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Agricultural Marketing Service

7 CFR Parts 900, 1150, 1160, et al.

Exemption of Organic Products From Assessment Under a Commodity  
Promotion Law; Final Rule

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

**7 CFR Parts 900, 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280**

[Document Number AMS–FV–14–0032]

**Exemption of Organic Products From Assessment Under a Commodity Promotion Law**

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements the provisions of section 10004 of the Agricultural Act of 2014 and modifies the organic assessment exemption regulations under 23 Federal marketing orders and 22 research and promotion programs (commodity promotion programs). This rule amends the current regulations to allow persons that produce, handle, market, process, manufacture, feed, or import “organic” and “100 percent organic” products to be exempt from paying assessments associated with commodity promotion activities, including paid advertising, conducted under a commodity promotion program administered by the Agricultural Marketing Service (AMS), regardless of whether the person requesting the exemption also produces, handles, markets, processes, manufactures, feeds, or imports conventional or nonorganic products. Currently, only persons that exclusively produce and market products certified as 100 percent organic are eligible for an exemption from assessments under commodity promotion programs. This rule expands the exemption to cover all “organic” and “100 percent organic” products certified under the National Organic Program regardless of whether the person requesting the exemption also produces, handles, markets, processes, manufactures, feeds, or imports conventional or nonorganic products.

**DATES:** Effective February 29, 2016.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Senior Marketing Specialist, or Michelle Sharrow, Branch Chief, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938; or email: [Barry.Broadbent@ams.usda.gov](mailto:Barry.Broadbent@ams.usda.gov), or [Michelle.Sharrow@ams.usda.gov](mailto:Michelle.Sharrow@ams.usda.gov).

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

Proposed rule; Published in the **Federal Register** December 16, 2014 (79 FR 75006).

Proposed rule; Extension of comment period; Published in the **Federal Register** January 15, 2015 (80 FR 2060).

**Executive Order 12866, Executive Order 13563, and Executive Order 13175**

This final rule is being issued by the Department of Agriculture (USDA) with regard to Federal marketing orders in conformance with Executive Orders 12866, 13563, and 13175.

With regard to research and promotion programs, Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a “non-significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process.

Additionally, with regard to research and promotion programs, this action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

**Executive Order 12988**

*Agricultural Marketing Agreement Act of 1937*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

*Beef Promotion and Research Act of 1985*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 11 of the Beef Promotion and Research Act of 1985 (7 U.S.C. 2910) provides that it shall not preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State.

*Commodity Promotion, Research, and Information Act of 1996*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7423) provides that it shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

*Cotton Research and Promotion Act of 1966*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

*Dairy Production Stabilization Act of 1983*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 4512(a) of the Dairy Production Stabilization Act of 1983 provides that nothing in this Act may be construed to preempt or supersede any other program relating to dairy product promotion organized and operated under the laws of the United States or any State.

*Egg Research and Consumer Information Act of 1974*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

*Fluid Milk Promotion Act of 1990*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

*Hass Avocado Promotion, Research and Information Act of 2000*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1212(c) of the Hass Avocado Promotion, Research and Information Act of 2000 (7 U.S.C. 7811) provides that nothing in this Act may be construed to preempt or supersede any program relating to Hass avocado promotion, research, industry information, and consumer information organized and operated under the laws of the United States or of a State.

*Mushroom Promotion, Research, and Consumer Information Act of 1990*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1930 of

the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6109) provides that nothing in this Act may be construed to preempt or supersede any other program relating to mushroom promotion, research, consumer information or industry information organized and operated under the laws of the United States or any State. Popcorn Promotion, Research, and Consumer Information Act of 1996.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 580 of the Popcorn Promotion, Research, and Consumer Information Act (7 U.S.C. 7489) provides that nothing in this Act preempts or supersedes any other program relating to popcorn promotion organized and operated under the laws of the United States or any State.

#### *Potato Research and Promotion Act of 1971*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

#### *Pork Promotion, Research and Consumer Information Act of 1985*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 1628 of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4817) states that the statute is intended to occupy the field of promotion and consumer education involving pork and pork products and of obtaining funds thereof from pork producers. The regulation of such activity (other than a regulation or requirement relating to a matter of public health or the provision of State or local funds for such activity) that is in addition to or different from the Pork Act may not be imposed by a State.

#### *Soybean Promotion, Research, and Consumer Information Act*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Additionally, section 1974 of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6309) provides, with certain exceptions, that nothing in the Soybean Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Soybean Act concerns assessments collected by Qualified State

Soybean Boards (QSSBs). The exception provides that, to ensure adequate funding of the operations of QSSBs under the Soybean Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Soybean Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

#### *Watermelon Research and Promotion Act*

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect.

This final rule is issued under the 23 Federal marketing orders and the 22 research and promotion programs established under the following acts: Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674) (AMAA); Beef Promotion and Research Act of 1985 (7 U.S.C. 2901–2911); Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411–7425); Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101–2118); Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501–4514); Egg Research and Consumer Information Act of 1974 (7 U.S.C. 2701–2718); Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417); Hass Avocado Promotion, Research, and Information Act of 2000 (7 U.S.C. 7801–7813); Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112); Popcorn Promotion, Research, and Consumer Information Act of 1996 (7 U.S.C. 7481–7491); Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801–4819); Potato Research and Promotion Act of 1971 (7 U.S.C. 2611–2627); Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311); and Watermelon Research and Promotion Act (7 U.S.C. 4901–4916). These acts are collectively referred to as “commodity promotion laws.”

The preceding acts provide that administrative proceedings must be exhausted before parties may file suit in court. Under those 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 the jurisdiction to review the Secretary’s rule, provided a complaint is filed within 20 days from the date of the entry of the ruling. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provision of the Beef Promotion and Research Act of 1985.

#### **Background**

Section 10004 of the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113–79) amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (7 U.S.C. 7401) on February 7, 2014. Section 501 of the FAIR Act establishes certain provisions for generic commodity promotion programs created under the various commodity promotion laws. Section 501 of the FAIR Act was previously amended in May 2002, by Section 10607 of the Farm Security and Rural Investment Act (2002 Farm Bill) (Pub. L. 107–171) to exempt persons that produced and marketed solely 100 percent organic products, and who did not otherwise produce or market any conventional or nonorganic products, from the payment of an assessment for commodity promotion program activities under a commodity promotion law.

Section 10004 of the 2014 Farm Bill subsequently expanded the organic assessment exemption to apply to any agricultural commodity that is certified as “organic” or “100 percent organic” as defined by the National Organic Program (NOP) (7 CFR part 205). The amendment further requires the Secretary of Agriculture to promulgate regulations concerning the eligibility and compliance procedures necessary to implement the exemption. Consistent with that provision of the 2014 Farm Bill, this final rule amends the organic assessment exemption provisions contained in 23 Federal marketing orders and 22 research and promotion programs to cover all certified “organic” or “100 percent organic” products of a producer, handler, marketer, processor, manufacturer, feeder, or importer regardless of whether the agricultural commodity subject to the exemption is produced, handled, marketed, processed, manufactured, fed, or imported by a person that also produces, handles, markets, processes, manufactures, feeds, or imports conventional or nonorganic agricultural products, including conventional or

nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed.

On December 16, 2014, a proposed rule was published in the **Federal Register** (79 FR 75006) inviting comments on proposed modifications to the organic assessment exemption regulations under 23 Federal marketing orders and 22 research and promotion programs. Interested parties were provided 30 days to comment on the proposed amendments. The comment period initially ended on January 15, 2015. However, at the request of 14 commenters, 11 of which represented a commodity board/committee/council, the comment period was extended to February 17, 2015 (80 FR 2060, published January 15, 2015).

In this final rule, USDA is making revisions to the general regulations affecting the 23 marketing order programs established under the AMAA. In addition, USDA is making similar amendments to the orders, plans and/or regulations of the 22 research and promotion programs administered by AMS. Also, USDA is terminating the existing provisions in § 1209.52 of the mushroom research and promotion order that are not consistent with amendments to the order's organic assessment exemption provisions contained in § 1209.252. The termination of § 1209.52(a)(2) and (a)(3) is authorized by § 1209.71(a) of the order. Lastly, while the existing organic exemption provisions will terminate in § 1209.52 of the order, this rule establishes revised organic exemption provisions in section § 1209.252(a) of the regulations.

Consistent with the provisions of the 2014 Farm Bill, this final rule modifies the current regulatory provisions that exempt organic producers, handlers, first handlers, marketers, processes, manufacturers, feeders, and importers from the payment of commodity promotion program assessments used to fund commodity promotion activities, including paid advertising, under a commodity promotion law.

#### **Summary of Changes From the Proposed Rule**

This final rule is different from the proposed rule in a number of respects. The final rule has been revised to improve the clarity of certain provisions, to maintain conformity with the provisions of the FAIR Act, and to establish or promote consistency across all of the commodity promotion programs. The modifications to the proposed rule, as detailed herein, do not substantially alter the regulatory effect of the originally proposed text.

Specifically, this final rule revises the organic assessment exemption eligibility requirements for mushrooms contained in § 1209.252(a) to add clarity and to promote consistency with the organic assessment exemption requirements contained in § 900.700 and the other 21 research and promotion orders, plans, and/or regulations.

In addition, this final rule removes a current provision included in 14 research and promotion orders, plans, and/or regulations (7 CFR parts 1150, 1205, 1207, 1209, 1210, 1216, 1218, 1219, 1220, 1221, 1230, 1250, 1260, and 1280) that addresses the exemption eligibility of products produced and marketed under an organic system plan but not sold, labeled, or represented as organic. The provision was removed to align the modified organic assessment exemption regulations with the FAIR Act.

Lastly, this final rule makes technical, non-substantive changes to the regulatory text to aid clarity and promote uniformity in all of the organic assessment exemption regulations contained herein. This includes repositioning certain paragraphs in § 1212.53 to eliminate potential confusion between the program's minimum quantity and organic assessment exemption procedures.

#### **Summary of Comments**

USDA received 731 timely comments from individuals, conventional and organic producers, industry organizations, research and promotion boards/councils, marketing order boards/committees, and organic trade associations. Of those comments, 550 were in favor of the rule, 10 opposed the rule, and 33 did not state a position. USDA determined that 138 of the comments were non-substantive in nature and did not address the merits of the proposed rule.

Fourteen of the comments were submitted by entities requesting an extension of the original comment period. Nine of the fourteen entities that submitted comments requesting an extension submitted additional comments after the comment period extension was granted by USDA.

Of the substantive comments submitted after the comment period extension, 20 were from research and promotion or marketing order boards/councils/committees, 15 were from organic agriculture trade associations, 5 were from agriculture trade associations, and 5 were from large organic handlers.

The comments largely fall into three broad categories. One category addresses issues of eligibility and the application of the FAIR Act. Another

category addresses issues concerning the assessment exemption reporting requirements and safeguards. The last category addresses administrative and procedural issues.

#### *Eligibility of Organic Products Entering Conventional Markets:*

Fourteen of the research and promotion programs' organic assessment exemption regulations currently contain a provision specifying that agricultural commodities produced and marketed under an organic system plan, but not sold, labeled, or represented as organic when the product is sold, shall not disqualify a producer from the organic assessment exemption. Within the provision, the stated reasons for conventional sales of organic products 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. The provision is currently included in 14 research and promotion orders, plans, and/or regulations, but is absent from the regulations covering the 8 remaining research and promotion programs and from the regulations that cover Federal marketing orders.

The provision was incorporated into the regulations to ensure that incidental non-conformance with the 2002 Farm Bill threshold requirement of "produces and markets solely 100 percent organic products" would not disqualify a producer from eligibility for an organic assessment exemption. Without the provision, under a strict interpretation of the 2002 Farm Bill statute, a certified organic producer under the NOP who produced and marketed any products through any conventional marketing channel, for any reason, would be ineligible for an organic assessment exemption. The provision was intended to reconcile administrative inconsistencies between the 2002 Farm Bill language and the intent of Congress in creating the exemption. USDA determined that certain common and acceptable production and marketing practices of NOP certified organic production operations could be allowed without jeopardizing the integrity of the exemption, even if some of those practices led to products entering conventional markets.

Under the provision, organic product produced in excess of demand in the organic market is permitted to enter a conventional market without jeopardizing the entity's organic assessment exemption status. Additionally, it allows product from buffer zones on certified organic production operations that could not otherwise be marketed as organic in an

organic market outlet to enter the conventional market without affecting the entity's organic assessment exemption eligibility. Lastly, it allows product that is subjected to chemicals or pesticides as a result of a State or emergency spray program, and the isolated use of antibiotics for humane purposes, to enter the conventional market without penalty.

In the proposed rule, USDA proposed making modifications to the provision and retaining it in the regulations of the 14 research and promotion programs that currently contain the language.

A number of the commenters submitted comments with regard to the provision as proposed. Several commenters suggested that the provision be expanded to all commodity promotion programs to promote uniformity. A number of other commenters assert that the provision creates a free rider situation when organic product exempt from assessment is allowed to enter the conventional market. They claim that organic product exempt from assessment would have an unfair competitive cost advantage when competing with conventionally produced product in the conventional market. In addition, the commenters asserted that exempt organic product in the conventional market would benefit from commodity promotion programs without having contributed to the cost of the promotion program. The commenters recommended the removal of the provision from the 14 programs that currently contain such language to rectify the inequitable situation moving forward.

After further consideration, with the expansion of the organic assessment exemption eligibility requirements in the 2014 Farm Bill to include split operations, any provision in the organic assessment exemption regulations to make allowances for product entering conventional markets in an effort to preserve an applicant's eligibility for the organic assessment exemption will no longer be necessary moving forward. In addition, if perpetuated, the provision could facilitate an unfair competitive environment and negatively impact conventional producers and marketers.

Therefore, for the reasons discussed above, USDA has removed the aforementioned provision from the 14 research and promotion programs that currently have the language in their orders/plans/regulations. As such, as a result of the modifications contained herein, all product that enters a conventional or non-organic market outlet will be subject to assessment in accordance with the respective

commodity promotion program's order, plan, or regulation.

*Definition of "Producer":* All of the orders, plans, and/or regulations covered under this rule define the entities that are subject to the regulatory provisions of the program (e.g. producer, handler, marketer, processor, manufacturer, feeder, importer, etc.). Many of those orders/plans/regulations have provisions included in such definitions under which entities may be exempt from regulation and/or the payment of assessments.

A number of commenters recommended amending the definition of "producer" (also "handler," "processor," and "importer") in each of the orders, plans, and/or regulations covered under this rule for a blanket exclusion of participation from all program activities for entities who receive an organic assessment exemption. The commenters believe that entities that are exempt from the payment of assessments should not be allowed to be appointed board members and vote in referenda.

Currently, eight research and promotion programs specify a minimum quantity of product (referred to as the "de minimis" amount) that must be produced, handled, processed, or imported for an entity to be required to pay the commodity promotion assessment (7 CFR parts 1160, 1206, 1207, 1208, 1209, 1210, 1215, and 1221). For those programs, entities that produce, handle, process, or import quantities of product below a specified de minimis amount are, by definition, not required to pay assessments. The other research and promotion programs do not have de minimis as part of the definition of regulated entities, but rather within the assessment section of the programs' regulatory provisions.

Entities that are exempt by definition and/or entities that receive an assessment exemption are ineligible for nomination for board membership and for voting in referenda. While an entity operating below the de minimis level may be exempt from assessment provisions of an order/plan/regulation, all regulated entities are required to maintain reports to carry out the provisions of the program.

The Fluid Milk Promotion Program (7 CFR part 1160) is an example of a research and promotion program that specifies a de minimis amount in the definition. The definition specifically states "the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 3,000,000 pounds of such fluid milk products during the representative

month." As such, since the provisions of the program only apply to fluid milk processors, and the definition of fluid milk processor does not include entities that process under 3,000,000 pounds of fluid milk a month, an entity that processes less than 3,000,000 pounds of fluid milk a month is not subject to the assessment provisions of the program, but must still report the quantity of fluid milk processed for the representative month of each fiscal period to verify its regulatory status.

An example of a research and promotion program that specifies a de minimis quantity in its assessment regulation is blueberries. A producer under the Blueberry Promotion, Research, and Information Order (7 CFR part 1218) is defined as "any person who grows blueberries in the United States for sale in commerce, or a person who is engaged in the business of producing, or causing to be produced for any market, blueberries beyond the person's own family use and having value at first point of sale." However, any producer who produces less than 2,000 pounds of blueberries annually, and applies for such exemption, is not required to pay assessments. Blueberry producers who produce less than 2,000 pounds of blueberries however continue to be subject to the reports, books, and recordkeeping requirements in the blueberry order.

Since representation on the commodity promotion program boards is already reserved for regulated entities that financially participate in a commodity promotion program, it is unnecessary to amend program definitions. This includes all exemptions under these programs, including organic exemptions. Under existing procedures for the previous more narrowly defined organic exemption, entities that are exempt from paying assessments as a result of the organic exemption cannot participate in the program. This will not change with the expansion of the organic exemption.

Entities subject to the provisions of an order that produce, handle, market, process, manufacture, feed, or import both organic and conventional or nonorganic products (split operations), and are granted an organic assessment exemption are still subject to assessment on their conventional or nonorganic product. Under those circumstances, with the payment of any amount of an assessment, no matter how small, an entity would be eligible to participate in the program's activities.

USDA notes that the commenters' recommendation could only be applied to the research and promotion programs and not Federal marketing orders, as the

organic assessment exemption for Federal marketing orders only applies to the percentage of the assessment that is allocated to fund marketing promotion activities. As such, even entities exempt from marketing promotion assessments on their organic products will be obligated to pay assessments to fund the order's other operational and administrative expenses. As a result, entities regulated under a marketing order, even if exempt from some percentage of assessment, are eligible to participate in the program.

Based on the above, no changes have been made to the regulations as a result of the comments submitted.

#### *Determination of "Marketing Promotion Activities" Under Commodity Promotion Laws:*

Under the FAIR Act, a "commodity promotion law" is defined as "a Federal law that provides for the establishment and operation of a promotion program regarding an agricultural commodity that includes a combination of promotion, research, industry information, and/or consumer information activities, is funded by mandatory assessments on producers or processors, and is designed to maintain or expand markets and uses for the commodity" (7 U.S.C. § 7401(a)). The FAIR Act further establishes that the exemption of certified organic products from commodity promotion program assessments be limited to "the payment of assessments under a commodity promotion law."

When the organic assessment exemption was first established as a result of 2002 Farm Bill amendments to the FAIR Act, USDA interpreted the law to apply to all of the activities of all established and future commodity promotion programs created "under a commodity promotion law," as defined. Therefore, USDA amended all of the research and promotion programs' plans, orders, and/or regulations to exempt entities that were solely 100 percent certified organic from payment of the entire amount of a program's assessment.

However, regarding Federal marketing orders, USDA interpreted the FAIR Act to only apply to expenditures directly related to marketing promotion activities under a marketing order. Under 7 U.S.C. 7401(a)(1), the definition of "commodity promotion law" specifically narrows the term, as it relates to marketing order programs, to just include "the marketing promotion provisions under section 8c(6)(I) of the Agricultural Adjustment Act (7 U.S.C. 608c(6)(I))." Therefore, in the establishment of the organic assessment exemption regulations for Federal

marketing orders in § 900.700(a), USDA defined the term "marketing promotion" to mean "marketing research and development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, and consumption of the applicable commodity." Under § 900.700(d), the organic assessment exemption is not applicable to the portion of assessment that directly funds the other authorized activities of a marketing order, such as minimum quality regulation, mandatory inspection, container requirements, volume control, or production research.

A number of commenters submitted comments regarding the application of the organic assessment exemption to production research. Some of the commenters believe that the assessments allocated to fund production research projects under a research and promotion program should not be subject to an organic assessment exemption. The commenters believe that production research has applicability to all production within a commodity's industry and that organic entities should contribute to the cost along with other entities. In a contrary position, many commenters believe that all research, both production and marketing oriented, has no benefit to the organic industry and that the organic industry should not be expected to fund it. Commenters from both sides of the issue submitted proposed changes to be made to the regulations.

USDA believes that the provisions of the FAIR Act have been properly applied under both Federal marketing orders and research and promotion programs. Therefore, no changes have been made to the regulations as a result of the comments.

#### *Reporting Requirement and Safeguard Issues*

*Revised Reporting Requirements:* All of the Federal marketing orders and research and promotion orders, plans, and/or regulations contain reporting requirements for the administration of the organic assessment exemption. The current application form necessary for obtaining an organic assessment exemption requires, among other things, that the applicant list all of the commodities that an applicant produces, handles, markets, processes, manufacturers, feeds, or imports. The applicant must also certify that all of the commodities listed are certified 100 percent organic, even for commodities other than the commodity for which the exemption is requested. This has been the method employed by USDA to ensure that an operation produced and

marketed "solely 100 percent organic products" as required by the FAIR Act prior to the 2014 Farm Bill amendment. This requirement translated into a significant amount of the time required by entities to fill out the current organic assessment exemption request form.

The 2014 Farm Bill amendment to the FAIR Act expanded the eligibility criteria for organic assessment exemptions to allow split operations, which are entities that produce, handle, market, process, manufacture, feed, or import organic and conventional or nonorganic products within the same business operation. The FAIR Act amendment renders the current reporting requirement for full disclosure of all commodities produced, handled, marketed, processed, manufactured, fed, or imported by an entity unnecessary moving forward, as an applicant no longer has to show that they are an exclusively organic operation to be granted an organic assessment exemption. As such, the current organic assessment exemption application requirements in the regulations have been revised to remove the requirement that lists all of an entity's commodities on the organic assessment exemption application form.

In addition, as a result of the modified reporting requirements contained in the regulations, the current approved organic assessment exemption request forms, Forms AMS-15 and FV-649, will be modified accordingly. A more detailed discussion regarding the changes to these forms can be found under the Paperwork Reduction Act heading below.

Many commenters supported the reduction in reporting requirements that resulted from this rule. They believed that reducing the paperwork burden on organic entities, many of which are small, would benefit the organic industry. However, while the commenters believed that the reduction in required documentation was a positive step, they recommended abandoning the annual reapplication requirement to reduce further the paperwork burden on organic entities. They suggest only requiring an entity submit an initial application for an organic assessment exemption and, if so granted, making the exemption perpetual. Additionally, several commenters recommended tying the organic assessment exemption to the organic certificate that is issued under the NOP by a USDA-accredited certifying agent to a certified organic operation, thus continuing eligibility for the organic assessment exemption until the applicant either surrenders their exemption rights or ceases to operate

organically. One commenter proposed that greater synergy between the USDA–AMS National Organic Program (AMS–NOP) and the commodity promotion programs could effectuate the accountability necessary for perpetual exemptions moving forward. One option offered by the commenter was the utilization of the AMS–NOP database by commodity promotion programs to safeguard assessment exemptions. Another commenter suggested requiring AMS–NOP to establish, maintain, and provide access to a “revoked or relinquished list” of operations that have lost organic certification that Federal marketing orders and research and promotion programs could use to facilitate the monitoring and administration of an exempt entity’s perpetual status.

A number of other commenters support increasing the reporting requirements to ensure compliance under the expanded organic assessment exemption. Under the modified provisions effectuated herein, split operations will now be allowed to request and receive organic assessment exemptions. As such, entities with some organic products and some conventional or nonorganic products will be allowed to request an assessment exemption on the organic portion of the products they produce or market. Several commenters recommended increasing the reporting requirements for these split operations to accurately account for the quantity of product that will continue to be subject to assessment. They believe that requiring applicants to disclose both the anticipated quantities of organic product and conventional or nonorganic product that the entity expects to produce, handle, market, process, manufacture, feed, or import will aide in maintaining the integrity of each program.

USDA believes that information collection is an important part of every commodity promotion program in general, and is integral to the oversight of the organic assessment exemption under each of those commodity promotion programs specifically. USDA agrees with the commenters that recommended increasing the information collection regarding the commodity research and promotion programs and will further revise Form AMS–15 accordingly. On the request form, applicants will be required to self-identify split operations and estimate the assessable and non-assessable quantities of product for the year. Specifically, applicants must report the estimated total quantity of product that the applicant expects to produce, handle, market, process, manufacture,

feed, or import; the estimated quantity of product that will be certified organic; and the estimated quantity of product that will be conventional or nonorganic.

In addition, if needed, all commodity promotion programs have the ability, within their orders, plans, and/or regulations, to modify their reporting requirements outside the scope of the organic assessment exemption request form. If additional information is deemed necessary to administer a commodity promotion program and ensure its integrity with respect to the organic assessment exemption, the respective board/committee/council could initiate rulemaking to that effect.

USDA also believes that it is necessary to require applicants to submit an application annually for the proper administration of the organic assessment exemption by the boards/committees/councils. The oversight of organic assessment exemptions will necessitate the collection and retention of current and accurate information regarding the exempted entities. Reliance on AMS–NOP to facilitate the collection and dissemination of information needed by the commodity promotion programs to administer the organic assessment exemption, as suggested by commenters, is not practical at this time.

Therefore, in light of the above discussion, Form AMS–15 will be further revised to require the necessary information for commodity research and promotion programs to properly administer the organic assessment exemption. No additional changes will be made to Form FV–649 for Federal marketing orders and no changes will be made to the regulations as proposed.

*Safeguard Provisions:* All of the Federal marketing orders and research and promotion programs affected by this rule have safeguards built into their regulations to facilitate compliance. The provisions most often employed by commodity promotion programs are reporting requirements, auditing authority, and civil penalties for noncompliance. The combination of these provisions is what would be utilized by the boards/committees/councils to safeguard the organic assessment exemption provisions of a program.

A number of commenters submitted recommendations for safeguarding the organic assessment exemption against abuse. Some commenters suggested mandatory audits of firms that are granted an organic assessment exemption. Other commenters suggested including on the exemption request form explicit detail of the potential penalties for the fraudulent use of an

organic assessment exemption (e.g. “The making of any false statement or representation on this form, knowing it to be false, is a violation of Title 18, Section 1001 United States Code, which provides for the penalty of a fine of \$10,000 or imprisonment of not more than five years, or both.”). Other recommendations included requiring AMS–NOP to submit information regarding exempt parties to the commodity promotion programs for reconciliation with reports submitted directly by the exempt parties to the program.

USDA will be adding a statement regarding the potential penalties for fraudulent use of an organic assessment exemption language to Form AMS–15 in an effort to make it more consistent with other exemption forms. This is in addition to the other revisions concerning the estimated amount of product produced, handled, marketed, processed, manufactured, fed, or imported with an estimated quantity of organic and conventional or nonorganic product. The other safeguard provisions currently contained in the regulations (recordkeeping, reporting, and audit requirements) are adequate for ensuring compliance in the collection of assessments from conventional or nonorganic entities.

#### Administrative and Procedural Issues

A number of commenters recommended that the regulations be modified to clearly state that organic producers, handlers, marketers, processors, manufacturers, feeders, and importers that are eligible for an organic assessment exemption are not obligated to apply for one and that they may voluntarily continue to fund a commodity promotion program.

USDA does not believe that the inclusion of a clause of this nature in the regulations, or on any form, is necessary, as an organic assessment exemption requires that an applicant submit an application to become eligible. The default for an entity subject to regulation is to pay assessments on all products produced, handled, marketed, processed, manufactured, fed, or imported, even entities that produced, handled, marketed, processed, manufactured, fed, or imported organic products. Therefore, no changes to the regulations will be made as a result of this recommendation.

Two commenters submitted comments regarding the financial impact that an organic assessment exemption will have on a commodity promotion program’s ability to operate. The commenters believe that the

assessment exemption will force programs to cut back on operations or increase assessment rates.

This action has been undertaken in response to a Congressional mandate and is not discretionary. Two commenters recommended that language be added to the organic assessment exemption regulations for each program to specify that the exemption is only from Federal program assessments and that organic entities must still participate in, and pay assessments to, any state and regional commodity promotion programs that may exist.

USDA does not control state or regional commodity promotion programs. Furthermore, USDA does not address such programs in Federal regulations to maintain a clear separation of jurisdictions, authorities, and powers. However, USDA acknowledges that some state and regional commodity promotion programs work in concert with Federal programs. As such, USDA will encourage the boards/committees/councils that oversee the Federal commodity promotion programs to remind entities that request a Federal organic assessment exemptions that there may be state and regional commodity promotion program assessments that are not exempted as part of a Federal program exemption.

One commenter sought confirmation that all future Federal marketing orders and research and promotion programs established after the effective date of this rule would include an organic assessment exemption similar to the provisions contained herein.

Any new Federal marketing order established under the AMAA would be subject to the provisions of § 900.700. In addition, the FAIR Act provides that the organic assessment exemption be applied to any commodity promotion law. The definition of “commodity promotion law” in the FAIR Act is extended to “any other provision of law enacted after April 4, 1996, that provides for the establishment and operation of an agricultural commodity promotion program.” Therefore, the commenter can reasonably expect that all existing and future commodity promotion programs will have an organic assessment exemption provision similar to that which is contained herein. However, should an organic research and promotion program be established in the future, entities that are currently exempt from payment of commodity promotion program assessments under an organic exemption may be subject to the

assessment provisions of an organic research and promotion order.

One commenter stated that the proposed rule did not define, and was not consistent in the use of, the term “split operation.” The term “split operation” is found in the current regulatory provisions of each order, plan, and/or regulation modified by this rule. The term is used interchangeably throughout this rule to describe an entity that produces, handles, markets, processes, manufactures, feeds, or imports organic products, but also produces, handles, markets, processes, manufactures, feeds, or imports conventional or nonorganic products of the same or different agricultural commodities. USDA does not believe that a separate definition of “split operation” is necessary in the regulations.

A commenter questioned the language regarding the eligibility of importers to claim an organic assessment exemption. The commenter recommended adding language to the proposed regulations to reflect that products certified as “organic” and “100 percent organic” under U.S. equivalency arrangements established under the NOP were also eligible for the exemption. Language to that effect has been added to each of the programs’ regulations that assess importers (7 CFR parts 1150, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1217, 1218, 1219, 1221, 1222, 1230, and 1260).

One commenter suggested that several of the provisions contained in each the various programs are applied inconsistently. Specifically, the commenter believes that the regulations concerning the timeframe that a commodity promotion program board/committee/council has to approve/disapprove an application, how exempt individuals demonstrate their exemption to other parties, and the effective date of the exemption should be consistent among all programs.

USDA believes that the regulations are as uniform as possible within the unique provisions in each of the various commodity promotion program orders, plans, and/or regulations. Variations in fiscal periods, assessment collection procedures, regulated entities, and other factors specific to a program make it difficult to achieve complete consistency across all programs. Therefore, no changes have been made as a result of these comments.

Three commenters believe that entities that have been granted an organic assessment exemption should be required to disclose their exempt status to the parties that purchase their product. The commenters have observed

that the market price of a commodity often has a built in premium to account for payment of an assessment to a commodity promotion program and, by not disclosing an organic entity’s exemption status, an unfair economic advantage could occur. To address commenters concerns, AMS will amend the current footnote contained in the Federal milk marketing order Class I price announcement related to the Fluid Milk Promotion Order (7 CFR part 1160). Currently the footnote reads, “If fluid milk processors market less than 3,000,000 pounds per month of fluid milk products in consumer packages, they are exempt from paying the 20 cents per hundredweight assessment.” USDA will include new language on the Class I price announcements indicating organic fluid milk processors may be exempt from the fluid milk assessment.

One commenter had concerns about the organic assessment exemption regulations and how they are applied to imported products. The commenter did not feel that the regulations, as proposed, were clear on the issuance of Harmonized Tariff Schedule (HTS) codes for imported products, whether or not U.S. Customs and Border Protection (Customs) would first collect then reimburse the assessment, and how a commodity promotion program board/committee/council would be able to identify and differentiate exempt from non-exempt product. USDA has drafted the regulations to align with current Customs practices. Some agricultural commodities have HTS codes assigned to organically produced product and some do not. As such, some products may be imported under an HTS code that applies the organic assessment exemption directly as the product enters the U.S. and could, therefore, bypass the collection of assessments by Customs. Other commodities may not have an HTS code assigned to organically produced product and the assessment may have to be collected from, and then subsequently reimbursed to, an exempt importer. The procedures for such reimbursements are addressed in each of the research and promotion program plans/orders/regulations.

Therefore, USDA does not believe that the regulations, as proposed, should be changed as a result of this comment. However, the regulations contained herein could be amended in the future to reflect any operational changes from Customs that would make the application of the organic assessment exemption more efficient regarding imported product.

Several commenters expressed concern that extending the organic assessment exemption to split



operations would lead to confusion as to how the exemption will be applied when it coincides with a program's minimum quantity provisions. They believed that some entities may inaccurately apply both exemption provisions and result in an underpayment or nonpayment of assessments.

First, USDA would like to reiterate that the commenters' concerns may only be directed to the provisions of the 22 research and promotion programs, as no Federal marketing order contains a de minimis provision in its definition of "handler". Next, the comments only pertain to the 8 programs that have de minimis amounts in their definition of the entities that are subject to the provisions of the order/plan/regulation (7 CFR parts 1160, 1206, 1207, 1208, 1209, 1210, 1215, and 1221). Therefore, with regards to the research and promotion programs with de minimis quantities, USDA would like to clarify how the organic assessment exemption will be applied under each of those programs.

To be eligible for an organic assessment exemption, an entity must first be subject to assessment under an order/plan/regulation. This means that the total quantity of a program commodity that an entity produces, handles, markets, processes, manufactures, feeds or imports is greater than the de minimis amount specified in the definition of entities subject to the provisions of the order/plan/regulation. In determining the total quantity, USDA considers all organic, conventional, and nonorganic product in the aggregate, as the provisions of each order/plan/regulation cover all of the commodity produced, handled, marketed, processed, manufactured, fed, or imported, regardless of production method employed in producing those products.

If an entity is subject to assessment after applying the de minimis amount on a total volume basis, then the quantity of organic product that the entity produces, handles, markets, processes, manufactures, feeds, or imports may be considered for an organic assessment exemption. Should the entity be a split operation, the entity would be obligated to pay assessments on the portion of the entity's product that is conventional or nonorganic, regardless of whether or not the quantity of conventional or nonorganic product is below the de minimis amount after exempting the organic product. Once the threshold for being subject to an order/plan/regulation has been met on a total product basis, the entity is subject to the provisions of the program and

must pay assessments on any nonexempt product.

In summary, the determination of whether or not an entity is subject to the provisions of an order/plan/regulation comes before any determination of whether or not the entity may be exempt from any of those provisions, including assessment. Simply put, an entity cannot be exempted from a provision that it is not subject to. Further, the approval of an assessment exemption for some or all of an entity's assessable product under an order/plan/regulation cannot be construed as a reduction in the total quantity of product produced or marketed by that entity. The quantity of product on which an assessment exemption is granted cannot be deducted from the entity's total quantity and retroactively be applied to the de minimis amount established under the order/plan/regulation to determine whether or not the entity is subject to the provisions of that order/plan/regulation.

For example, the de minimis quantity for processors under the Popcorn Promotion, Research, and Consumer Information Order (7 CFR part 1215) is 4 million pounds annually. If a popcorn processor processes 6 million pounds annually, the processor is subject to the provisions of the order and is required to pay assessments on the 6 million pounds. If 4 million pounds of the 6 million pounds total are certified organic, the processor may request an organic assessment exemption on those 4 million pounds. However, the processor must pay the assessment on the remaining 2 million pounds, even though that quantity, by itself, would be below the de minimis quantity in the definition of a popcorn processor. The application of the minimum quantity provisions that determine what is subject to an order/plan/regulation are applied prior to the application of any assessment exemption and are not affected by the same after the fact.

Lastly, several commenters requested a delay, up to 120 days, in the implementation of the revised organic assessment exemption provisions to ensure that the expanded organic exemption provisions are implemented consistently and accurately throughout all Federal marketing orders and research and promotion program boards/committees/councils. USDA has reviewed the remittance and exemption procedures of each commodity promotion program and recognizes that there are differences in the timelines that each commodity promotion program board/committee/council follows. USDA recognizes that an implementation date of 90 to 120 days

would be optimal. However, USDA also recognizes the significance of the Farm Bill revisions and has determined that an implementation date of 60 days is appropriate.

#### Organic Commodity Promotion Order

Section 10004 of the 2014 Farm Bill includes a provision stating that the organic assessment exemption is effective until the date the Secretary issues an organic commodity promotion order under the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425). The promulgation of an organic commodity promotion order was also authorized under section 10004 of the 2014 Farm Bill.

The implementation of an organic commodity promotion order would follow the same process as other commodity promotion orders overseen by USDA; the industry submits a proposal for an order that contains analysis, justification, objectives, impact on small businesses, evidence of industry support, and the text of the proposed order. USDA would then review and publish the proposed order in the **Federal Register** for public comment. If, after reviewing the comments, USDA concludes the order has merit and meets legislative intent, a referendum would be announced and conducted. If the program was approved by industry voters, a final rule would be issued to implement the program.

In May 2015, USDA received an industry proposal for an organic commodity promotion order. USDA is currently reviewing the proposal.

#### Marketing Order Programs

The FAIR Act organic exemption amendment, as enacted by the 2014 Farm Bill, covers 23 marketing order programs established under the AMAA (Florida citrus—7 CFR part 905; Texas citrus—7 CFR part 906; Florida avocados—7 CFR part 915; Washington apricots—7 CFR part 922; Washington sweet cherries—7 CFR part 923; Southeastern California grapes—7 CFR part 925; Oregon/Washington pears—7 CFR part 927; Cranberries grown in the States of Massachusetts, *et al.*—7 CFR part 929; Tart cherries grown in the States of Michigan, *et al.*—7 CFR part 930; California olives—7 CFR part 932; Colorado potatoes—7 CFR part 948; Georgia Vidalia onions—7 CFR part 955; Washington/Oregon Walla Walla onions—7 CFR part 956; Idaho-Eastern Oregon onions—7 CFR part 958; Texas onions—7 CFR part 959; Florida tomatoes—7 CFR part 966; California almonds—7 CFR part 981; Oregon-Washington hazelnuts—7 CFR part 982; California walnuts—7 CFR part 984; Far

West spearmint oil—7 CFR part 985; California dates—7 CFR part 987; California raisins—7 CFR part 989; and California dried prunes—7 CFR part 993).

Federal marketing orders are locally administered by committees made up of producers and/or handlers, and often members of the public. Marketing order regulations, initiated by industry and enforced by USDA, bind the entire industry in the geographical area regulated once they are approved by the Secretary of Agriculture. Marketing orders employ one or more of the following authorities: (1) Maintain the high quality of produce available to the market; (2) standardize packages and containers; (3) regulate the flow of product to market; (4) establish reserve pools for storable commodities; and (5) authorize production research, marketing research and development, and advertising. Each unique marketing order helps to promote orderly marketing for the specific commodity and region covered by the regulation.

The 23 specific marketing order programs listed above allow for market promotion activities designed to assist, improve, or promote the marketing, distribution, or consumption of the commodity covered under each specific marketing order. Some of these programs also authorize market promotion in the form of paid advertising. Promotion activities, including paid advertising, are paid for by assessments levied on handlers regulated under the various Federal marketing orders.

Rules of practice and regulations governing all Federal marketing orders established under the AMAA are contained in 7 CFR part 900 General Regulations. Section 900.700 specifies the criteria for identifying persons eligible to obtain an assessment exemption for marketing promotion activities, including paid advertising; procedures for persons to apply for an exemption; procedures for calculating the assessment exemption; and other procedural details pertaining to the 23 marketing order programs that currently engage in, or have the authority for, marketing promotion, including paid advertising.

Currently under those provisions, only handlers that exclusively handle or market products that are eligible to be labeled “100 percent organic” are exempt from the portion of a marketing order assessment applicable to an order’s marketing promotion activities, including paid advertising. As such, organic handlers who handle or market any quantity of conventional or nonorganic products in addition to their

organic products are not currently able to claim an assessment exemption on any of the products they handle. The 2014 Farm Bill expanded the organic exemption in the FAIR Act to allow all organic handlers to apply for an exemption from assessments on products certified as “organic” or “100 percent organic,” regardless of whether the handler also handles or markets conventional or nonorganic products.

This final rule modifies the organic assessment exemption eligibility criteria contained in § 900.700. The requirements contained in that section will be revised to allow organic operations that are split operations to apply for and receive an assessment exemption on their certified “organic” and “100 percent organic” products, whereas such types of operations are explicitly precluded from the organic assessment exemption under the current language. More specifically, the eligibility provisions contained in § 900.700(b) will be modified to include certified organic handlers that maintain split operations. The section will also be amended to provide that exempt handlers must continue to pay assessments associated with any agricultural products that do not qualify for an exemption under that section.

Handlers who wish to claim the assessment exemption on their organic products will continue to be required to submit an application to the board or committee, and subsequently be approved, to qualify for the organic exemption. However, as a result of the revised eligibility requirements contained herein, the specific information that will be collected from applicants will change. Some of the information collection that is currently necessary for the board or committee to administer the organic assessment exemption will no longer be required moving forward (*e.g.* detail of all commodities handled by the entity to ensure it is a 100 percent organic operation). As such, § 900.700(c) will be modified to reflect these changes.

#### Research and Promotion Programs

The FAIR Act organic exemption amendment contained in the 2014 Farm Bill also covers 22 research and promotion programs established under either freestanding legislation (beef, cotton, dairy, eggs, fluid milk, Hass avocados, mushrooms, popcorn, pork, potatoes, soybeans, and watermelons) or the Commodity Promotion, Research, and Information Act of 1996 (blueberries, Christmas trees, honey, lamb, mangos, paper and paper-based products, peanuts, processed

raspberries, softwood lumber, and sorghum).

Wholly funded and operated by industry, the research and promotion programs are charged with creating, maintaining, and expanding markets for the agricultural commodities they represent. While these programs are overseen by AMS, including the review of all financial budgets, marketing plans, and research projects, they are governed by boards and councils made up of industry participants. Producers, handlers, processors, manufacturers, feeders, importers, and/or others in the marketing chain pay assessments to the representative boards and councils to fund each program’s activities. Industries voluntarily request the formation of these programs, which allows them to establish, finance, and execute coordinated programs of research, producer and consumer education, and generic commodity promotion to improve, maintain, and develop markets for their respective commodities.

Under this final rule, the eligibility criteria for obtaining an organic assessment exemption, as contained in each of the research and promotion orders, plans, and/or regulations, will be revised. The requirements for such an exemption will be modified to allow split organic operations to apply for and receive an assessment exemption on their certified “organic” and “100 percent organic” products, whereas such types of operations are explicitly precluded from the assessment exemption under the current provisions in each program. In addition, language will be added to provide that exempt producers, handlers, marketers, processors, manufacturers, feeders, or importers must continue to pay any assessments associated with any agricultural products that do not qualify for an exemption.

Persons who wish to claim the assessment exemption on their organic products will continue to be required to submit an application to the board or council, and subsequently be approved, to qualify for the organic exemption. However, as a result of the revised eligibility requirements contained herein, the specific information that will be collected from applicants will change. Some of the information collection that is currently necessary for the board or council to administer the organic assessment exemption will no longer be required moving forward (*e.g.* detail of all commodities produced, handled, marketed, processed, manufactured, fed, or imported by the entity to ensure it is a 100 percent organic operation). In addition, some

new information will be required of split operations to ensure compliance under the expanded exemption (*e.g.* declaration of split operation; estimated amount of organic product that will be produced, handled, marketed, processed, manufactured, fed, or imported by the split operation; and estimated total quantity of product that will be produced, handled, marketed, processed, manufactured, fed, or imported by the split operation). As such, additional modifications will be made to Form AMS-15, Organic Exemption Request Form, to account for split operations. However, no changes to the section of each order, plan, and/or regulation that specifies the information collection requirements for the organic assessment exemption will be made.

#### Who is eligible for exemption under a marketing order?

This final rule will modify the eligibility requirements for organic assessment exemptions that are currently in place for marketing order programs. Under this action, persons who are subject to an assessment under a designated marketing order, who maintain a valid organic certificate, and who handle any assessable agricultural commodities that are certified as “organic” or “100 percent organic” (as defined in the NOP) will be eligible for the organic assessment exemption under amended requirements in part 900.

All of the 23 Federal marketing orders impacted by this rule assess only handlers (*i.e.*, persons that handle the regulated commodity) to fund the operations of the respective programs. Under the current organic assessment exemption regulation, which was promulgated as a result of the provisions in the 2002 Farm Bill that amended the FAIR Act, to qualify for an exemption 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 also produce or market any conventional or nonorganic products. For the purpose of that regulation, “produce” was defined as 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. USDA determined that handlers, processors and producers acting as handlers, and importers were also eligible for exemption if any of their activities met the definition of “produce” as outlined above. Additionally, the regulation only

provided for granting organic assessment exemptions to persons that handle domestic commodities regulated under Federal marketing orders and not importers, as importers regulated under section 608e of the AMAA (7 U.S.C. 608e–1) (section 8e) do not pay assessments. Therefore, importers are not eligible for an organic assessment exemption under part 900.

The 2002 Farm Bill amended the FAIR Act to make organic assessment exemptions available to any person that “produces and markets” organic products, should they also conform to certain other criteria. This rule will incorporate the broadened eligibility criteria established by the 2014 Farm Bill amendment to the FAIR Act into the regulations. Importers of commodities covered by section 8e of the Agricultural Marketing Agreement Act of 1937 will remain ineligible for an exemption as importers do not pay assessments under marketing order programs.

In addition, the FAIR Act amendment also expanded eligibility to cover split organic operations. The requirement that operations be “solely” 100 percent organic was replaced with the requirement that operations maintain a “valid organic certificate” issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP. Handlers who handle certified “organic” and/or “100 percent organic” products will qualify for an organic assessment exemption regardless of whether the commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same commodity as that for which the exemption is claimed.

#### Examples

For all examples, assume that the person handles or markets a commodity regulated under a marketing order, is otherwise obligated to pay assessments under that order, and that 60 percent of the marketing order’s budgeted expenses are attributed to market promotion activities, including paid advertising:

- A handler who handles all of their volume as certified “organic” or “100 percent organic” product (received from certified organic producers), and maintains a valid organic certificate under the NOP, will be eligible for an organic assessment exemption. The handler will be exempt from 100 percent of the portion of the marketing order assessment attributed to marketing promotion activities (60 percent). The handler will be obligated to pay 40 percent of the assessment rate on 100 percent of the product handled. The

assessment calculation will be: Quantity handled × 40 percent of the assessment rate.

- A handler who handles 20 percent of their volume as certified “organic” or “100 percent organic” product (received from certified organic producers) and maintains a valid organic certificate under the NOP will be eligible for an organic assessment exemption. The handler will be exempt from the portion of the marketing order assessment attributed to marketing promotion activities (60 percent) on the quantity of the products handled that are organic (20 percent). Conversely, the handler will be obligated to pay 40 percent of the assessment rate on 20 percent of the product handled and 100 percent of the assessment rate on 80 percent of the product handled. The assessment calculation will be: (Quantity handled × 20 percent × 40 percent of the assessment rate) + (quantity handled × 80 percent × assessment rate).

- A handler who handles 20 percent of their volume as “organic” or “100 percent organic” received from certified organic producers, but does NOT maintain a valid organic certificate under the NOP, will NOT be eligible for any exemption of their marketing order assessments as they do not have proper certification. The handler will be obligated to pay 100 percent of the assessment associated with the quantity of product handled.

- An importer who imports a commodity that is subject to import regulation under section 8e will NOT be eligible for an exemption from marketing order assessments as importers are not obligated to pay assessments under a marketing order or the import regulations.

#### Who is eligible for exemption under a research and promotion program?

Just as for Federal marketing orders, this final rule will modify the eligibility requirements for organic assessment exemptions that are currently in place for research and promotion programs. Under this proposed action, persons who are subject to an assessment under a designated research and promotion program, who maintain a valid organic certificate, and who handle any assessable agricultural commodities that are certified as “organic” or “100 percent organic” (as defined in the NOP) will be eligible for an organic assessment exemption under amended requirements contained in each of the programs’ respective orders, plans, and/or regulations. Persons who are importing organic products in compliance with a U.S. equivalency arrangement established by AMS-NOP

pursuant to OFPA and the NOP regulations will also be eligible for an organic assessment exemption.

For the 22 research and promotion programs currently enacted, 16 assess producers, 2 assess handlers, 2 assess manufacturers, 2 assess processors, and 16 assess importers. Under the provisions for each of the respective programs, some also assess other entities, in addition to the named classes, including exporters, feeders, and seed stock producers. Any of the entities obligated to pay assessments under one of the aforementioned programs is eligible for an organic assessment exemption.

Under the current regulation, organic assessment exemptions are available to any person who “produces or markets solely 100 percent organic products” and conforms to certain requirements. As mentioned previously, the recent amendment to the FAIR Act expands the organic assessment exemption eligibility to any person that “produces, handles, markets, or imports” organic products under a “valid organic certificate” issued under the OFPA and the NOP. This final rule will remove the “solely 100 percent organic” requirement currently in the regulations and allow split operations to request an organic assessment exemption for all products that qualify as certified “organic” and “100 percent organic.” Also, just as for Federal marketing orders, “person” will continue to mean any individual, group of individuals, corporation, association, cooperative, or other business entity engaged in any of the aforementioned activities.

### Examples

For all examples, assume that the person produces, handles, processes, or imports a commodity regulated under a research and promotion program and is otherwise obligated to pay assessments under that order:

- A producer who maintains a valid organic certificate under the NOP and markets 100 percent of the products they produce as certified “organic” or “100 percent organic” will be eligible for an organic exemption on 100 percent of the quantity produced.

- A handler who maintains a valid organic certificate under the NOP and handles 20 percent of the products they handle as certified “organic” or “100 percent organic” products will be eligible for an organic exemption on 20 percent of the total quantity they handle. Conversely, the handler will continue to be obligated to pay the full assessment on the 80 percent of the total quantity they handle that is not “organic” or “100 percent organic.” The

assessment calculation will be: Quantity produced × 80 percent × assessment rate.

- A producer who has a split operation (50 percent organic and 50 percent conventional or nonorganic) with the combined total of production above the de minimis amount and maintains a valid organic certificate under NOP for the 50 percent organic product will be eligible for an exemption on the organic portion, but must pay on the 50 percent conventional or nonorganic portion—even though the remaining conventional or nonorganic portion is below the de minimis amount.

- A processor who processes 20 percent of their volume as “organic” or “100 percent organic” products received from certified organic producers, but does NOT maintain a valid organic certificate under the NOP, will NOT be eligible for any exemption of their assessment obligation as they are NOT a certified handling operation. The processor will be obligated to pay 100 percent of the assessment associated with the quantity of product they processed and marketed.

- An importer who maintains a valid organic certificate under the NOP and markets the products that they import as organic products, but the producers of the products are NOT certified under the NOP, will be eligible for an organic assessment exemption if the product is certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP.

### Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS is required to examine the impact of this final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis.

### Analysis of Marketing Order Programs

Marketing orders issued pursuant to the AMAA, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Assessments under marketing order programs are paid by the handlers regulated under each of the Federal marketing orders. There are approximately 950 handlers regulated

under the 23 Federal marketing orders with market promotion authority (there are 28 marketing orders total—5 do not have authority for market promotion activities). Currently, only 10 entities handle or market solely 100 percent organic products and claim exemptions from paying assessments for market promotion activities, including paid advertising, under the assessment exemption regulations contained in § 900.700. USDA believes that as many as 20 percent of the entities handling agricultural products under the various marketing orders (approximately 190 firms) may handle some quantity of organic products, but do not qualify for an assessment exemption under the current regulations.

Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000 (13 CFR 121.201). All of the entities currently approved for an organic assessment exemption under the marketing order programs would be classified by SBA as small agricultural service firms. In addition, although the exact number of potential applicants is unknown, USDA believes that many of the entities that will become eligible for an organic assessment exemption as a result of this action may also be classified as small firms under the SBA classification.

As previously mentioned, Section 501 of the FAIR Act was amended by the 2002 Farm Bill to exempt persons that produced and marketed solely 100 percent organic products, and were not split operations, from the payment of an assessment for commodity promotion activities under a commodity promotion law. The amendment required the Secretary to promulgate regulations with regard to the eligibility and compliance of such organic assessment exemptions. AMS subsequently added § 900.700 to the General Regulations (7 CFR part 900) governing Federal marketing orders to establish the criteria and procedure for obtaining an organic assessment exemption.

On February 7, 2014, the FAIR Act was again amended by the 2014 Farm Bill to broaden the eligibility criteria for receiving an organic assessment exemption under a commodity promotion program. Specifically, the 2014 Farm Bill amendment to the FAIR Act exempts persons that produce, handle, market, or import products certified as “organic” or “100 percent organic” from payment of assessments under a commodity promotion program. The exemption applies regardless of

whether a producer, handler, marketer, or importer also produces, handles, markets, or imports conventional or nonorganic products. The statute further requires the Secretary to promulgate regulations under each of the commodity promotion programs to implement the amendment.

As required, USDA is amending the general regulations that will affect 23 of the 28 Federal marketing orders that have authority for market promotion, including paid advertising. These amendments modify the current provisions and broaden the eligibility for organic handling operations to become exempt from paying assessments on the certified "organic" and "100 percent organic" products that they handle, regardless of whether the handler is a split operation.

The 23 marketing order programs affected by this final rule allow for promotion activities designed to assist, improve, and promote the marketing, distribution, or consumption of the commodities covered under the marketing orders. Some of the orders also include authority for paid advertising. Expenses necessary to administer the programs are paid for by assessments levied on handlers regulated under the various marketing orders. Market promotion activities, including paid advertising, are only one component of each marketing order's regulatory scheme. The assessment exemption for organic products only applies to the portion of a marketing order assessment that is associated with market promotion activities, including paid advertising. All handlers subject to regulation under a marketing order are obligated to pay the portion of the assessment that is not directly related to market promotion, including paid advertising. This includes handlers who are granted an organic assessment exemption.

Under this final rule, § 900.700 is amended to broaden the criteria for persons eligible to obtain an assessment exemption for marketing promotion, including paid advertising; streamline the procedure for applying for an exemption; modify the procedure for calculating the assessment exemption; and revise other procedural details necessary to effectuate the 2014 Farm Bill amendment. These changes will allow more handlers to qualify for an organic assessment exemption than are presently eligible under the current regulations.

Regarding the impact on affected entities under a marketing order, this final rule will impose minimal incurred costs in filing the exemption application and in maintaining records needed to

verify the applicant's exemption status during the period that the entity is exempt. Under the revised regulations, applicants will still be required to submit an application for exemption on Form FV-649 and receive approval from the applicable board or committee to obtain the assessment exemption. However, the eligibility criteria has been broadened and the amount of documentation required of an applicant has been reduced, thus reducing the burden on entities who wish to participate. Applicants will continue to submit one application annually. The annual burden associated with requests for organic assessment exemptions for all of the marketing order industries is estimated to total 47.5 hours (190 applicants × 15 minutes) (see the Paperwork Reduction Act section below for greater explanation of the information collection and recordkeeping burden).

The total estimated cost burden associated with the information collection is estimated to be \$712, or \$3.75 per applicant. The total cost was estimated by multiplying the expected burden hours associated with the organic exemption application (47.5 hours) by \$15.00 per hour, a sum deemed reasonable should an applicant be compensated for their time.

During the 2012–2013 marketing season, assessments for all Federal marketing orders totaled approximately \$89,700,000. Of that amount, about \$58,300,000 (or 65 percent) was made available for marketing promotion activities, including paid advertising. While there is not enough information to generate a reasonable estimate, USDA believes about two percent, on average, of the total assessments are for commodities that are certified organic. Thus, assessments on organic commodities might have totaled as much as \$1,794,000 (2 percent of \$89,700,000). That total might be reduced moving forward by \$1,166,000 (65 percent of \$1,794,000—the portion of the assessments made available for marketing activities) if all of the approximately 190 handlers that USDA believes may be eligible were to apply to the respective board or committee and be approved for an organic assessment exemption under the revised regulations.

There are approximately 10 handlers that are approved for organic assessment exemptions under the current regulation, with a total exempted amount of approximately \$135,000. The current exemption averages approximately \$13,500 per handler. Based on the estimate that 190 handlers might be exempt from assessments

under the proposed criteria, and an estimated \$1,166,000 of potential exemptions, USDA estimates that exempted organic handlers may average \$6,136 in decreased assessments. This amount is less than half of the current average. However, the revised eligibility requirements are expected to attract more handlers than under the current regulations. Many of those handlers may be small entities or may only handle a small percentage of organic products relative to the total amount of product handled.

There is some variation among the 23 marketing orders on the percent of assessments used for market promotion activities, including paid advertising. Thus, the actual reduction in assessments will differ among the various marketing orders. In fact, the amounts allocated for marketing promotion activities as a percentage of the total marketing order budgets range from less than 5 percent to almost 95 percent. As such, the financial impact of this rule to each handler individually, and to each of the 23 distinct marketing order programs collectively, cannot be accurately estimated. However, several of the affected marketing order programs do expect to see large reductions in assessment revenue moving forward. The Oregon-Washington Fresh Pear Committee anticipates a \$362,718 reduction in assessments (approximately 3.8 percent of total assessments), the California Almond Board expects a reduction of \$298,000 (approximately 0.5 percent), and the California Raisin Administrative Committee expects a reduction of \$180,000 (approximately 3.5 percent) as a result of the expanded eligibility for organic assessment exemptions. These boards and committees will have to adjust programs and reduce budgeted expenses accordingly.

Since this action has the potential to exempt agricultural handling entities from assessments, AMS believes that this rule will have a net beneficial economic impact on exempted firms. The additional burden associated with the additional information collection will be more than offset by reduced assessment obligations. The benefits for this final rule are not expected to be disproportionately greater or less for smaller entities than for larger entities regulated under any of the 23 marketing order programs.

#### **Analysis of Research and Promotion Programs**

Research and promotion programs established under the various commodity promotion acts, and the rules and regulations issued thereunder,

are like marketing orders in that they are uniquely brought about through group action of essentially small entities acting on their own behalf.

Producers, handlers, processors, manufacturers, importers, exporters, feeders, and seed stock producers pay assessments to the national boards and councils that administer the various commodity research and promotion programs, or in some cases to other parties designated by a board or council to collect assessments. The number of entities paying assessments under each of the research and promotion programs varies considerably. For example, the mango program receives assessments from approximately 198 handlers and importers, while the beef program receives assessments from nearly 1 million producers and 125 importers.

As mentioned previously, small agricultural service firms are defined by the SBA as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. Many of the handlers, importers, manufacturers, exporters, feeders, and seed stock producers currently approved for organic assessment exemptions under the research and promotion programs would be classified by SBA as small agricultural service firms. In addition, most of the producers currently approved for exemptions would also be classified as small agricultural producers. The exact number and size of the potential applicants that will be eligible for an assessment exemption as a result of this action is not known. The current and estimated number of respondents filing exemption claims appears later in this discussion; however, USDA believes that many of the entities that will become eligible for an organic assessment exemption under the regulation changes contained herein may also be classified as small firms and/or small producers under the SBA classification.

This final rule was initiated as a result of amendments to the FAIR Act contained in the 2014 Farm Bill. This

rule modifies the organic assessment exemption regulations established under each of the 22 research and promotion programs to revise the eligibility criteria for obtaining an organic assessment exemption. As revised, the regulations provide that entities that produce, handle, market, process, manufacture, feed, or import organic products may be exempt from the payment of an assessment under a commodity promotion law with respect to any agricultural commodity that is certified as “organic” or “100 percent organic” under the NOP. The exemption will apply to the certified “organic” or “100 percent organic” products regardless of whether the agricultural commodity subject to the exemption is produced, handled, marketed, processed, manufactured, fed, or imported by a person that also produces, handles, markets, processes, manufactures, feeds, or imports conventional agricultural products. This is a change from the previous regulations, which only allowed organic assessment exemptions for organic operations that produced and marketed solely products that were “100 percent organic” as defined under the OFPA and were not split operations.

Under the previous regulations, eligible producers, handlers, marketers, processors, manufacturers, exporters, feeders, and importers that wished to be exempted from assessment on their certified organic products must have first submitted a request for exemption to the appropriate board or council on Form AMS-15. This provision does not change as a result of this final rule. However, this action does change the information collection requirements for requesting an organic assessment exemption to reflect the revised eligibility criteria and will necessitate modifying Form AMS-15 to reflect the changes established by this rule. The modified form will continue to be required under the revised regulations to assist the board or council in the effective administration of the exemption and to ensure compliance with the exemption requirements.

In preparing this final regulatory flexibility analysis, AMS has attempted to identify the entities that will be affected by this final rule and examine the potential impact on such entities. AMS has determined that this action will have little negative impact on entities subject to research and promotion programs. Further, the changes will only impose minimal costs incurred in the filing of the exemption request and in maintaining records needed to verify the applicant’s exemption status during the period that the entity is exempt. Under the revised regulations, the required information collection burden will be about the same for entities who wish to initiate or perpetuate an organic assessment exemption. Applicants will continue to be required to submit one application annually.

All of the entities paying assessments to the research and promotion programs are eligible to take advantage of the rule changes contained herein, provided the parties elect to apply and otherwise comply with the exemption requirements as specified under each of the individual orders.

Approximately 1,493 entities are currently approved for organic assessment exemptions under the 22 research and promotion programs. Organic assessment exemptions for the past year were approximately \$1,400,000 for all of the programs in aggregate. In 2013, it is estimated that the dairy promotion and research program had the largest number of exemptions, with 1,150 producers exempt, and the highest dollar amount, with nearly 1 million dollars of assessment exemptions. Participation in the other programs varied. Ten of the 22 research and promotion programs currently do not have any entities approved for organic assessment exemptions.

The estimated number of respondents filing exemption claims with the boards or councils after implementation of the changes to the regulations is anticipated as follows:

	Current	Estimated
<i>Beef</i> .....	30	2,966
<i>Blueberries</i> .....	8	204
<i>Christmas trees</i> .....	0	0
<i>Cotton</i> .....	0	no estimate
<i>Dairy</i> .....	1,150	1,823
<i>Eggs</i> .....	0	20
<i>Fluid milk</i> .....	0	11
<i>Hass avocados</i> .....	230	771
<i>Honey</i> .....	2	327
<i>Lamb</i> .....	3	7
<i>Mangos</i> .....	3	75
<i>Mushrooms</i> .....	7	246

	Current	Estimated
<i>Paper and Paper-based Packaging</i> .....	0	0
<i>Peanuts</i> .....	0	85
<i>Popcorn</i> .....	0	170
<i>Pork</i> .....	5	18
<i>Potatoes</i> .....	6	904
<i>Raspberries</i> .....	0	232
<i>Softwood lumber</i> .....	0	0
<i>Sorghum</i> .....	10	10
<i>Soybeans</i> .....	39	1,930
<i>Watermelons</i> .....	0	412
<b>Totals</b> .....	<b>1,493</b>	<b>10,211</b>

No respondents are expected from among Christmas tree, paper and paper-based packaging, or softwood lumber entities, given the nature of their industries. In addition, several of the programs exempt smaller entities from assessment—fluid milk processors processing less than 3 million pounds; egg producers owning 75,000 or fewer hens; raspberry producers producing less than 20,000 pounds; mushroom producers producing less than 500,000 pounds; honey first handlers handling less than 250,000 pounds; popcorn processors processing less than 4 million pounds; blueberry producers producing less than 2,000 pounds; and sorghum importers importing less than 1,000 bushels of grain or 5,000 tons of silage. More new respondents would be expected under those programs if the smaller entities were not already exempt based on minimum quantities.

Under the revised regulations, the annual burden related to submitting requests for organic assessment exemptions for all of the entities covered under the 22 research and promotion programs is estimated to total 2,552.75 hours (10,211 entities × 15 minutes) (see the Paperwork Reduction Act section for more detail). The total financial burden associated with the information collection for all industries covered by the programs is estimated to be \$38,291.25, or \$3.75 per applicant. The total cost was estimated by multiplying the expected burden hours associated with the exemption application (2,552.75 hours) by \$15.00 per hour, a sum deemed reasonable should an applicant be compensated for their time.

This final rule will allow eligible producers, handlers, first handlers, marketers, processors, manufacturers, importers, exporters, feeders, and importers to request an exemption from paying assessments on products certified as “organic” or “100 percent organic.” This action revises the organic exemption eligibility criteria under each of the research and promotion programs,

thereby making the exemption available to more entities. The revised eligibility criteria are expected to increase the total number of participants as well as the total amount of organic assessment exemptions under each of the programs. The estimated total in organic assessment exemption amounts expected to result from revising the eligibility requirements are as follows:

<i>Beef</i> .....	\$2,400,000
<i>Blueberries</i> .....	no estimate
<i>Christmas trees</i> .....	0
<i>Cotton</i> .....	no estimate
<i>Dairy</i> .....	4,190,000
<i>Eggs</i> .....	742,500
<i>Fluid milk</i> .....	4,530,000
<i>Hass avocados</i> .....	850,000
<i>Honey</i> .....	no estimate
<i>Lamb</i> .....	114,000
<i>Mangos</i> .....	no estimate
<i>Mushrooms</i> .....	132,655
<i>Paper and Paper-based packaging</i> .....	0
<i>Peanuts</i> .....	6,517
<i>Popcorn</i> .....	no estimate
<i>Pork</i> .....	111,000
<i>Potatoes</i> .....	no estimate
<i>Raspberries</i> .....	no estimate
<i>Softwood lumber</i> .....	0
<i>Sorghum</i> .....	122,500
<i>Soybeans</i> .....	427,800
<i>Watermelons</i> .....	no estimate
<b>Total</b> .....	<b>\$13,626,972</b>

There are no estimated assessment exemption amounts for the Christmas tree, paper and paper-based-packaging, or softwood lumber programs given the nature of these industries. Some boards and councils were able to estimate the number of organic production and marketing operations within their industries; however, based upon current data, there is not enough information to generate a reasonable estimate of the potential dollar amount of organic assessment exemptions reported as “no estimate.” The boards and councils that reported “no estimate” generally represent programs that estimated small percentages of participation amongst their industries. As a result of this action, some of the boards and councils

listed above may have to adjust programs or reduce budgeted expenses in response to organic assessment exemptions.

Since this action has the potential to exempt agricultural production, handling, and marketing entities from assessments, this rule will have an additional burden associated with the additional information collection, which will be more than offset by reduced assessment obligations. The benefits for this action are not expected to be disproportionately greater or less for small producers, handlers, or marketers than for larger entities regulated under any of the 22 research and promotion programs.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements have been previously approved by the Office of Management and Budget (OMB) under 23 Federal marketing order programs (7 CFR parts 905, 906, 915, 922, 923, 925, 927, 929, 930, 932, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, and 993) and 22 research and promotion programs (7 CFR parts 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280). Upon publication of this final rule, AMS will submit a Justification for Change to OMB for the AMS–15 Exemption Application Form for Research and Promotion Programs, OMB No. 0581–0093 National Research, Promotion and Consumer Information Programs. AMS will also submit a Justification for Change to OMB for the FV–649 Exemption Application Form for Marketing Orders, OMB No. 0581–0216 Fruit and Vegetable Marketing Orders Certified Organic Handler Marketing Promotion Assessment Exemption under 23 Federal Marketing Orders. The Justification for Change will request approval for an increase in



number of respondents and an increase in burden hours for these two forms.

After consideration of all relevant material presented, including information submitted by the commenters and other information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the declared policy of the previously referenced commodity promotion laws, the 2014 Farm Bill, and the FAIR Act.

#### List of Subjects

##### 7 CFR Part 900

Administrative practice and procedure, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

##### 7 CFR Part 1160

Milk, Reporting and recordkeeping requirements.

##### 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 1206

Administrative practice and procedure, Advertising, Consumer information, Agricultural research, Mango, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 1207

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

##### 7 CFR Part 1208

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Raspberries, Reporting and recordkeeping requirements.

##### 7 CFR Part 1209

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

##### 7 CFR Part 1210

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

##### 7 CFR Part 1212

Administrative practice and procedure, Advertising, Agricultural

research, Reporting and recordkeeping requirements.

##### 7 CFR Part 1214

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

##### 7 CFR Part 1215

Administrative practice and procedures, Advertising, Agricultural research, Popcorn, Reporting and recordkeeping requirements.

##### 7 CFR Part 1216

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

##### 7 CFR Part 1217

Administrative practice and procedure, Advertising, Marketing agreements, Reporting and recordkeeping requirements, Softwood lumber.

##### 7 CFR Part 1218

Administrative practice and procedure, Advertising, Agricultural Research, Blueberries, Reporting and recordkeeping requirements.

##### 7 CFR Part 1219

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

##### 7 CFR Part 1220

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

##### 7 CFR Part 1221

Administrative practice and procedure, Advertising, Agricultural research, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Sorghum.

##### 7 CFR Part 1222

Administrative practice and procedure, Advertising, Labeling, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 1230

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

##### 7 CFR Part 1280

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

For the reasons set forth in the preamble, 7 CFR parts 900, 1150, 1160, 1205, 1206, 1207, 1208, 1209, 1210, 1212, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1230, 1250, 1260, and 1280 are amended as follows:

#### PART 900—GENERAL REGULATIONS

■ 1. The authority citation for 7 CFR part 900 continues to read as follows:

**Authority:** 7 U.S.C. 601–674 and 7 U.S.C. 7401.

■ 2. Revise § 900.700 to read as follows:

##### § 900.700 Exemption from assessments.

(a) This section specifies criteria for identifying persons eligible to obtain an exemption from the portion of the assessment used to fund marketing promotion activities under a marketing order and the procedures for applying for such an exemption under 7 CFR parts 905, 906, 915, 922, 923, 925, 927, 929, 930, 932, 948, 955, 956, 958, 959, 966, 981, 982, 984, 985, 987, 989, 993, and such other parts (included in 7 CFR parts 905 through 998) covering marketing orders for fruits, vegetables, and specialty crops as may be established or amended to include market promotion. For the purposes of this section, the term “assessment period” means fiscal period, fiscal year, crop year, or marketing year as defined under these parts; the term “marketing promotion” means marketing research and development projects or marketing promotion, including paid advertising designed to assist, improve, or promote the marketing, distribution, or consumption of the applicable commodity.

(b) A handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan and is subject to assessments under a part or parts specified in paragraph (a) of this section may be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising, provided that:



(1) Only agricultural commodities certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205);

(4) Any handler so exempted shall continue to be obligated to pay assessments under such part or parts specified that are associated with any agricultural products that do not qualify for an exemption under this section; and

(5) For exempted products, any handler so exempted shall be obligated to pay the portion of the assessment associated with the other authorized activities under such part or parts other than marketing promotion, including paid advertising.

(c) *Assessment exemption application.* (1) To be exempt from paying assessments for these purposes under a part or parts listed in paragraph (a) of this section, the handler shall submit an application to the board or committee established under the applicable part or parts prior to or during the assessment period. This application, Form FV–649, “Certified Organic Handler Application for Exemption from Market Promotion Assessments Paid Under Federal Marketing Orders,” shall include:

(i) The date, applicable committee or board, and Federal marketing order number;

(ii) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(iii) Certification that the applicant maintains a valid certificate of organic operation under the OFPA and the NOP;

(iv) Certification that the applicant handles or markets organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(v) Certification that the applicant is otherwise subject to assessments under the Federal marketing order program for which the exemption is requested;

(vi) The number of organic certified producers for whom they handle or market product (including the applicant);

(vii) A requirement that the applicant attach a copy of their certificate of organic operation and all applicable producer certificates of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(viii) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(ix) Such other information as the committee or board may require, with the approval of the Secretary.

(2) The handler shall file the application with the committee or board, prior to or during the applicable assessment period, and annually thereafter, as long as the handler continues to be eligible for the exemption. If the person complies with the requirements of this section and is eligible for an assessment exemption, the committee or board will approve the exemption request and provide written notification of such to the applicant within 30 days. If the application is disapproved, the committee or board will provide written notification of the reason(s) for such disapproval within the same timeframe.

(3) The exemption will apply at the beginning of the next assessable period following notification of approval of the assessment exemption, in writing, by the committee or board.

(d) *Assessment exemption calculation.* (1) The applicable assessment rate for any handler approved for an exemption shall be computed by dividing the committee’s or board’s estimated non-marketing promotion expenditures by the committee’s or board’s estimated total expenditures approved by the Secretary and applying that percentage to the assessment rate applicable to all persons for the assessment period. The modified assessment rate shall then be applied to the quantity of certified “organic” or “100 percent organic” products handled under an approved organic assessment exemption as provided in paragraph (c)(2) of this section. Products handled not subject to an approved organic assessment exemption shall be assessed at the assessment rate applicable to all persons for the assessment period. The committee’s or board’s estimated non-marketing promotion expenditures shall exclude the direct costs of marketing promotion and the portion of committee’s or board’s administrative and overhead costs (e.g., salaries, supplies, printing, equipment, rent, contractual expenses, and other applicable costs) to support and administer the marketing promotion activities.

(2) If a committee or board does not plan to conduct any market promotion activities in a fiscal year, the committee or board may submit a certification to that effect to the Secretary, and as long as no assessments for such fiscal year are used for marketing promotion projects, or the administration of projects are funded by a previous fiscal period’s assessments, the committee or board may assess all handlers, regardless of their organic status, the full assessment rate applicable to the assessment period.

(3) For each assessment period, the Secretary shall review the portion of the assessment rate applicable to marketing promotion for persons eligible for an exemption and, if appropriate, approve the assessment rate.

(4) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the committee or board within 30 days and pay the full assessment on all remaining assessable product for all committee or board assessments from the date the handler no longer is eligible to the end of the assessment period.

(5) Within 30 days following the applicable assessment period, the committee or board shall re-compute the applicable assessment rate for handlers exempt under this section based on the actual expenditures incurred during the applicable assessment period. The Secretary shall review, and if appropriate, approve any change in the portion of the assessment rate for market promotion applicable to exempt handlers, and authorize adjustments for any overpayments or collection of underpayments.

## PART 1150—DAIRY PROMOTION PROGRAM

■ 3. The authority citation for 7 CFR part 1150 continues to read as follows:

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

■ 4. In § 1150.157, remove paragraph (i), redesignate paragraph (j) as paragraph (i), and revise paragraphs (a), (b), (c), (d), (e), (g), and newly redesignated paragraph (i) to read as follows:

### § 1150.157 Assessment exemption.

(a) A producer described in § 1150.152(a)(1) and (2) who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of the producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer subject to assessments pursuant to § 1150.152(a)(1) and (2) shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under 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(a).

(g) An importer who imports products that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” dairy products on an *Organic Exemption Request Form* (Form AMS–15) 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 an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the CBP entry documentation. Any line item entry of “organic” or “100 percent organic” dairy products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by the CBP on certified “organic” or “100 percent organic” dairy products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

**PART 1160—FLUID MILK PROMOTION PROGRAM**

■ 5. The authority citation for 7 CFR part 1160 continues to read as follows:

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

■ 6. In § 1160.215, revise paragraphs (b) through (e) to read as follows:

**§ 1160.215 Assessment exemption.**

\* \* \* \* \*

(b) A fluid milk processor described in § 1160.211(a) who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a fluid milk processor regardless of whether the agricultural commodity subject to the exemption is processed by a person that also processes conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The fluid milk processor maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any fluid milk processor so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(c) To apply for an assessment exemption, a fluid milk processor described in § 1160.211(a) shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the processor continues to be eligible for the exemption.

(d) A fluid milk processor request for exemption shall include the following information:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;

(3) Certification that the applicant processes organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(e) If a fluid milk processor complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the processor within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

**PART 1205—COTTON RESEARCH AND PROMOTION**

■ 7. The authority citation for 7 CFR part 1205 continues to read as follows:

**Authority:** 7 U.S.C. 2101–2118.

■ 8. In § 1205.519, revise paragraphs (a), (b), (c), (d), (e), (f), and (h) to read as follows:

**§ 1205.519 Organic exemption.**

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under the OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for an exemption under this section, an eligible cotton producer shall submit a request for exemption to the Board on an *Organic Exemption Request Form* (Form AMS–15) 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) A producer request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces and/or imports organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section 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 products that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” cotton and cotton products on an *Organic Exemption Request Form* (Form AMS–15) 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 an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be

entered by the importer on the Customs entry documentation. Any line item entry of “organic” or “100 percent organic” cotton and cotton products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

(h) An importer who is exempt from payment of assessments under paragraph (f) of this section shall be eligible for reimbursement of assessments collected by Customs on certified “organic” or “100 percent organic” cotton and cotton products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

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

■ 9. The authority citation for 7 CFR part 1206 continues to read as follows:

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

■ 10. In § 1206.202, revise paragraphs (a), (b), (c), (d), and (e) and add paragraph (g) to read as follows:

**§ 1206.202 Exemption for organic mangos.**

(a) A first handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products handled by the first handler regardless of whether the agricultural commodity subject to the exemption is handled by a person that also handles conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The first handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any first handler so exempted shall continue to be obligated to pay assessments under this part that are

associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible first handler shall submit a request for exemption to the Board on an *Organic Exemption Request Form* (Form AMS–15) 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) A first handler request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant handles organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a first handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the first handler within 30 days. 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 products that are eligible to be labeled as "organic" or "100 percent organic" under the NOP, or certified as "organic" or "100 percent organic" under a U.S. equivalency arrangement established under the NOP, shall be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified "organic" or "100 percent organic" mangos on an *Organic Exemption Request Form* (Form AMS–15) 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 exemption. This documentation shall include the same information required of first 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 within the applicable timeframe. If Customs collects the assessment on exempt product that is identified as "organic" by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

(g) An importer who is exempt from payment of assessments under paragraph (e) of this section shall be eligible for reimbursement of assessments collected by the CBP on certified "organic" or "100 percent organic" mangos and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

#### **PART 1207—POTATO RESEARCH AND PROMOTION PLAN**

■ 11. The authority citation for 7 CFR part 1207 continues to read as follows:

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

■ 12. In § 1207.514, revise paragraphs (a), (b), (c), (d), (e), and (f), and remove paragraph (h) to read as follows:

##### **§ 1207.514 Exemption for organic potatoes.**

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as "organic" or "100 percent organic" (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified "organic" or "100 percent organic" (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural

commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, the producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption.

(c) The producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) A producer approved for exemption under this section 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 products that are eligible to be labeled as "organic" or "100 percent organic" under the NOP, or certified as "organic" or "100 percent organic" under a U.S.

equivalency arrangement established under the NOP, shall be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” potatoes, potato products, and seed potatoes on an *Organic Exemption Request Form* (Form AMS–15) 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. If Customs collects the assessment on exempt product that is identified as “organic” by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

**PART 1208—PROCESSED RASPBERRY PROMOTION, RESEARCH, AND INFORMATION ORDER**

■ 13. The authority citation for 7 CFR part 1208 continues to read as follows:

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

■ 14. In § 1208.53, revise paragraph (d) to read as follows:

**§ 1208.53 Exemption and reimbursement procedures.**

\* \* \* \* \*

(d) *Organic exemption.* (1) A producer of raspberries for processing who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as “organic” or “100 percent organic”

(as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Council on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the beginning of the fiscal period, for as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation provided by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Council, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports products that are eligible to be labeled as

“organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Council and request an exemption from assessment on certified “organic” or “100 percent organic” processed raspberries on an *Organic Exemption Request Form* (Form AMS–15) 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 a producer in paragraph (d)(3) of this section. 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 within the applicable timeframe. If Customs collects the assessment on exempt product that is identified as “organic” by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

**PART 1209—MUSHROOM PROMOTION, RESEARCH, AND CONSUMER INFORMATION ORDER**

■ 15. The authority citation for 7 CFR part 1209 continues to read as follows:

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

■ 16. 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 shall be exempt from assessments under this part.

(2) [Reserved]

\* \* \* \* \*

- 17. In § 1209.252,
  - a. Revise the section heading;
  - b. Redesignate paragraph (a)(2) as paragraph (a)(3);
  - c. Add new paragraph (a)(2); and
  - d. Revise newly redesignated paragraph (a)(3).

The revision and addition read as follows:

**§ 1209.252 Exemptions and exemption procedures.**

(a) \* \* \*

(2) In addition to the exemption provided for in § 1209.52, a producer or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer or importer regardless of whether the agricultural commodity subject to the exemption is produced or imported by a person that also produces or imports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

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

(i) An eligible mushroom producer shall submit a request for exemption to the Council on an *Organic Exemption Request Form* (Form AMS–15) 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) A producer request for exemption shall include the following:

(A) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(B) Certification that the applicant maintains a valid certificate of organic

operation issued under the OFPA and the NOP;

(C) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(D) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(E) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(F) Such other information as may be required by the Council, with the approval of the Secretary.

(iii) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(iv) An eligible mushroom importer shall submit a request for exemption from assessment on imported certified “organic” or “100 percent organic” mushrooms, or mushrooms certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, on an *Organic Exemption Request Form* (Form AMS–15) 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 (a)(4)(ii) of this section. 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. If Customs collects the assessment on exempt product that is identified as “organic” by a number in the Harmonized Tariff Schedule, the Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

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

\* \* \* \* \*

**PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN**

- 18. The authority citation for 7 CFR part 1210 continues to read as follows:

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

- 19. In § 1210.516, revise paragraphs (a), (b), (c), (d), and (f) and remove paragraph (h) to read as follows:

**§ 1210.516 Exemption for organic watermelons.**

(a) A producer or handler who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer or handler regardless of whether the agricultural commodity subject to the exemption is produced or handled by a person that also produces or handles conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer or handler maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under the OFPA (7 CFR part 205); and

(4) Any producer or handler so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible producer or handler shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer or handler continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic

operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces or handles organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer or handler complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer or handler within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

(f) An importer who imports products that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” watermelons on an *Organic Exemption Request Form* (Form AMS–15) 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. If Customs collects the assessment on exempt product that is identified as “organic” by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay

assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

**PART 1212—HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER**

■ 20. The authority citation for 7 CFR part 1212 continues to read as follows:

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

■ 21. In § 1212.53,

■ a. Redesignate paragraph (b) as paragraph (c) and paragraph (c) as paragraph (b); and

■ b. Revise newly redesignated paragraph (c) and paragraphs (e) and (g).

The revisions read as follows:

**§ 1212.53 Exemption from assessment.**

\* \* \* \* \*

(c) A first handler or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP), or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a first handler or importer regardless of whether the agricultural commodity subject to the exemption is handled or imported by a person that also handles or imports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The first handler or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any first handler or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(5) Persons eligible for an organic assessment exemption as provided this section may apply for such an exemption by submitting a request to

the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, as long as the first handler or importer continues to be eligible for the exemption.

(i) A first handler or importer request for exemption shall include the following:

(A) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(B) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(C) Certification that the applicant handles or imports organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(D) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(E) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(F) Such other information as may be required by the Board, with the approval of the Secretary.

(ii) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the first handler or importer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe. It is the responsibility of the first handler or importer to retain a copy of the certificate of exemption.

\* \* \* \* \*

(e) Exempt importers shall be eligible for reimbursement of assessments collected by Customs.

(1) Importers exempt under paragraph (a) of this section must apply to the Board for reimbursement of any assessment paid. No interest will be paid on the assessment collected by Customs. Requests for reimbursement must be submitted to the Board within 90 days of the last day of the calendar year the honey or honey products were imported.

(2) If Customs collects the assessment on exempt product under paragraph (b) of this section that is identified as “organic” by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a



reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

\* \* \* \* \*

(g) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board for a certificate of exemption.

\* \* \* \* \*

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

■ 22. The authority citation for 7 CFR part 1214 continues to read as follows:

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

■ 23. In § 1214.53, revise paragraph (c) to read as follows:

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

\* \* \* \* \*

(c) *Organic.* (1) A producer who domestically produces Christmas trees under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal period, for

as long as the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports Christmas trees that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” Christmas trees on an *Organic Exemption Request Form* (Form AMS–15) 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 a producer in paragraph (c)(3) 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 within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (c)(5) of this section that is identified as

“organic” by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

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

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

■ 24. The authority citation for 7 CFR part 1215 continues to read as follows:

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

■ 25. In § 1215.52, revise paragraph (b) to read as follows:

**§ 1215.52 Exemption from assessment.**

\* \* \* \* \*

(b) Persons that operate under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a processor regardless of whether the agricultural commodity subject to the exemption is processed by a person that also processes conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The processor maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any processor so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

■ 26. In § 1215.300:  
 ■ a. Revise paragraph (b);  
 ■ b. Redesignate paragraphs (c) through (f) as paragraphs (d) through (g), respectively;



- c. Add new paragraph (c); and
- d. Revise newly redesignated paragraph (d).

The revisions and addition read as follows:

**§ 1215.300 Exemption procedures.**

\* \* \* \* \*

(b) Persons eligible for an organic assessment exemption as provided in § 1215.52(b) may apply for such an exemption by submitting a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, as long as the processor continues to be eligible for the exemption.

(c) A processor request for exemption shall include the following:

- (1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;
- (2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;
- (3) Certification that the applicant processes organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;
- (4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the processor within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

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

- 27. The authority citation for 7 CFR part 1216 continues to read as follows:  
**Authority:** 7 U.S.C. 7411–7425 and 7 U.S.C. 7401.

- 28. In § 1216.56, revise paragraphs (a), (b), (c), and (d) and remove paragraph (g) to read as follows:

**§ 1216.56 Exemption for organic peanuts.**

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production

system plan may be exempt from the payment of assessments under this part, provided that:

- (1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;
- (2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OPFA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) In order to apply for this exemption, an eligible peanut producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before August 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

- (1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;
- (2) Certification that the applicant maintains a valid organic certificate issued under the OFPA and the NOP;
- (3) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;
- (4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s)

for disapproval within the same timeframe.

\* \* \* \* \*

**PART 1217—SOFTWOOD LUMBER RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER**

- 29. The authority citation for 7 CFR part 1217 continues to read as follows:  
**Authority:** 7 U.S.C. 7411–7425; 7 U.S.C. 7401.

- 30. In § 1217.53, revise paragraph (d) to read as follows:

**§ 1217.53 Exemption from assessment.**

\* \* \* \* \*

(d) *Organic.* (1) A domestic manufacturer of softwood lumber products who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before the start of the fiscal year, for as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

- (i) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports softwood lumber that is eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” softwood lumber on an *Organic Exemption Request Form* (Form AMS-15) at any time initially, and annually thereafter on or before the beginning of the fiscal year, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a manufacturer in paragraph (d)(3) 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 within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (d)(5) of this section that is identified as “organic” by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which

Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

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

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

■ 31. The authority citation for 7 CFR part 1218 continues to read as follows:

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

■ 32. In § 1218.53:

- a. Revise paragraphs (c) and (d);
- b. Remove paragraph (g);
- c. Redesignate paragraphs (h) through (k) as paragraphs (i) through (l), respectively;
- d. Redesignate paragraphs (e) and (f) as paragraphs (g) and (h), respectively;
- e. Add new paragraphs (e) and (f); and
- f. Revise newly redesignated paragraphs (g) and (j).

The revisions and additions read as follows:

**§ 1218.53 Exemption procedures.**

\* \* \* \* \*

(c) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(d) To apply for exemption under this section, a producer shall submit a

request to the Council on an *Organic Exemption Request Form* (Form AMS-15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(e) A producer request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Council, with the approval of the Secretary.

(f) If a producer complies with the requirements of this section, the Council will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Council will notify the applicant of the reason(s) for disapproval within the same timeframe.

(g) An importer who imports products that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Council and request an exemption from assessment on certified “organic” or “100 percent organic” blueberries on an *Organic Exemption Request Form* (Form AMS-15) 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 (e) of this section. 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. If Customs and Border Protection (Customs) collects the assessment on exempt product that is identified as “organic” by a number in the Harmonized Tariff Schedule, the

Council must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Council for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Council that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

(j) Importers who are exempt from payment of assessments shall be eligible for reimbursement of assessments collected by Customs and may apply to the Council for a reimbursement of such assessments paid. No interest will be paid on assessments collected by Customs. Requests for reimbursement shall be submitted to the Council within 90 days of the last day of the year the blueberries were actually imported.

\* \* \* \* \*

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

■ 33. The authority citation for 7 CFR part 1219 continues to read as follows:

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

■ 34. In § 1219.202, revise paragraphs (a), (b), (c), (d), and (f) and remove paragraph (h) to read as follows:

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

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued

under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, an eligible Hass avocado producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before November 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

(f) An importer who imports products that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” Hass avocados on an *Organic Exemption Request Form* (Form AMS–15) 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. If Customs collects the assessment on exempt product that is identified as “organic” by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

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

■ 35. The authority citation for 7 CFR part 1220 continues to read as follows:

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

■ 36. In § 1220.302, revise paragraphs (a), (b), (c), and (d) and remove paragraph (g) to read as follows:

##### **§ 1220.302 Exemption.**

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued

under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for an exemption under this section, the producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

**PART 1221—SORGHUM PROMOTION, RESEARCH, AND INFORMATION ORDER**

■ 37. The authority citation for 7 CFR part 1221 continues to read as follows:

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

■ 38. In § 1221.117, revise paragraphs (g), (h), (i), and (j) and remove paragraph (m) to read as follows:

**§ 1221.117 Exemptions.**

\* \* \* \* \*

(g) A producer or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP), or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer or importer regardless of whether the agricultural commodity subject to the exemption is produced or imported by a person that also produces or imports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer or importer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer or importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(h) To apply for an exemption under this section, the applicant shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer or importer continues to be eligible for the exemption.

(i) A producer or importer request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces or imports organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(j) If the applicant complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer or importer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

**PART 1222—PAPER AND PAPER-BASED PACKAGING PROMOTION, RESEARCH AND INFORMATION ORDER**

■ 39. The authority citation for 7 CFR part 1222 continues to read as follows:

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

■ 40. In § 1222.53, revise paragraph (b) to read as follows:

**§ 1222.53 Exemption from assessment.**

\* \* \* \* \*

(b) *Organic.* (1) A manufacturer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic handling system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a manufacturer regardless of whether the agricultural commodity subject to the exemption is manufactured by a person that also manufactures conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The manufacturer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any manufacturer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, an eligible manufacturer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year

initially, and annually thereafter on or before the start of the fiscal year, as long as the manufacturer continues to be eligible for the exemption.

(3) A manufacturer request for exemption shall include the following:

(i) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant manufactures organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a manufacturer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the manufacturer within 30 calendar days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) An importer who imports paper and paper-based packaging that is eligible to be labeled as "organic" or "100 percent organic" under the NOP, or certified as "organic" or "100 percent organic" under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments. Such importer may submit documentation to the Board and request an exemption from assessment on certified "organic" or "100 percent organic" paper and paper-based packaging on an *Organic Exemption Request Form* (Form AMS-15) at any time initially, and annually thereafter on or before the beginning of the fiscal year, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of a manufacturer in paragraph (b)(3) 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 within the applicable timeframe. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do

not qualify for an exemption under this section.

(6) If Customs collects the assessment on exempt product under paragraph (b)(5) of this section that is identified as "organic" by a number in the Harmonized Tariff Schedule, the Board must reimburse the exempt importer the assessments paid upon receipt of such assessments from Customs. For all other exempt organic product for which Customs collects the assessment, the importer may apply to the Board for a reimbursement of assessments paid, and the importer must submit satisfactory proof to the Board that the importer paid the assessment on exempt organic product.

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

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

■ 41. The authority citation for 7 CFR part 1230 continues to read as follows:

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

■ 42. In § 1230.102, revise paragraphs (a), (b), (c), (d), (g), and (i) to read as follows:

##### **§ 1230.102 Exemption.**

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as "organic" or "100 percent organic" (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified "organic" or "100 percent organic" (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS-15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant's full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled "organic" or "100 percent organic" under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

(g) An importer who imports products that are eligible to be labeled as "organic" or "100 percent organic" under the NOP, or certified as "organic" or "100 percent organic" under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified "organic" or "100 percent organic" porcine animals or pork and pork products on an *Organic Exemption Request Form* (Form AMS-15) 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 an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of “organic” or “100 percent organic” porcine animals or pork and pork products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by Customs on certified “organic” or “100 percent organic” porcine animals or pork and pork products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

**PART 1250—EGG RESEARCH AND PROMOTION**

■ 43. The authority citation for 7 CFR part 1250 continues to read as follows:

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

■ 44. In § 1250.530, revise paragraph (b) to read as follows:

**§ 1250.530 Certification of exempt producers.**

\* \* \* \* \*

(b) *Organic Production.* (1) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(i) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(ii) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(iii) The producer maintains a valid certificate of organic operation as issued

under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522)(OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(iv) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(2) To apply for exemption under this section, a producer shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long the producer continues to be eligible for the exemption.

(3) A producer request for exemption shall include the following:

(i) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(ii) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(iii) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(iv) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(v) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(vi) Such other information as may be required by the Board, with the approval of the Secretary.

(4) If a producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(5) 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.

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

\* \* \* \* \*

**PART 1260—BEEF PROMOTION AND RESEARCH**

■ 45. The authority citation for 7 CFR part 1260 continues to read as follows:

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

■ 46. In § 1260.302, revise paragraphs (a), (b), (c), (d), (g), and (i) to read as follows:

**§ 1260.302 Organic exemption.**

(a) A producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer regardless of whether the agricultural commodity subject to the exemption is produced by a person that also produces conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any producer so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, a producer shall submit a request to the Board or QSBC on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a producer complies with the requirements of this section, the Board or QSBC will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board or QSBC will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

(g) An importer who imports products that are eligible to be labeled as “organic” or “100 percent organic” under the NOP, or certified as “organic” or “100 percent organic” under a U.S. equivalency arrangement established under the NOP, may be exempt from the payment of assessments on those products. Such importer may submit documentation to the Board and request an exemption from assessment on certified “organic” or “100 percent organic” cattle or beef and beef products on an *Organic Exemption Request Form* (Form AMS–15) 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 an alphanumeric number valid for 1 year from the date of issue. This alphanumeric number should be entered by the importer on the Customs entry documentation. Any line item entry of “organic” or “100 percent organic” cattle or beef and beef products bearing this alphanumeric number assigned by the Board will not be subject to assessments. Any importer so exempted shall continue to be obligated to pay assessments under this part that are associated with any imported agricultural products that do not qualify for an exemption under this section.

\* \* \* \* \*

(i) An importer who is exempt from payment of assessments under paragraph (g) of this section shall be eligible for reimbursement of assessments collected by Customs on certified “organic” or “100 percent organic” cattle or beef and beef products and may apply to the Secretary for a reimbursement. The importer would be required to submit satisfactory proof to the Secretary that the importer paid the assessment on exempt organic products.

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

■ 47. The authority citation for 7 CFR part 1280 continues to read as follows:

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

■ 48. In § 1280.406, revise paragraphs (a), (b), (c), and (d) and remove paragraph (h) to read as follows:

**§ 1280.406 Exemption.**

(a) A producer, seed stock producer, feeder, handler, or exporter who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic production or handling system plan may be exempt from the payment of assessments under this part, provided that:

(1) Only agricultural products certified as “organic” or “100 percent organic” (as defined in the NOP) are eligible for exemption;

(2) The exemption shall apply to all certified “organic” or “100 percent organic” (as defined in the NOP) products of a producer, handler, or exporter regardless of whether the agricultural commodity subject to the exemption is produced, handled, or exported by a person that also produces, handles, or exports conventional or nonorganic agricultural products of the same agricultural commodity as that for which the exemption is claimed;

(3) The producer, handler, or exporter maintains a valid certificate of organic operation as issued under the Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) (OFPA) and the NOP regulations issued under OFPA (7 CFR part 205); and

(4) Any person so exempted shall continue to be obligated to pay assessments under this part that are associated with any agricultural products that do not qualify for an exemption under this section.

(b) To apply for exemption under this section, the person shall submit a request to the Board on an *Organic Exemption Request Form* (Form AMS–15) at any time during the year initially, and annually thereafter on or before January 1, for as long as the producer continues to be eligible for the exemption.

(c) The request for exemption shall include the following:

(1) The applicant’s full name, company name, address, telephone and fax numbers, and email address;

(2) Certification that the applicant maintains a valid certificate of organic operation issued under the OFPA and the NOP;

(3) Certification that the applicant produces, handles, or exports organic products eligible to be labeled “organic” or “100 percent organic” under the NOP;

(4) A requirement that the applicant attach a copy of their certificate of organic operation issued by a USDA-accredited certifying agent under the OFPA and the NOP;

(5) Certification, as evidenced by signature and date, that all information provided by the applicant is true; and

(6) Such other information as may be required by the Board, with the approval of the Secretary.

(d) If a person complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the applicant within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

\* \* \* \* \*

Dated: December 21, 2015.

**Rex A. Barnes,**  
*Associate Administrator, Agricultural Marketing Service.*

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