing chain. USDA also makes sure that the geographical distribution of members closely reflects the distribution of the production.

After consideration of all relevant materials presented, including the proposal and comments received, the USDA has determined that this Order is consistent with and will effectuate the purposes of the 1996 Act.

It is found that good cause exist for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because given that the collection and remittance of assessments begin as soon as possible, the initial Board should be appointed expeditiously in order to carry out the purposes of the Order.

#### 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, Title 7, Chapter XI of the Code of Federal Regulations is 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

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#### Christmas Tree Promotion Board

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#### Expenses and Assessments

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#### Promotion, Research and Information

1214.60	Programs, plans, and projects.
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1214.70	Reports.
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#### Miscellaneous

1214.80	Right of the Secretary.
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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 or CBP.**

*Customs or CBP* 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, DC, 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 will 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 will 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 an 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) For fiscal years beginning 3 or more years after the date of the establishment of the Board, the Board may not expend for administration, maintenance, and functioning of the Board in a fiscal year an amount that exceeds 10 percent of the assessment and other income received by the Board. 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 will 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 in which they are produced or imported. 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 provided 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 provided 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) Producers and importers who did not apply to the Board for an exemption and domestically produced or imported less than 500 Christmas trees during the fiscal period shall receive a refund from the Board for the applicable assessments within 30 calendar days after the end of the fiscal year. Board staff shall determine the assessments paid and refund the amount due to the producers and importers accordingly.

(8) 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 number of the United States classification valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic Christmas trees bearing this alphanumeric number 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 30 days after the announcement of the referendum results of their request for a refund of the

assessments that they paid. The producers and importer requesting a refund 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, § 1214.83 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 amendment, 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:

(i) 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 0581-0267 and 0581-0268.

#### Subpart B—[Reserved]

Dated: November 1, 2011.

David R. Shipman,  
*Acting Administrator.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1214

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

RIN 0581-AD00

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes procedures for conducting a referendum to determine whether the continuation