

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

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**AUTHORITY:** 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

**SOURCE:** 76 FR 69103, Nov. 8, 2011, unless otherwise noted.

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

**EDITORIAL NOTE:** At 76 FR 71241, November 17, 2011, subpart A of 7 CFR 1214, published November 8, 2011 (76 FR 69094), is stayed indefinitely.

## **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—Referendum Procedures**

**SOURCE:** 76 FR 69113, Nov. 8, 2011, unless otherwise noted.

#### **§ 1214.100 General.**

Referenda to determine whether eligible domestic producers and importers of Christmas trees favor the continuance, amendment, suspension, or termination of the Christmas Tree Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

#### **§ 1214.101 Definitions.**

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to delegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

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

(c) *Department* means the U.S. 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.

(d) *Eligible domestic producer* means any person who domestically produces more than 500 Christmas trees annually in the United States, and who:

(1) Owns, or shares the ownership and risk of loss of the production of Christmas trees;

(2) Rents Christmas tree production land, facilities and/or equipment resulting in the ownership of all or a portion of the Christmas trees domestically produced;

(3) Owns Christmas tree production facilities and equipment but does not manage them and, as compensation, obtains the ownership of a portion of the Christmas trees domestically produced; or

(4) Is a party in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to domestically produce Christmas trees who share the risk of loss and receive a share of the Christmas trees domestically produced. No other acquisition of legal title to Christmas trees shall be deemed to result in persons becoming eligible domestic producers.

(e) *Eligible importer* means any person importing more than 500 Christmas trees annually into the United States as a principal or as an agent, broker, or consignee of any person who domestically produces or handles Christmas trees outside of the United States for sale in the United States, and who is listed as the importer of record for such Christmas trees that are identified in the Harmonized Tariff Schedule of the United States by the numbers 0604.91.00.20, 0604.91.00.40, and 0604.91.00.60 during the representative period. Importation occurs when Christmas trees originating outside of the United States are released from custody by Customs and introduced into the stream of commerce in the United States. Included are persons who hold title to foreign-produced Christmas trees immediately upon release by Customs, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of Christmas trees from Customs when such Christmas trees are entered or withdrawn for consumption in the United States.

(f) *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.

(g) *Order* means the Christmas Tree Promotion, Research, and Information Order.

(h) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity. For the purpose of this definition, the term "partnership" includes, but is not limited to:

(1) A husband and a wife who have title to, or leasehold interest in, a Christmas tree farm as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property; and

(2) So-called "joint ventures" wherein one or more parties to an agreement, informal or otherwise, contributed land and others contributed capital, labor, management, or other services, or any variation of such contributions by two or more parties.

(i) *Referendum agent or agent* means the individual or individuals designated by the Department to conduct the referendum.

(j) *Representative period* means the period designated by the Department.

(j) *United States or U.S.* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

### **§ 1214.102 Voting.**

(a) Each eligible domestic producer and eligible importer of Christmas trees shall be entitled to cast only one ballot in the referendum. However, each domestic producer in a landlord/tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to domestically produce Christmas trees, in which more than one of the parties is a domestic producer or importer, shall be entitled to cast one ballot in the referendum covering only such domestic producer or importer's share of the ownership.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate domestic producer or importer, or an administrator, executor, or trustee or an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail as instructed by the Department.

(d) Eligible domestic producers or eligible importers may be asked to provide proof of sales or acreage as proof of eligibility to vote in any referendum.

### **§ 1214.103 Instructions.**

The referendum agent shall conduct the referendum, in the manner provided in this subpart, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions of this subpart, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.



(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible domestic producers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

#### **§ 1214.104 Subagents.**

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions of this subpart. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

#### **§ 1214.105 Ballots.**

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be challenged for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was challenged, by whom challenged, the reasons therefore, the results of any investigations made with respect thereto, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

#### **§ 1214.106 Referendum report.**

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was

conducted, the extent and kind of public notice given, and other information pertinent to the analysis of the referendum and its results.

**§ 1214.107 Confidential information.**

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Order and the voter list shall be strictly confidential and shall not be disclosed.

**§ 1214.108 OMB control number.**

The control number assigned to the information collection requirement in this subpart 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 0581-0267.