

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service**

**7 CFR Parts 1150, 1160, 1205, 1206, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280**

[Docket No. PY-02-006]

**RIN 0581-AC15**

**Exempting Organic Producers From Assessment by Research and Promotion Programs**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends all 17 commodity research and promotion orders and/or rules and regulations to exempt any person receiving and handling solely 100 percent organic products from paying assessments to any research and promotion program administered by the Agricultural Marketing Service (AMS). To obtain an exemption, the person must operate under an approved organic system plan authorized by the National Organic Program (NOP) and produce and market only products that are eligible for a 100 percent organic label under the NOP. A separate final rule to exempt any person producing and marketing solely 100 percent organic products from paying assessments for market promotion activities under certain marketing order programs administered by AMS is also being published in today's **Federal Register**.

**DATES:** Effective February 14, 2005.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Proposed Rule and Invitation for Comments on Proposed Amendments: Published April 26, 2004 [69 FR 22689]; Proposed Rule; Extension of Comment Period: Published May 26, 2004 [69 FR 29907].

**Executive Order 12866**

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

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Commodity Promotion, Research, and Information Act of 1996; Cotton Research and Promotion Act; Dairy Production Stabilization Act of 1983; Egg Research and Consumer Information Act; Fluid Milk Promotion Act of 1990; Hass Avocado Promotion, Research, and Information Act of 2000; Honey Research, Promotion, and Consumer Information Act; Mushroom Promotion, Research, and Consumer Information Act of 1990; Popcorn Promotion, Research, and Consumer Information Act; Pork Promotion, Research, and Consumer Information Act of 1985; Potato Research and Promotion Act; Soybean Promotion, Research, and Consumer Information Act; and Watermelon Research and Promotion Act provide that administrative proceedings must be exhausted before parties may file suit in court. Under these acts, any person subject to an order may file a petition with the Secretary of Agriculture stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of the Beef Promotion and Research Act of 1985.

**Background**

Section 10607 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171)—known as the 2002 Farm Bill—amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401) (FAIR Act) on May 13, 2002. The amendment exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or nonorganic products, from paying

assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). USDA has implemented National Organic Program (NOP) requirements at 7 CFR part 205 to carry out the intent of the OFPA.

The Farm Bill text reads as follows: "Notwithstanding any provision of a commodity promotion law, a person that produces and markets solely 100 percent organic products, and that does not produce any conventional or nonorganic products, shall be exempt from the payment of an assessment under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm (as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502))."

On April 26, 2004, a proposed rule was published in the **Federal Register** [69 FR 22690] inviting comments on a proposal to amend the orders and/or rules and regulations of the 16 research and promotion programs for which the U.S. Department of Agriculture has oversight. These amendments would establish a provision for organic producers and marketers meeting the specified criteria and procedures to be exempt from paying assessments under research and promotion programs.

Interested parties were provided 30 days to comment on the proposed amendments. At the request of a commenter, the comment period was extended by an additional 30 days to June 25, 2004 [69 FR 29907, published May 26, 2004].

**Summary of Changes From the Proposed Rule**

This final rule differs from the proposed rule in a number of respects.

- This final rule covers a new program for mangos that was implemented following publication of the proposed rule. Accordingly, a new Subpart C is added to 7 CFR part 1206.

- This final rule clarifies that, for the purpose of obtaining an assessment exemption, a person must operate under an NOP-approved organic system plan and must produce and market only commodities eligible for a "100 percent organic" label under the NOP (7 CFR part 205.300–205.311). This applies to all commodities produced and marketed by the person, not only those covered by the applicable research and promotion program under which the exemption is sought.

- This final rule considers any assessment payer, for the purpose of

obtaining an exemption, to be the person that produces and markets the commodity. Accordingly, the regulatory text has been modified as appropriate to reflect this, and the definition of "produce" as proposed has been deleted. Therefore, persons other than producers are no longer required to alter a product. In addition, we have added a provision wherein products produced and marketed under an organic system plan but not sold, labeled, or represented as organic would not disqualify producers from exemption.

- An effective date is specified in the regulatory text of each program providing that the exemption will apply at the next assessable period following issuance of the Certificate of Exemption.
- Other changes made in the final rule include more specific language concerning the application form, clarifying the information required of importers, and a change from 30 to 60 days for boards and councils to grant or deny exemption requests during the first 6 months following the final rule's effective date.
- Miscellaneous changes to some programs' regulatory text were also made for clarity.

#### Summary of Comments

We received 132 timely comments from individuals, conventional and organic farmers, industry organizations, research and promotion boards, organic trade organizations, a law firm, and a State department of agriculture. We also received 25 comments from organic farmers past the close of the comment period, but these did not raise any new issues.

Of the 132 comments timely submitted, 9 were from conventional farmers, 96 were from organic farmers, 11 were from industry organizations, 4 were from organic organizations, 7 were from research and promotion boards, 1 was from an organic cooperative, 1 was from a State department of agriculture, 2 were from individuals, and 1 was from a law firm on behalf of an organic dairy. Of the timely comments, we received 89 form letters.

The comments largely fall into two broad categories. One category addresses issues of assessment exemption eligibility and application of the FAIR Act. The other category addresses administrative and procedural issues.

#### Issues of Eligibility and Application of the FAIR Act

**Definition of Produce:** The Farm Bill language states that any eligible person who produces and markets solely 100 percent organic products and meets the

other specified requirements would be exempt from the applicable assessments. For the purpose of the proposed rule, we defined *produce* to mean "to grow or produce food, feed, livestock, or fiber or to receive food, feed, livestock, or fiber and alter that product by means of feeding, slaughtering, or processing."

Some commenters stated that the definition of "produce" in the proposed rule was overly broad, not supported by statutory authority, and that it illegally expanded the application of the exemption to persons not intended to receive the exemption by including processing activities, either by processors or importers. Other commenters said that importers should not be exempt because the altering or processing would be done after the assessment is paid, because assessments are collected by the U.S. Customs Service at the time of entry into the country. In addition, commenters argued that someone who meets the "produce" definition should do so for all of the exempt product; *e.g.*, an importer who imports 10,000 pounds of 100 percent organic beef and processes 2 pounds should not be exempt from the entire assessment.

Still other commenters commended AMS for recognizing that Congress intended to exempt not just producers but also handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers.

The Farm Bill refers to "persons who produce," not "producers." Therefore, any person who produces—whether a producer, importer, processor, or other entity—would qualify for exemption, assuming all of the specified criteria are met. We have reevaluated the definition of produce and determined that the phrase "produces and markets" should apply to the function the person performs that compels the payment of an assessment. In other words, for producers and seed stock producers, produce and market means to produce the commodity. For handlers and first handlers, produce and market means to handle the commodity; for importers, to import the commodity; for processors, to process; for feeders, to produce by feeding; and for exporters, to export. The regulatory text was changed accordingly, and we removed the definition of produce that appeared in the proposed rule.

**Solely 100 Percent Organic:** The Farm Bill language states that in order to be eligible for exemption, the person must produce and market solely 100 percent organic products and must not produce any conventional or nonorganic products. The proposed rule was drafted

to state that whatever the person produces must be 100 percent organic—not just the commodity for which the exemption is sought.

Some commenters encouraged narrow interpretation of the exemption—that persons must meet the 100 percent definition for everything produced and that split operations should not qualify for the exemption. However, numerous commenters, including form letter submitters, said that a producer should only have to be certified as 100 percent organic for the commodity for which the exemption is sought. They also stated that by referencing the Organic Foods Production Act (OFPA), Congress did not limit exemptions for approved split operations because Congress has determined that a split operation may produce 100 percent certified organic products. A few commenters said that rendering a certified organic farmer who produces any non-organic commodity ineligible for exemption would be in conflict with the OFPA and Congressional intent.

Furthermore, a large number of commenters, including form letter submitters, wrote that Congress' use of "100 percent organic" meant that the person's entire product line must be certified as organically produced and handled and did not refer to the labeling provisions that distinguish between the organic products bearing various percentages of organic ingredients.

One commenter said that fluid milk can only be classified as 95 percent or more organic due to the addition of vitamins and that Congress did not intend to exclude fluid milk processors, and a number of commenters, including form letter submitters, said this demonstrated that the rule was drawn too narrowly.

The Farm Bill language requires that a person must produce and market solely 100 percent organic products in order to receive the exemption. Because of the construction of the language, we deem "100 percent organic" to mean the labeling term described under the NOP and "solely 100 percent organic products" to mean every product in the person's farm or operation. Therefore, our determination is that to be exempt, a person must produce only products eligible to be labeled as "100 percent organic," and this applies to all commodities, not just the commodity for which the exemption is sought. To be clear, this means that split operations will not qualify for exemption. However, handlers, first handlers, and processors who receive only 100 percent organic products from split operations will still qualify for exemption,

provided they themselves are not certified as split operations.

A small number of commenters stated that some provision should be made to exempt organic farms in transition. They provided two examples. In the first example, a certified organic farmer purchases 200 acres of adjacent land on which conventional hay is currently grown. The farmer begins to transition the land to make it eligible for organic certification. During the 3 years that the land is transitioning to become eligible, the hay may not be sold as organically produced, and the farmer would lose the exemption if the hay is sold conventionally. In the second example, a 100 percent organic farm expands its operation by converting some non-organic crop land to organic. Under NOP rules, the land must be farmed organically for 3 years to complete the transition, and during that time, the farmer would not be eligible for the exemption.

Under the proposed rule, transitional farms, though not specifically mentioned, were ineligible for exemption because they are split operations and did not produce 100 percent organic products, and this is also reflected in the final rule. In the first example, the farmer would be certified under NOP as a split operation for 3 years until the transition is complete. Regardless of whether the hay is sold, it could not be labeled or marketed as 100 percent organic during the 3-year transition period. Since the farmer must have NOP certification and meet the threshold of *solely* 100 percent organic, the farmer would not be eligible for exemption until the entire farm or operation was converted to organic production. In the second example, the farmer owns non-organic crop land and would be certified as a split-farm operation, therefore making the farmer ineligible for exemption. Once the 3-year transition is complete and the entire operation is certified, the farmer would be eligible for exemption.

A large number of commenters, including form letter submitters, said that an organic producer may be forced to sell an animal conventionally because of using antibiotics or pesticides or maintaining a buffer area. They said that, in isolated instances and for humane purposes, an organic producer may administer antibiotic treatment. However, that treatment would prevent the animal from being sold as organic. They also said that organic producers may be ordered to use chemicals as part of a mandatory disease treatment program, and those products cannot be sold as organic for 3 years. Furthermore, they said that under NOP rules, an

organic operation must maintain a buffer area between the organic farm's crops and any neighboring non-organic fields, and crops harvested from a buffer zone cannot be marketed as organic. These commenters said that because isolated use of antibiotics and pesticides would not cause the organic producer to lose NOP certification and because buffer areas are required by NOP rules, organic producers should not lose their exemption as the result of conventional sales under these circumstances. Our determination is that if the products were produced organically, a conventional sale of those organic products would not nullify a person's exemption from assessment. Under the NOP, organic farmers do not lose certification on their organic farms if they must sell products conventionally, and we have taken the same view. Therefore, we have determined that as long as the person maintains NOP certification, producers (including seed stock producers and feeders) will still meet the threshold of *solely* 100 percent organic for exemption if: (1) They give an animal antibiotic treatment or use pesticides or chemicals as a result of mandatory programs and market the resulting product as conventional, and/or (2) they sell products from a buffer area; provided they maintain NOP certification and are not a split operation. The regulatory language of those programs that assess producers, seed stock producers, and feeders (beef, blueberries, cotton, dairy, eggs, Hass avocados, honey, lamb, mushrooms, peanuts, pork, potatoes, soybeans, and watermelons) was changed accordingly.

However, to be consistent with the requirement to market *solely* 100 percent organic products, handlers, processors, and other assessment payers who also are producers may not handle, process, or otherwise market their nonorganic production, other than to sell it to another handler or processor. The regulatory language was changed accordingly. Handlers are assessed under the watermelon program, first handlers are assessed under the lamb and mango programs, and processors are assessed under the fluid milk and popcorn programs. Only handlers, first handlers, and processors that handle or process *solely* 100 percent organic products from certified producers are eligible for exemption. Moreover, if a handler or processor receives products from producers who produce both 100 percent organic and conventional products, products from buffer zones, or products treated with antibiotics or pesticides, that handler or processor is not eligible for exemption. To be

exempt, these handlers or processors must receive and handle or process *solely* 100 percent organic products. The producers from whom they receive products can grow other products conventionally, provided all of the products the handler or processor receives are eligible to be labeled as 100 percent organic. However, a handler or processor who is also a producer under the NOP may not sell products from buffer zones or treated with antibiotics or pesticides under mandatory programs and still maintain exemption eligibility.

#### *Administrative and Procedural Issues*

**Effective Date and Initial Coverage:** One commenter believed that the rule should specify that the exemption is not retroactive. As provided in this final rule, the exemption is not retroactive, but the regulatory text was changed to clarify the effective date. The exemption will apply at the next assessable period following issuance of the Certificate of Exemption. For some applicants, it will be the next month; for others, the next fiscal year, and each program's regulatory language addresses specifics.

**Application:** A number of commenters, including form letter submitters, said that persons should not have to apply for exemption but instead should only have to present the certificate from the USDA-accredited certifying agent. These commenters said that the certificate contains sufficient information to permit boards to determine exemption eligibility, and no additional paperwork should be required.

Several of these commenters commended USDA for proposing reporting requirements that would *solely* use the certification documents from a USDA-accredited certifier to satisfy the eligibility requirements of "100 percent organic" as defined by the NOP. The commenters are correct that the certificate from a USDA-accredited certifying agent indicates whether the person's farm or operation is certified as operating under an organic system plan. However, the application provides additional information that is necessary for boards to determine whether the person meets the threshold for *solely* 100 percent organic and other specified criteria.

Commenters also stated that they agreed with the proposed rule that the application should include only the following: Name, address, a copy of the organic exemption certificate, and a signed declaration that the farmer meets the qualifications for exemption. They said that if the form requires information beyond what is addressed in the regulatory text, the public must

have a chance to comment. While the proposed regulatory text addressed the information requested on the form as "name, address, copy of the organic certificate, and a signed certification \* \* \*," the supplementary information of the proposed rule outlined this information in greater detail. This included the applicant's name, the name and address of the company, telephone and fax numbers, a copy of the organic certification, and a signed certification that the person meets the qualification for exemption.

Herein, we are clarifying that some additional information is needed on the form that is part of the person's signed certification. This includes a list of commodities marketed by the applicant, and assertions that the applicant is certified, produces solely 100 percent organic products, and is not a split operation. Also, the form asks for an e-mail address, but this is optional. The proposed rule estimated that this form would take 30 minutes to complete, and the information that was not specifically itemized was and remains included in the paperwork burden estimate.

These commenters also said that in requiring farmers to certify that they produce solely 100 percent organic products, the potential for confusion exists because this terminology differs from the typical language used by certifying agents. As part of their application, organic persons must submit a copy of their certification from a USDA-accredited certifying agent. The boards will evaluate the remainder of the application to determine whether or not the person meets the threshold of *solely* 100 percent organic, though it should be readily apparent whether the applicant qualifies. Therefore, no changes were made.

In response to one comment, we amended the regulatory text to reflect that the information required from importer applicants is the same as that required from other applicants. While that was the intent of the proposed rule, the regulatory text reflected slightly different requirements.

We did not adopt a recommendation from several commenters that would require persons to submit, in lieu of an application, a notice of eligibility to the applicable board, along with any materials necessary to demonstrate that eligibility. The commenters also suggested that persons with less than \$5,000 in income be required to file an affidavit and notify the board of any change in eligibility within 30 days. Our determination is that the notice of eligibility or affidavit would virtually be the same burden as the application. Moreover, not only is the application

minimally burdensome, but it is also necessary for boards to annually determine an applicant's eligibility and to verify compliance.

One commenter drafted a form and suggested its use by applicants, and an industry organization suggested a three-part form with copies going to the producer, purchaser, and State council. The information requested on this form was, in our view, not sufficient to determine whether the applicant met the criteria for exemption. Therefore, we did not adopt this suggestion.

Several commenters said that the certification process must be tightly controlled to prevent abuse. We believe that the process is sufficiently controlled between the application, documentation, and compliance measures. Furthermore, the exemption process is consistent with the process used by those programs with *de minimis* exemptions.

One commenter said that the paperwork associated with the exemptions will be costly to the boards and divert funds from promotion and research and activities. Our response is that while there will be some expense involved in administering the exemption, we have taken steps to simplify and standardize the boards' processes and minimize costs.

*Requirement to Reapply Annually:* The proposed rule required that the exempt person must reapply on an annual basis.

One commenter supported annual recertification, but a number of commenters said that annual recertification is overly burdensome because NOP certificates are good until suspended, surrendered, or revoked. These commenters said that this requirement is unnecessary if the organic certificate is used. Instead, the burden should be on the farmer to notify the boards of any change in status and then repay any assessments owed. Some commenters urged AMS to provide strong language for revoking the exemption when its requirements are no longer satisfied.

We reviewed this issue and did not remove the requirement to reapply annually because we believe that in order for boards to maintain compliance, an annual application is necessary. Boards must keep up with assessment payers' evolving operations, and an annual application is preferable to relying on exempt parties to notify boards of any changes. Without an annual application, persons who thought they were exempt but should not have been could end up owing a significant amount of outstanding assessments. The burden of reapplying

annually is negligible compared to the benefits of exemption. Furthermore, this requirement is consistent with existing rules and regulations specifying that those who apply for exemption for *de minimis* reasons must do so every year.

We did not adopt a suggestion from one commenter that, in lieu of annual recertification, the research and promotion boards take the money they have collected from organic producers and use it to send notifications to collecting handlers (or other parties that collect assessments from the assessment payer) and to include information about the organic exemption in all future literature about commodity checkoff programs. Notification will be made to the industry as a whole through this rule and a news release, and exempt persons are required to notify any person who collects and remits their assessments, if applicable, of their exempt status.

*Deadline for Granting Exemptions:* The proposed rule stated that the boards/councils will grant or deny applications for exemption within 30 days.

A handful of commenters said that the 30-day deadline for granting exemptions is too short. Instead, boards should have 60 days to grant exemptions. We reviewed this recommendation and are maintaining the 30-day deadline. This timeframe was included to ensure that qualifying persons receive the organic exemption in a timely manner. Moreover, there should be no deliberation based on the information that is requested on the form; it should be readily apparent whether or not applicants qualify. However, we recognize that boards may need additional time up-front to establish procedures. To that end, we amended the rule to allow boards 60 days to grant exemptions within the first 6 months of this rule's effective date. After 6 months, the timeframe will revert to 30 days.

*Notification of Denial:* One commenter said that the rule should specify in writing that farmers who are denied the exemption are timely notified in writing. The regulatory language was amended to reflect that persons denied the exemption will be notified in writing within the same timeframe as those granted the exemption.

An organic organization said that the rule should clarify that a person meeting the requirements of the application is presumed to be exempt and should further clarify the circumstances under which the applicant could be denied exemption. To clarify, any person meeting all criteria will be granted the exemption. Reasons for denial include

lack of NOP certification, failure to meet the definition of person, or failure to meet the threshold of solely 100 percent organic.

In addition, we described an appeals process in the supplementary information.

**Recordkeeping:** One commenter said that the rule should include a requirement to maintain exemption records for a term that is consistent with the term required for keeping records for compliance audits, and three commenters (one research and promotion board and two industry organizations) said that the rule should specify that boards and recordkeepers must maintain records for 7 years for compliance purposes. We did not adopt either of these suggestions because the individual orders and/or regulations already address recordkeeping requirements, and the 7-year period is beyond the 2 years generally specified.

Two commenters said that the rule should specify an obligation to make available all records necessary to verify compliance, but we did not incorporate this suggestion. Recordkeeping requirements are already spelled out in the various orders and/or regulations, and specifying an obligation to make these documents available would be redundant.

**Collecting Handlers:** A few commenters wanted to replace the provisions requiring the person to provide a copy of the exemption certificate to each person responsible for collecting and remitting the assessment. Instead, the person would be required to provide a correctly completed original and numbered exemption certificate at the time of sale from a book of certificates obtained from the board. We did not adopt this suggestion because we believe it is unnecessary and would put undue burden on the exempt person and the boards.

Several commenters said that for the beef program, the collecting point (the one who reports to the State beef council) should list cattle on the monthly remittance report like they would report another State of origin. We reviewed this recommendation and determined that no change was needed in the rule. Instead, the boards will develop guidance or instructions for collecting handlers or whatever party is responsible for collecting and remitting assessments to report to the boards any commodity that was not assessed because of the organic exemption. This reporting would be handled on existing handler or remittance forms and would not add additional paperwork burden.

One commenter said that the rule should specify that any watermelon

handler that handles both organic and non-organic products cannot exempt any part of the assessments collected from the producer, nor from that handler's portion of the assessment for either organic or non-organic product. In response to this comment, we did not amend the rule. Under the watermelon program, handlers are assessed in addition to producers and importers. In the case of a producer selling to a handler, the producer pays an assessment on watermelons produced, which the handler collects and remits, and the handler also pays an assessment on watermelons handled. To be exempt, the producer must meet the specified criteria; likewise, for the handler to be exempt, the handler must meet the specified criteria. If the producer is exempt but the handler is not, the handler must pay assessments on all products handled. In no case, though, would the handler have to remit an assessment from an exempt producer on watermelons produced by that producer.

One commenter said that specific reporting procedures need to be included for producers and collecting points to ensure that organic and nonorganic commodities are not mixed and that only certified organic commodities are subject to the exemption. In response to this comment, we did not make any changes to the rule. Persons are exempt under this rule, not commodities. Since only persons certified as 100 percent organic can be exempt, there should be no question of mixing organic and nonorganic commodities in terms of the exemption.

**Compliance:** A number of commenters said that AMS and NOP should work in active cooperation with the boards on compliance. Another commenter said that sellers, purchasers, and handlers should be able to access full disclosure of animals that have been exempt from assessment; to that end, USDA should maintain a database indicating the name and address of any exempt person and the period of exemption. A number of commenters said that the rule should require USDA to provide quarterly updates to boards showing farmers certified as organic and those whose certification has been revoked. We are not establishing a database for public access, but we concur that we should assist the boards' compliance efforts. Therefore, while no change was made to the regulatory text, we will share with the boards information in some form as appropriate for the boards to maintain an effective compliance program.

We did not adopt suggestions from commenters to specify that a person claiming organic exemption is subject to a board audit or to urge board staff to conduct regular audits. Since the boards already have the authority to conduct audits to maintain or verify compliance, it was unnecessary to articulate this in the regulatory text.

**Harmonized Tariff Schedule (HTS) Numbers:**

One commenter asked for clarification on the process by which a board issued an HTS classification to an importer, while another said that the rule should specify that boards should consult with the U.S. Customs Service to establish an HTS number. However, no changes were made to the rule. AMS will work with the boards to establish HTS numbers, and we do not believe the process needs to be articulated in the regulatory text.

**State Programs:** A commenter expressed concern that organic farmers could incorrectly believe that they are also exempt from paying assessments required by State law. Similarly, other commenters said that it should be the boards' responsibility to inform the exempt person that the exemption only covers national program assessments and not a State program authorized by State law and that the certificate of exemption should clearly state that the person is not exempt under any State law. We did not adopt these suggestions. The 17 programs affected by this exemption are identified in this final rule as the only programs for which an organic exemption can be obtained, and we do not believe it is necessary to articulate this in the regulatory text.

**Other Comments:** We did not adopt a suggestion from several commenters that the rule state that the exemption is granted to the person and not the commodity. We believe the rule is clear that persons are exempt from paying assessments, not that commodities are exempt from being assessed.

One commenter expressed concern about the administration and implementation of the exemption and said that there should be one governing body controlling certification and exemption requirements. This commenter suggested that the boards would best be able to spot forgeries and should therefore be the designated governing body. We determined that no changes to the rule are necessary. The proposed rule specified that the boards or their designees administer the exemption. The reason designees are included is that in the beef program, the Qualified State Beef Councils are responsible for receiving assessments, and the Board only receives assessments

directly in cases where there is no State beef council.

Other commenters said that the rule should specify that the exempt organic person cannot be owned or affiliated with a person who pays assessments to a research and promotion board, nor can they be affiliated with a person who produces conventional products. In response to these comments, one commenter stated that nothing in the law permits USDA to make distinctions based on corporate structure. We reviewed these comments. The Farm Bill specifies that the exemption is granted to persons that produce and market solely 100 percent organic products, and a person can be an individual, group of individuals, corporation, association, cooperative, or other business entity. Therefore, no changes were made to the rule.

A commenter said that the rule should more strictly and accurately specify and define those who qualify and do not qualify. However, we did not believe any changes to the rule were necessary in light of the comment discussion, supplementary information, and examples contained herein addressing eligibility.

We did not adopt a suggestion from one commenter to address importers in the dairy regulations (7 CFR part 1105). Separate rulemaking to assess importers under the dairy promotion and research program is not finalized. Consequently, we cannot address the organic exemption for importers under the dairy promotion and research regulations until a final rule has been issued and importers become subject to assessment.

We incorporated, with modification as necessary, certain editorial comments concerning regulatory text to correct and consolidate references to assessment payers and clarify provisions in 7 CFR part 1240.

We incorporated, with modification as necessary, a comment concerning regulatory text in 7 CFR part 1260 to clarify that the board or a State beef council receives assessments under the beef promotion and research program.

#### Provisions of This Rule

The FAIR Act amendment covers research and promotion programs established under either free-standing legislation (beef, cotton, eggs, fluid milk, dairy, Hass avocados, honey, mushrooms, popcorn, pork, potatoes, soybeans, and watermelons) or the Commodity Promotion, Research, and Information Act of 1996 (blueberries, lamb, mangos, and peanuts).

When the proposed rule on this organic exemption was issued, rulemaking to establish a mango

program was ongoing. A second proposed rule on the Mango Promotion, Research and Information Order was published in the October 9, 2003, issue of the **Federal Register** [68 FR 58556]. In November 2003, first handlers and importers of mangos voted to approve a national mango promotion, research, and information order. A final rule was published on October 4, 2004 [69 FR 59120], and the mango promotion, research, and information program became effective November 4, 2004, and was codified at 7 CFR part 1206. The proposed rule on the organic exemption outlined that if the mango program were finalized, provisions similar to those proposed for Hass avocados (7 CFR part 1219) would be added to exempt persons producing and marketing solely 100 percent organic products from paying assessments under a mango research and promotion program. Consequently, a new Subpart C was added to 7 CFR part 1206 to establish rules and regulations addressing how eligible organic first handlers and importers of mangos would obtain an exemption.

Wholly industry-funded and -operated and charged with creating and expanding markets for the agricultural commodities they represent, these programs are overseen by AMS, including review of budgets, plans, and projects. Producers, handlers, importers, and/or others in the marketing chain pay assessments to these commodity boards to fund the programs. Industries voluntarily request these programs. Research and promotion programs allow industries to establish, finance, and carry out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for their commodities.

Under this proposal, language would be added to the orders, plans, and/or regulations of each program specifying the criteria for identifying persons eligible to obtain an assessment exemption and procedures for applying for an exemption. The provision would be tailored to each of the 17 programs, all of which have structural and operational distinctions. The result would be some procedural differences between the programs' regulatory language. For example, under the cotton program, producers would be required to reapply for exemption every year on or before the beginning of the crop year [see § 1205.519(b)]. Under the watermelon program, however, producers and handlers would reapply for exemption on or before January 1 of each year [see § 1210.516(b)].

#### Who Is Eligible for Exemption

To be eligible for an exemption, the person must be subject to an assessment under a research and promotion program administered by AMS. Of the 17 research and promotion programs covered under this proposed rule, 14 assess producers. Most of these programs also assess other entities, including handlers, first handlers, importers, exporters, feeders, and seed stock producers. One program assesses first handlers and importers, and two programs assess processors.

The FAIR Act amendment specifies that to be exempt from a commodity promotion assessment, a person—meaning an individual, group of individuals, corporation, association, cooperative, or other business entity—must produce and market solely 100 percent organic products and must not produce any nonorganic or conventional products. For purposes of this rule, *produce and market* means the function the person performs requiring the payment of an assessment. For producers and seed stock producers, it means to produce the commodity; for handlers and first handlers, it means to handle; for importers, it means to import; for processors, it means to process; for feeders, to produce by feeding; and for exporters, to export.

Regardless, to be exempt, all persons must possess certification from a USDA-accredited certifying agent and certify that the farm or handling operation meets the requirements of 100 percent organic as defined in 7 CFR part 205 and other specified criteria. Exemption eligibility is based on a three-prong test: (1) The person must be a certified organic producer or operator; (2) the person must be eligible to label all products as 100 percent organic as described in 7 CFR part 205; and (3) the 100 percent organic labeling eligibility applies to every commodity the person produces and markets.

Selling an organic product in the conventional marketplace does not nullify the exemption eligibility of a producer, seed stock producer, or feeder. A person who produces and markets agricultural commodities under an approved organic system plan and is not a split operation as described under the NOP will not be disqualified from exemption when the agricultural commodities produced and marketed under the plan are not sold, labeled, or represented as organic. In other words, if products are certified as 100 percent organic, a person who sells some of these products in the conventional marketplace is not disqualified from the exemption. There could be a variety of

reasons why a producer, seed stock producer, or feeder would sell organic products through conventional channels. These include lack of demand for organic products or lack of sufficient organic markets.

#### Examples

- A farmer grows 100 percent organic soybeans and 100 percent organic corn. The farmer is eligible for exemption under the soybean promotion, research, and consumer information program.

- A farmer grows 100 percent organic soybeans and conventional corn. While the farmer's soybean land may be certified as operating under an organic system plan, the farmer is a split operation and is therefore not eligible for exemption under the soybean promotion, research, and consumer information program because the farmer's production is not solely 100 percent organic.

- An importer imports only 100 percent organic boxed beef. The importer is eligible for exemption under the beef promotion and research program.

- A farmer grows 100 percent organic soybeans but, because of a State-mandated disease eradication program, must sell the affected soybeans conventionally for the next 3 years. Assuming the farmer remains certified, the farmer is eligible for exemption under the soybean promotion, research, and consumer information program, even during the 3-year period.

- A watermelon handler receives solely 100 percent organic watermelons. One of the handler's producers is required by the State government to spray all or a portion of the watermelons with chemicals to eradicate a disease. The producer maintains NOP certification during the 3-year period in which the watermelons must be sold conventionally, during which time the handler handles this producer's watermelons. The handler is not eligible for exemption.

- A certified producer grows soybeans which are 100 percent organic. The producer purchases neighboring land that has grown conventional soybeans and plans to farm that land organically. Under NOP rules, it will be 3 years before that newly acquired land can be certified. The producer is not eligible for exemption under the soybean promotion, research, and consumer information program because the producer does not meet the threshold of *solely* 100 percent organic.

- A watermelon handler receives solely 100 percent organic watermelons from a watermelon producer who also grows conventional products and is

certified under NOP as a split farm operation. The handler handles only 100 percent organic products. The handler is eligible for exemption.

- A fluid milk processor processes organic milk, but the milk does not meet the threshold of 100 percent organic as defined under NOP because of the addition of vitamins. The fluid milk processor is not eligible for exemption.

#### Procedures

According to the 2002 Farm Bill, any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, is exempt from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in 7 CFR 205. Produce and market means the function the person performs that requires the payment of assessment. For producers, produce and market means to produce the commodity. For handlers, it means to handle; for importers, to import; for processors, to process; etc.

To be exempt from paying assessments under a research and promotion program administered by AMS, the person would submit an application—"Organic Exemption Request Form"—to the applicable board or council. The form would need to be submitted to the board, council, or other party designated by the board or council prior to or during the initial applicable assessment period and annually thereafter as long as the applicant continues to be eligible for the exemption. This application would include the applicant's name, name and address of the company, telephone and fax numbers, a copy of the applicant's organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. This signed declaration includes additional information necessary to demonstrate eligibility.

If the applicant complies with these requirements and is eligible for an assessment exemption, the board or council would approve the exemption and notify the applicant. For the first 6 months following the rule's effective date, boards or councils will have 60 days to approve the exemption request. After that, boards or councils will have 30 days to approve the exemption request.

If the application is disapproved, the board or council would notify the applicant of the reason(s) for disapproval within the same timeframe. Applicants may appeal if a board or council does not approve their exemption requests. The first appeal level would be the board or council. If the applicant is still not satisfied with the decision made by the committee or board on appeal, the applicant may appeal to USDA. All decisions of USDA will be final.

For the purpose of assuring fair and consistent treatment of all persons applying for organic assessment exemptions, USDA has the right to review any decision made by the boards or councils.

Most of the programs require that the person responsible for remitting assessments on behalf of the exempt party maintain a record of that party's exemption. In most cases, this is a handler maintaining a record of an exempt producer.

#### Paperwork Reduction Act

The provisions of the proposed rule were carefully reviewed, and every effort was made to minimize information collection requirements and still ensure effective administration of the exemption. In accordance with OMB regulations [5 CFR 1320], which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by this rule were submitted to OMB as a reinstatement with change under control number 0581-0217.

This action will enable organic producers and marketers to apply for exemption under the following 17 research and promotion programs: 7 CFR parts 1150, 1160, 1205, 1206, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280. Producers and marketers include producers, handlers, first handlers, processors, exporters, feeders, and seed stock producers.

Form AMS-15, Organic Exemption Request Form, was described in the proposed rule as requiring the applicant's name, name and address of the company, telephone and fax numbers, a copy of the applicant's organic farm or organic handling certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. This signed certification includes providing certain additional information. This is a list of

commodities marketed by the applicant and assertions that the applicant is not a split operation and produces and markets only products eligible to be labeled as 100 percent organic. Also, the form asks for an e-mail address, but this is optional.

As a result of comments received, the Organic Exemption Request Form was modified to eliminate some information that was part of the signed certification that we no longer deemed applicable and add some information that was determined to be necessary. This revised information has no affect on the burden or description of the form.

**Title:** Organic Producer and Marketer Exemption from Assessment Under Research and Promotion Programs

**OMB Number:** 0581-0217.

**Type of Request:** Reinstatement, with change, of a previously approved collection for which approval has expired.

**Abstract:** The information collection requirements in this request are essential to carry out the intent of the 2002 Farm Bill in exempting from assessment persons who produce and market solely 100 percent organic products.

The request for approval of the new information collection is as follows:

**Form AMS-15, Organic Exemption Request Form:**

**Estimate of Burden:** Public reporting burden for this collection of information is estimated to average 30 minutes per response.

**Respondents:** Eligible Certified Organic Producers and Marketers.

**Estimated Number of Respondents:** 2,165.

**Estimated Number of Responses per Respondent:** 1.

**Estimated Total Annual Burden on Respondents:** 1,082.5 hours.

Most of the programs require that the person responsible for remitting assessments on behalf of the exempt party maintain a record of that party's exemption. In most cases, this is a handler maintaining a record of an exempt producer. The burdens on these persons for such recordkeeping requirements are included in the information collection requests previously approved for all of the programs—Hass avocados under OMB control number 0581-0197, beef and pork under 0590-0001, lamb under 0581-0198, mangos under 0581-0209, and the rest under 0581-0093.

The information collection will be used only by authorized representatives of USDA, including AMS staff, and authorized representatives of the boards and councils or their designees.

Authorized representatives of the boards

and councils (or their designees) will be the primary users of the information, and AMS will be the secondary user.

#### Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Agricultural Marketing Service (AMS) has examined the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

As previously mentioned, producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers pay assessments to the national boards or councils that administer various commodity research and promotion programs, or in some cases to other parties designated by a board or council to collect assessments. Initiated as a result of the 2002 Farm Bill, which amended Section 501 of the Federal Agricultural Improvement and Reform Act of 1996 (FAIR Act), this rule exempts from assessment those entities that produce and market solely 100 percent organic products.

To obtain the exemption, eligible producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers must submit a request for exemption to the appropriate board or council on a form. While the rule imposes certain reporting and recordkeeping requirements on these entities, the form requires the minimum information necessary to effectively administer the exemption provision, and its use is necessary for compliance purposes.

In preparing its initial regulatory flexibility analysis, AMS attempted to identify the entities that would be affected by the proposed rule and to examine the potential impact on such entities. However, information was not available to allow AMS to determine whether any importers would be covered by this proposed rule under the beef and pork programs. In addition, information was not available to allow AMS to identify the respondents under the lamb program as producers, first handlers, feeders, exporters, and seed stock producers, so AMS addressed the lamb program in the aggregate to determine the economic impact. Because a provision for mangos was included in this final rule, information on mangos was obtained and used to prepare the final regulatory flexibility analysis.

The estimated respondents providing new information to the boards or councils and the burden associated with

the information collections is as follows. There would be an estimated 2,165 respondents providing new information to the boards or councils under the following programs:

Beef: 167 producers, number of importers unknown (167 total).

Blueberries: 7 producers, 0 importers (7 total).

Cotton: 100 producers, 10 importers (110 total).

Dairy: 600 producers.

Eggs: 0 producers.

Fluid milk: 0 processors.

Hass avocados: 60 producers, 0 importers (60 total).

Honey: 10 producers, 0 importers (10 total).

Lamb: 40 respondents (including producers, first handlers, feeders, seed stock producers, and exporters).

Mangos: 1 first handler, 5 importers (6 total).

Mushrooms: 2 producers, 0 importers (2 total).

Peanuts: 54 producers.

Popcorn: 0 processors.

Pork: 18 producers, number of importers unknown (18 total).

Potatoes: 35 producers, 0 importers (35 total).

Soybeans: 1,028 producers.

Watermelons: 27 producers, 1 handler, 0 importers (28 total).

No respondents were identified for the fluid milk, popcorn, and egg programs. The fluid milk and egg programs exempt smaller entities from assessment—fluid milk processors processing 3 million pounds or less during the first month of the fiscal period and egg producers owning 75,000 or fewer laying hens. Among assessment payers, no solely 100 percent organic processors or producers are known; if they exist, they are already exempt for *de minimis* reasons. No popcorn processors that produce (as defined in this rule) solely 100 percent organic product were identified because of the current nature of the popcorn industry.

The burden associated with the information collection would be \$10,825.00 for all respondents, or \$5.00 per respondent. These totals have been estimated by multiplying the burden hours associated with the exemption request form by \$10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

Under the 17 research and promotion programs, those assessed pay assessments to the boards and councils that administer the programs. The total annual collections and assessment rates for each board or council are as follows:

Beef: \$83.6 million; \$1 per head.

Blueberries: \$1.5 million; \$12 per ton.  
 Cotton: \$65.2 million; \$1 per bale plus 0.5 percent of the value of the lint in each bale.

Dairy: \$255.0 million; 15 cents per cwt.

Eggs: \$19.7 million; 10 cents per 30-dozen case of eggs.

Fluid milk: \$106.2 million; 20 cents per cwt.

Hass avocados: \$16.3 million; 2.5 cents per pound.

Honey: \$3.6 million; 1 cent per pound.

Lamb: \$3.5 million; \$0.005 per pound of live weight, \$0.30 per head on lambs purchased for slaughter.

Mangos: \$2.5 million; 0.5 cents per pound.

Mushrooms: \$1.7 million; .002 cents per pound.

Peanuts: \$6.7 million; 1 percent of the value of the peanuts.

Popcorn: \$558,000; 6 cents per cwt.

Pork: \$47.8 million; 0.40 percent of the market value.

Potatoes: \$8.6 million; 2 cents per cwt.

Soybeans: \$77.8 million; 1/2 of 1 percent of the net market value.

Watermelons: \$1.5 million; 2 cents per cwt for domestic watermelons

produced, 2 cents per cwt for domestic watermelons first handled, 4 cents per cwt for imported watermelons.

The Small Business Administration [13 CFR 121.201] defines small agricultural producers as those having annual receipts of \$750,000 or less annually and small agricultural service firms as those having annual receipts of \$5 million or less. These include producers, feeders, and seed stock producers. Importers, exporters, handlers, and first handlers would be considered agricultural service firms. Using these criteria, most if not all of the agricultural producers and agricultural service firms covered by this rule would be considered small businesses.

This rule allows producers and marketers of solely 100 percent organic products to request an exemption from paying assessments. These exemptions were estimated by multiplying the exempt volume by the assessment rate, and the amounts for exempt entities would be as follows:

Beef: producers—\$15,197; importers—unknown.

Blueberries: producers—\$5,833; importers—\$0 (\$5,833 total).

Cotton: producers—\$52,000; importers—\$25,000 (\$77,000 total).

Dairy: producers—\$1.33 million.

Eggs: producers—\$0.

Fluid milk: processors—\$0.

Hass avocados: producers—\$91,000; importers—\$0 (\$91,000 total).

Honey: producers—\$11,174; importers—\$0 (\$11,174 total).

Lamb: \$2,987 total (includes producers, first handlers, feeders, seed stock producers, and exporters).

Mangos: \$30,000 (includes first handlers and importers).

Mushrooms: producers—\$14,400; importers—\$0 (\$14,400 total).

Peanuts: producers—\$18,690.

Popcorn: processors—\$0.

Pork: producers—\$966; importers—unknown.

Potatoes: producers—\$45,000; importers—\$0 (\$45,000 total).

Soybeans: producers—\$40,273.

Watermelons: producers—\$17,890; handlers—\$950; importers—\$0 (\$18,840 total).

Therefore, the estimated net economic impact of this rule on the respondents is as follows:

Program	Paperwork burden costs	Exemption from assessments	Net amount
Beef .....	\$835	\$15,197	\$14,362
Blueberries .....	35	5,833	5,798
Cotton .....	550	77,000	76,450
Dairy .....	3,000	1,330,000	1,327,000
Eggs .....	0	0	0
Fluid milk .....	0	0	0
Hass avocados .....	300	91,000	90,700
Honey .....	50	11,174	11,124
Lamb .....	200	2,987	2,787
Mangos .....	60	30,000	29,940
Mushrooms .....	10	14,400	14,390
Peanuts .....	270	18,690	18,420
Popcorn .....	0	0	0
Pork .....	90	966	876
Potatoes .....	175	45,000	44,825
Soybeans .....	5,140	40,273	35,133
Watermelons .....	140	18,840	18,700
<b>Total .....</b>	<b>10,825</b>	<b>1,701,360</b>	<b>1,690,505</b>

Based on the above figures, this rule should have only a beneficial economic effect on small entities.

Reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

With regard to alternatives, the FAIR Act required USDA to take this action, which will lessen the assessment costs for persons who produce and market

solely 100 percent organic products. In drafting the exemption procedures, every effort has been made to minimize the burden on the persons impacted and to simplify the process. The anticipated assessment reductions for eligible persons are expected to greatly outweigh the costs related to the additional reporting.

#### List of Subjects

7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

7 CFR Part 1160

Fluid milk products, Milk, Promotion.

7 CFR Part 1205

Advertising, Agricultural Research, Cotton, Reporting and recordkeeping requirements.

7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Mangos, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

**7 CFR Part 1207**

Advertising, Agricultural research, Potatoes, Reporting and recordkeeping requirements.

**7 CFR Part 1209**

Advertising, Agricultural Research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

**7 CFR Part 1210**

Administrative practice and procedure, Advertising, Agricultural research, Reporting and recordkeeping requirements, Watermelons.

**7 CFR Part 1215**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Popcorn, Promotion, Reporting and recordkeeping requirements.

**7 CFR Part 1216**

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

**7 CFR Part 1218**

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Blueberry promotion, Reporting and recordkeeping requirements.

**7 CFR Part 1219**

Administrative practice and procedure, Advertising, Consumer information, Hass avocados, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

**7 CFR Part 1220**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

**7 CFR Part 1230**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products.

**7 CFR Part 1240**

Advertising, Agricultural research, Honey, Imports, Reporting and recordkeeping requirements.

**7 CFR Part 1250**

Administrative practice and procedure, Advertising, Agricultural

research, Eggs and egg products, Reporting and recordkeeping requirements.

**7 CFR Part 1260**

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Meat and meat products, Reporting and recordkeeping requirements.

**7 CFR Part 1280**

Administrative practice and procedure, Advertising, Consumer information, Lamb and lamb products, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 1150, 1160, 1205, 1206, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280 are amended as follows:

**PART 1150—DAIRY PROMOTION**

■ 1. The authority citation for part 1150 is revised to read as follows:

**Authority:** 7 U.S.C. 4501–4514 and 7 U.S.C. 7401.

■ 2. Add a new § 1150.157 to read as follows:

**§ 1150.157 Assessment exemption.**

(a) A producer described in § 1150.152 (a) and (b) who operates 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, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, a producer pursuant to § 1150.152 (a) and (b) 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 July 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If a producer described in § 1150.152 (a) and (b) complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer described in paragraph (c) of this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152.

(f) The person responsible for remitting assessments to the Board pursuant to § 1150.152 shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board pursuant to § 1150.172.

(g) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

**PART 1160—FLUID MILK PROMOTION**

■ 3. The authority citation for part 1160 is revised to read as follows:

**Authority:** 7 U.S.C. 6401–6417 and 7 U.S.C. 7401.

■ 4. In § 1160.211, paragraph (a)(1) is revised to read as follows:

**§ 1160.211 Assessments.**

(a)(1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of \$.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the

United States by such fluid milk processor. Any fluid milk processor who markets milk of its own production directly to consumers as prescribed under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108 or § 1160.215, shall also pay the assessment under this subpart. The Secretary shall have the authority to receive assessments on behalf of the Board.

\* \* \* \* \*

■ 5. A new § 1160.215 is added to read as follows:

**§ 1160.215 Assessment exemption.**

(a) No assessment shall be required on fluid milk products exported from the United States.

(b) A fluid milk processor described in § 1160.211(a) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; processes 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 the payment of assessments.

(c) To apply for an assessment exemption, a fluid milk processor described in § 1160.211(a) 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 July 1 as long as the fluid milk processor continues to be eligible for the assessment exemption.

(d) The request shall include the following: The fluid milk processor's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (b) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(e) The Board will grant an assessment exemption to any fluid milk processor meeting the criteria in § 1160.215(b) and issue a Certificate of Exemption to the fluid milk processor. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(f) The exemption will apply not later than the last day of the month following

the Certificate of Exemption issuance date.

**PART 1205—COTTON RESEARCH AND PROMOTION**

■ 6. The authority citation for part 1205 is revised to read as follows:

**Authority:** 7 U.S.C. 2101–2118 and 7 U.S.C. 7401.

■ 7. A new § 1205.519 is added to read as follows:

**§ 1205.519 Organic exemption.**

(a) A producer who operates 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, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, an eligible cotton 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 beginning of the crop year as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells cotton. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic cotton and 100 percent organic cotton products—on a form provided by the Board—at any time initially and annually thereafter as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic cotton and cotton products bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

**PART 1206—MANGO PROMOTION, RESEARCH, AND INFORMATION**

■ 8. The authority citation for part 1206 is revised to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 9. Add a new Subpart C—Rules and Regulations to read as follows:

**Subpart C—Rules and Regulations****§ 1206.200 Terms defined.**

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Mango Promotion, Research, and Information Order.

**§ 1206.201 Definitions.**

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

**§ 1206.202 Exemption for organic mangos.**

(a) A first handler who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan, handles 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 the payment of assessments.

(b) To obtain this exemption, an eligible first handler 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 beginning of the fiscal period as long as the first handler continues to be eligible for the exemption.

(c) The request shall include the following: The first handler's name and address, a copy of the organic farm or organic handling 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.

(d) If the first handler complies with the requirements of paragraph (a) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the first handler. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board

and request an exemption from assessment on 100 percent organic mangos—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 required of first handlers in paragraph (c). 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 within the applicable timeframe. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic mangos bearing this HTS classification assigned by the Board will not be subject to assessments.

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

**PART 1207—POTATO RESEARCH AND PROMOTION**

■ 10. The authority citation for part 1207 is revised to read as follows:

**Authority:** 7 U.S.C. 2611–2627 and 7 U.S.C. 7401.

■ 11. A new § 1207.514 is added to read as follows:

**§ 1207.514 Exemption for organic potatoes.**

(a) A producer who operates 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, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the 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 July 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified in

paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells potatoes. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic potatoes, potato products, and seed potatoes—on a form provided by the Board—at any time initially and annually thereafter on or before July 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic potatoes, potato products, and seed potatoes bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption

under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

## PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION

- 12. The authority citation for part 1209 is revised to read as follows:

**Authority:** 7 U.S.C. 6101–6112 and 7 U.S.C. 7401.

- 13. In § 1209.52, revise paragraph (a) to read as follows:

### § 1209.52 Exemption from assessment.

(a) The following persons shall be exempt from assessments under this part:

- (1) A person who produces or imports, on average, 500,000 pounds or less of mushrooms annually; and
- (2) A producer who operates 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, except as provided for in § 1209.252(a)(2)(vi); and is not a split operation; and

(3) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation.

\* \* \* \* \*

- 14. In § 1209.252, revise paragraph (a) to read as follows:

### § 1209.252 Exemption procedures.

(a) *Types of exemptions and requirements.* (1) Any person who produces or imports, on average, 500,000 pounds or less of mushrooms annually and who desires to claim an exemption from assessments during a fiscal year shall apply to the Council, on a form provided by the Council, for a Certificate of Exemption. The producer or importer shall certify that the person's production or importation of mushrooms shall not exceed 500,000 pounds, on average, for the fiscal year for which the exemption is claimed. An average shall be calculated by averaging a person's estimated production or importation for the fiscal year for which an exemption is claimed with the

person's production or importation in the preceding fiscal year.

(2) To apply for an exemption for organic mushrooms:

(i) An eligible mushroom producer shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(ii) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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 Council and with the approval of the Secretary.

(iii) If the producer complies with the requirements of § 1209.52 (a)(2), the Council will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Council will have 60 days to approve the exemption request; after August 15, 2005, the Council will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(iv) An eligible importer may submit documentation to the Council and request an exemption from assessment on 100 percent organic mushrooms—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers. If the importer complies with the requirements of this section, the Council will grant the exemption and issue a Certificate of Exemption to the importer. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic mushrooms bearing this HTS classification assigned by the Council will not be subject to assessments.

(v) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(vi) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

## PART 1210—WATERMELON RESEARCH AND PROMOTION

- 15. The authority citation for part 1210 is revised to read as follows:

**Authority:** 7 U.S.C. 4901–4916 and 7 U.S.C. 7401.

- 16. A new § 1210.516 is added to read as follows:

### § 1210.516 Exemption for organic watermelons.

(a) A producer who produces only products that are eligible to be labeled as 100 percent organic under the National Organic Program (NOP) (7 CFR part 205), except as provided for in paragraph (h) of this section, or a handler who handles only products that are eligible to be labeled as 100 percent organic under the NOP; and who operates under an approved NOP system plan, and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for this exemption, the producer or handler shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer or handler continues to be eligible for the exemption.

(c) The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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.

(d) If the producer or handler complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer or handler. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells watermelons. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic watermelons. The importer may request the exemption—on a form provided by the Board—at any time initially and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers and handlers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic watermelons bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for

exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

#### **PART 1215—POPCORN PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

- 17. The authority citation for part 1215 is revised to read as follows:

**Authority:** 7 U.S.C. 7481–7491 and 7 U.S.C. 7401.

- 18. Section 1215.52 is revised to read as follows:

##### **§ 1215.52 Exemption from assessment.**

(a) Persons that process and distribute 4 million pounds or less of popcorn annually, based on the previous year, shall be exempted from assessment.

(b) Persons that operate under an approved National Organic Program (NOP) (7 CFR part 205) system plan; process only products that are eligible to be labeled as 100 percent organic under the NOP; and are not split operations shall be exempt from the payment of assessments.

(c) To claim an exemption, persons shall apply to the Board, in the form and manner prescribed in the rules and regulations.

- 19. Section 1215.300 is amended by:
- (a) Revising paragraphs (b) and (c);
- (b) Redesignating paragraph (d) as paragraph (f);
- (c) Adding new paragraphs (d) and (e).

The revisions read as follows:

##### **§ 1215.300 Exemption procedures.**

\* \* \* \* \*

(b) Persons that process solely 100 percent organic products and that do not process any conventional or nonorganic products as provided in § 1215.52 paragraph (b) of this part may apply for an exemption by submitting a request for exemption to the Board on a form provided by the Board at any time initially. The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(d) Any person who desires to renew the exemption from assessments for a subsequent fiscal year shall reapply to the Board by January 1 of that year.

(e) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

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#### **PART 1216—PEANUT PROMOTION, RESEARCH, AND INFORMATION**

- 20. The authority citation for part 1216 is revised to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

- 21. Section 1216.56 is added to read as follows:

##### **§ 1216.56 Exemption for organic peanuts.**

(a) A producer who operates 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, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) In order to apply for this exemption, an eligible peanut 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 August 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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.

(d) If the producer complies with the requirements of this section, the Board will approve the exemption and issue a

Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for approval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells peanuts. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

#### **PART 1218—BLUEBERRY PROMOTION, RESEARCH, AND INFORMATION**

■ 22. The authority citation for part 1218 is revised to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 23. Section 1218.53 is amended by redesignating paragraphs (b) through (e) as (h) through (k), adding new paragraphs (b) through (g), and revising paragraph (a) to read as follows:

##### **§ 1218.53 Exemption procedures.**

(a) Any producer who produces less than 2,000 pounds of blueberries annually shall be exempt from the payment of assessments. Such producer may apply to the USACBC—on a form provided by the USACBC—for a certificate of exemption. Such producer shall certify that the producer's production of blueberries shall be less than 2,000 pounds for the fiscal year for which the exemption is claimed.

(b) Any importer who imports less than 2,000 pounds of fresh and frozen

blueberries annually shall be exempt from the payment of assessments. Such importer may apply to the USACBC—on a form provided by the USACBC—for a certificate of exemption. Such importer shall certify that the importer's importation of fresh and frozen blueberries shall not exceed 2,000 pounds for the fiscal year for which the exemption is claimed.

(c) A producer who operates 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, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(d) To apply for this exemption, a producer shall submit a request for exemption to the USACBC—on a form provided by the USACBC—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: The producer's name and address, with a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 CFR part 205), 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. If a producer complies with the requirements in paragraph (c) of this section, the USACBC will grant an assessment exemption and issue a certification of exemption to the producer. For exemption requests received on or before August 15, 2005, the USACBC will have 60 days to approve the exemption request; after August 15, 2005, the USACBC will have 30 days to approve the exemption request. If the application is disapproved, the USACBC will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic fresh and frozen blueberries—on a form provided by the USACBC—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall

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

(f) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

\* \* \* \* \*

#### **PART 1219—HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION**

■ 24. The authority citation for part 1219 is revised to read as follows:

**Authority:** 7 U.S.C. 7801–7813 and 7 U.S.C. 7401.

■ 25. In part 1219, add a new Subpart C—Rules and Regulations to read as follows:

##### **Subpart C—Rules and Regulations**

###### **§ 1219.200 Terms defined.**

Unless otherwise defined in this subpart, the definitions of terms used in this subpart shall have the same meaning as the definitions of such terms which appear in Subpart A—Hass Avocado Promotion, Research, and Information Order of this part.

###### **§ 1219.201 Definitions.**

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

**§ 1219.202 Exemption for organic Hass avocados.**

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To obtain this exemption, an eligible Hass avocado 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 November 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling 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.

(d) If the producer complies with the requirements of paragraph (a) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells Hass avocados. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic Hass avocados—on a form provided by the Board—at any time initially and annually thereafter on or before November 1 as long as the importer

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

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

**PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

■ 26. The authority citation for part 1220 is revised to read as follows:

**Authority:** 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

■ 27. A new § 1220.302 is added to read as follows:

**§ 1220.302 Exemption.**

(a) A producer who operates 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, except as provided for in paragraph (g) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board or other party as designated by the Board—on a form provided by the Board—at any time

initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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.

(d) If the producer complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each first purchaser. The first purchaser shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) The exemption will apply at the first reporting period following the issuance of the exemption.

(g) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

**PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION**

■ 28. The authority citation for part 1230 is revised to read as follows:

**Authority:** 7 U.S.C. 4801–4819 and 7 U.S.C. 7401.

- 29. A new § 1230.102 is added to read as follows:

**§ 1230.102 Exemption.**

(a) A producer who operates 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, except as provided for in paragraph (i) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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.

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment to the Board.

(f) The person responsible for collecting and remitting the assessment to the Board shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from

assessment on 100 percent organic porcine animals or pork and pork products—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic porcine animals or pork and pork products bearing this HTS classification assigned by the Board will not be subject to assessments.

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

**PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION**

- 30. The authority citation for part 1240 continues to read as follows:

**Authority:** 7 U.S.C. 4601–4612 and 7 U.S.C. 7401.

- 31. Section 1240.42 is amended by:
- (a) Redesignating paragraph (d) as paragraph (e).
- (b) Revising paragraph (c).
- (c) Adding new paragraph (d). The revisions read as follows:

**§ 1240.42 Exemption from assessment.**

\* \* \* \* \*

(c) If, after a person has been exempt from paying assessments for any year

pursuant to this section, and the person no longer meets the requirements of paragraphs (a) and (b) of this section for exemption, the person shall file a report with the Board in the form and manner prescribed by the Board and pay an assessment on or before March 15 of the subsequent year on all honey or honey products produced or imported by such person during the year for which the person claimed the exemption.

(d) A producer who operates 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, except as provided for in § 1240.114 (f); and is not a split operation shall be exempt from the payment of assessments. An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments.

\* \* \* \* \*

- 32. Amend § 1240.50 by revising paragraph (d) to read as follows:

**§ 1240.50 Reports.**

\* \* \* \* \*

(d) For persons who have an exemption from assessments under § 1240.42, such information as deemed necessary by the Board, and approved by the Secretary, concerning the exemption including disposition of exempted honey.

- 33. Revise § 1240.114 to read as follows:

**§ 1240.114 Exemption procedures.**

(a) To obtain a Certificate of Exemption for organic honey, 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 January 1 as long as the 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 farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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.

(b) If the producer complies with the requirements of this section, the Board will approve the exemption and issue a

Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(c) A producer receiving an organic exemption shall provide a copy of the Certificate of Exemption to each first handler, producer-packer, importer, and exporter to whom the producer sells honey. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(d) An importer who is eligible to be exempt from the payment of assessments on imported organic honey and honey products may request an exemption from assessment on 100 percent organic honey and honey products—on a form provided by the Board—at any time initially and on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers and producer-packers in paragraph (a) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic honey and honey products bearing this HTS classification assigned by the Board will not be subject to assessments.

(e) The exemption will apply immediately following issuance of the Certificate of Exemption.

(f) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer

area as described in 7 CFR part 205, provided all other criteria are met.

■ 34. In § 1240.115, revise paragraph (b)(1) to read as follows:

**§ 1240.115 Levy of assessments.**

\* \* \* \* \*

(b) \* \* \*

(1) Any persons other than importers holding a valid exemption certificate pursuant to § 1240.42 during the 12-month period ending on December 31; \* \* \* \* \*

■ 35. Amend § 1240.118 by revising the first sentence to read as follows:

**§ 1240.118 Reports of disposition of exempted honey.**

The Board may require reports by first handlers, producer-packers, importers, or any persons who receive an exemption from assessments under § 1240.42 on the handling and disposition of exempted honey. \* \* \*

■ 36. Revise § 1240.120 to read as follows:

**§ 1240.120 Retention period for records.**

Each producer, first handler, producer-packer, importer, or any person who receives an exemption from assessments under § 1240.42 and is required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability:

(a) One copy of each report made to the Board;

(b) Records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of such exempt person; and

(c) Such records as are necessary to verify such reports.

■ 37. Revise § 1240.121 to read as follows:

**§ 1240.121 Availability of records.**

Each producer, first handler, producer-packer, importer, or any person who receives an exemption from assessments under § 1240.42 and is required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

■ 38. Revise § 1240.122 to read as follows:

**§ 1240.122 Confidential books, records, and reports.**

All information obtained from the books, records, and reports of producers, first handlers, producer-packers, importers or any persons who

receive an exemption from assessments under § 1240.42 and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

**PART 1250—EGG RESEARCH AND PROMOTION**

■ 39. The authority citation for part 1250 is revised to read as follows:

**Authority:** 7 U.S.C. 2701–2718 and 7 U.S.C. 7401.

■ 40. Revise § 1250.530 to read as follows:

**§ 1250.530 Certification of exempt producers.**

(a) *Number of laying hens.* Egg producers not subject to the provisions of the Act pursuant to § 1250.348 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of § 1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use by exempt producers. The certification form shall be filed with each handler on or before January 1 of each year as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following: the name and address of the producer, the basis for producer exemption according to the requirements of § 1250.348, and the signature of the producer.

(b) *Organic Production.* A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (b)(6) of this section; and is not a split operation shall be exempt from the payment of assessments.

(1) To apply for an exemption under this section, a 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 January 1 as long as the producer continues to be eligible for the exemption.

(2) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed

certification that the applicant meets all of the requirements specified in paragraph (b) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(3) If the producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a certificate of exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(4) The producer shall provide a copy of the certificate of exemption to each handler to whom the producer sells eggs. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(5) The exemption will apply at the first reporting period following the issuance of the Certificate of Exemption.

(6) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

(c) If the exempt producer no longer qualifies for an exemption as specified in § 1250.348 or 1250.530(b), that producer shall notify, within 10 days, all handlers with whom the producer has filed a Certificate of Exemption.

## PART 1260—BEEF PROMOTION AND RESEARCH

■ 41. The authority citation for part 1260 is revised to read as follows:

**Authority:** 7 U.S.C. 2901–2911 and 7 U.S.C. 7401.

■ 42. A new § 1260.302 is added to read as follows:

### § 1260.302 Organic exemption.

(a) A producer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; only produces products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (i) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for an exemption under this section, the producer shall submit the request to the Board or QSBC—on a form provided by the Board or QSBC—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption.

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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.

(d) If the producer complies with the requirements of this section, the Board or QSBC will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board or QSBC will have 60 days to approve the exemption request; after August 15, 2005, the Board or QSBC will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment.

(f) The person responsible for collecting and remitting the assessment shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board or QSBC.

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic cattle or beef and beef products—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer

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

(h) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

## PART 1280—LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER

■ 43. The authority citation for part 1280 is revised to read as follows:

**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

■ 44. A new § 1280.406 is added to read as follows:

### § 1280.406 Exemption.

(a) A producer, seed stock producer, or feeder who produces (including producing by feeding) only products that are eligible to be labeled as 100 percent organic under the National Organic Program (NOP) (7 CFR part 205), except as provided for in paragraph (h) of this section; a handler who handles only products that are eligible to be labeled as 100 percent organic under the NOP; or an exporter who exports only products that are eligible to be labeled as 100 percent

organic under the NOP; and who operates under an approved NOP system plan and is not a split operation.

(b) To apply for an exemption under this section, the person shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the person continues to be eligible for the exemption.

(c) The request shall include the following: the person's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), 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.

(d) If the person complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) An exempt producer shall provide a copy of the Certificate of Exemption to each person to whom the producer sells ovine animals or lamb and lamb products. The Certificate of Exemption must accompany the ovine animals through the production chain to the person responsible for remitting the assessment to the Board.

(f) The person shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(g) The exemption will apply at the first reporting period following the issuance of the exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer, seed stock producer, or feeder from exemption under this section, except that persons producing or feeding both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated

use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

Dated: January 5, 2005.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 05-573 Filed 1-13-05; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 900

#### [Docket No. FV03-900-1 FR]

### Exemption of Organic Handlers From Assessments for Market Promotion Activities Under Marketing Order Programs

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements the provisions of section 10607 of the 2002 Farm Bill and exempts handlers subject to marketing order requirements from paying assessments for market promotion activities, including paid advertising, to marketing order committees and boards. To obtain an exemption, the handler must operate under an approved organic process system plan authorized by the National Organic Program (NOP), and handle or market only products that are eligible for a 100 percent organic product label under the NOP. The Agricultural Marketing Service (AMS), that oversees and works with the committees and boards in administering the programs, has identified 28 marketing order programs for which assessment exemptions may be established. A separate final rule to exempt any person producing and marketing solely 100 percent organic products from paying assessments to any national research and promotion program administered by AMS also is being published in today's *Federal Register*.

**DATES:** Effective February 14, 2005.

#### FOR FURTHER INFORMATION CONTACT:

George Kelhart or Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., STOP 0237, Room 2525-South, Washington, DC 20250-0237; Telephone: (202) 720-

2491; Fax: (202) 720-8938; or E-mail: [George.Kelhart@usda.gov](mailto:George.Kelhart@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250-0237; telephone: (202) 720-2491; Fax: (202) 720-8938; or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

#### SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed rule; Published in the *Federal Register* December 2, 2003 (68 FR 67381).

Proposed rule; Extension of comment period; Published in the *Federal Register* December 30, 2003 (68 FR 75148).

#### Executive Order 12866

This final rule is being issued by the Department of Agriculture (USDA) in conformance with Executive Order 12866.

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This final rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674)(Act or AMAA), under which the 28 marketing order programs are established, provides that administrative proceedings must be exhausted before parties may file suit in court. Under the Act, any person subject to an order may file a petition with USDA stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order, or to be exempted therefrom. The petitioner is afforded the opportunity for a hearing on the petition. After the hearing, USDA would make a ruling on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling, provided a complaint is filed within 20 days from the date of the entry of the ruling.

#### Background

Section 10607 of the Farm Security and Rural Investment Act (Pub. L. 107-171; 2002 Farm Bill) was enacted May 13, 2002. Section 501 of the Federal