



This document is scheduled to be published in the Federal Register on 12/16/2014 and available online at <http://federalregister.gov/a/2014-29280>, and on FDsys.gov

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: Proposed rule.

SUMMARY: This proposal would modify the organic assessment exemption regulations under 23 Federal marketing orders and 22 research and promotion programs. The current regulations would be amended to allow persons that produce, handle, market, or import certified 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). The exemption would 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, 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. The authority for this proposal is in section 10004 of the Agricultural Act of 2014.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments will be included in the record and made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Michelle Sharrow, Branch Chief, Marketing Order and Agreement Division, Fruit and Vegetable 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, or
Michelle.Sharrow@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

The authority for this proposed rule is specified in section 10004 of the Agricultural Act of 2014 (2014 Farm Bill) (Pub. L. 113-79). On February 7, 2014, the 2014 Farm Bill amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (FAIR Act) (7 U.S.C. 7401), which established 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 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, the proposed exemption covers all certified "organic" or "100 percent organic" products of a producer, handler, first handler, marketer, or importer regardless of whether the agricultural commodity subject to the exemption is produced, handled, marketed, or imported by a person that also produces, handles, markets, 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.

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

The Department of Agriculture (USDA) is issuing this proposed rule with regard to 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 would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

Agricultural Marketing Agreement Act of 1937

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

Dairy Production Stabilization Act of 1983

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect. Section 1221 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed rule is not intended to have retroactive effect.

Fluid Milk Promotion Act of 1990

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

Hass Avocado Promotion, Research and Information Act of 2000

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

This proposal is issued under the 23 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.

Proposed Rule

USDA is proposing revisions to the general regulations affecting the 23 marketing order programs established under the AMAA. In addition, USDA is proposing similar amendments to the orders and/or rules and regulations of the 22 research and promotion programs. USDA is proposing the termination of existing provisions in § 1209.52 of the mushroom research and promotion order that are not consistent with proposed amendments to the order's organic assessment exemption provisions contained

in § 1209.252. The proposed termination of § 1209.52(a)(2) and (a)(3) is authorized by § 1209.71(a) of the order. While the existing organic exemption provisions would terminate in § 1209.52 of the order, a revised organic exemption provision is proposed in section § 1209.252(a)(2) of the regulations.

Consistent with the provisions of the 2014 Farm Bill, the proposed modifications would amend current regulatory provisions that exempt organic producers, handlers, first handlers, marketers, and importers from the payment of promotion program assessments used to fund commodity promotion activities, including paid advertising, under a commodity promotion law.

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 marketing orders.

Rules of practice and regulations governing all 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 (hereafter referred to as a "split operation").

This proposal would modify the organic assessment exemption eligibility criteria contained in § 900.700. The requirements contained in that section would be revised to allow organic operations that are split operations to apply for and receive an assessment exemption on their 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) would be modified to include certified organic handlers that maintain split operations. The section would 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 would continue to be required to submit an application to the marketing order board or committee, and subsequently be approved by that body, to qualify for the organic exemption. However, as a result of the revised eligibility requirements as proposed herein, some of the

information collection previously necessary for the board or committee to administer the organic assessment exemption would no longer be required moving forward. As such, § 900.700(c) would be modified to require less documentation from the handler with regards to the type and scope of their operation when they apply for an organic assessment exemption.

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, mangoes, 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 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, 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 proposal, the eligibility criteria for obtaining an organic assessment exemption, as contained in each of the research and promotion orders, plans, and/or regulations, would be revised. The requirements for such an exemption would be modified to allow split organic operations to apply for and receive an assessment exemption on their organic products, whereas such types of operations are explicitly precluded from the assessment exemption under the current provisions in each program. In addition, language would be added to provide that exempt producers, handlers, marketers, 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 would 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 proposed herein, some of the information collection that is currently necessary for the board

or council to administer the organic assessment exemption would no longer be required moving forward. As such, the section of each order, plan, or regulation that specifies the information collection requirements for the organic assessment exemption would be modified to require less documentation from the applicant with regards to the type and scope of their operation.

Who Is Eligible for Exemption Under a Marketing Order?

This proposed rule would modify the eligibility requirements for organic assessment exemptions that are currently in place for marketing order programs. Under this proposed 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) would be eligible for the organic assessment exemption under amended requirements in part 900.

All of the 23 marketing orders impacted by this proposed 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 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 proposed rule would 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 would 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 would 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 that 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, would be eligible for an organic assessment exemption. The handler would be exempt from 100 percent of the portion of the marketing order assessment attributed to marketing promotion activities (60 percent). The handler would be obligated to pay 40 percent of the assessment rate on 100 percent of the product handled. The assessment calculation would be: quantity handled X 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 would be eligible for an organic assessment exemption. The handler would 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 would 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 would be: (quantity handled X 20 percent X 40

percent of the assessment rate) + (quantity handled X 80 percent X 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, would NOT be eligible for any exemption of their marketing order assessments as they do not have proper certification. The handler would 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 would 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 marketing orders, this proposed rule would 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) would be eligible for an organic assessment exemption under amended requirements contained in each of the programs' respective orders, plans, or regulations. Persons who are importing organic products in compliance with a U.S. equivalency arrangement established by NOP pursuant to OFPA and the NOP regulations would 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, and 2 assess processors. Under the provisions for each of the respective programs, many also assess other entities, in addition to the named classes, including importers, 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 proposed rule would 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 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" would 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 would be eligible for an organic exemption on 20 percent of the total quantity they handle. Conversely, the handler would 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 would be: quantity produced X 80 percent X assessment rate.

- 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, would NOT be eligible for any exemption of their assessment obligation as they are NOT a certified handling operation. The processor would 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, would 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.

Initial Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of this proposed 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 initial 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 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 would become eligible for an organic assessment exemption as a result of this proposed 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 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 proposing amendments to the general regulations that would affect 23 of the 28 Federal marketing orders that have authority for market promotion, including paid advertising. These amendments would 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 proposed 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, as currently implemented and as proposed going forward, 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 proposal, § 900.700 would be 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 would 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 proposed rule would impose minimal costs incurred 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 proposed revisions, applicants would 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 would be broadened and the amount of documentation required of an applicant would be reduced, thus reducing the burden on entities who wish to participate. Applicants would 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 X 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 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 proposed 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, as proposed herein, would be 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 would 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 proposal 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, the California Almond Board expects a reduction of \$298,000, and the California Raisin Administrative Committee expects a reduction of \$180,000 as a result of the expanded eligibility for organic assessment exemptions. Should this rule be implemented, these boards and committees would have to adjust programs and reduce budgeted expenses accordingly.

Since this proposed action has the potential to exempt agricultural handling entities from assessments, AMS believes that this rule would have a net beneficial economic impact on exempted firms. The additional burden associated with the additional information collection would be more than offset by reduced assessment obligations. The benefits for this proposed 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, first handlers, processors, 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.

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, 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 would be eligible for an assessment exemption as a result of this proposal 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 would become eligible for an organic assessment exemption under the proposed changes may also be classified as small firms and/or small producers under the SBA classification.

This proposed rule was initiated as a result of amendments to the FAIR Act contained in the 2014 Farm Bill. This rule would modify the current organic assessment exemption regulations under each of the 22 research and promotion programs

to revise the eligibility criteria for obtaining an organic assessment exemption. As proposed, entities that produce, handle, market, 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 would apply to the certified "organic" or "100 percent organic" products regardless of whether the agricultural commodity subject to the exemption is produced, handled, marketed, or imported by a person that also produces, handles, or markets conventional or nonorganic agricultural products. This is a change from the current regulations, which only allow organic assessment exemptions for organic operations that produce and market solely products that are "100 percent organic" as defined under the OFPA and are not split operations.

Under the current regulations, eligible producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers that wish to be exempted from assessment on their certified organic products must submit a request for exemption to the appropriate board or council on Form AMS-15. This provision would not change as a result of this proposed rule. However, the proposed action would reduce the information collection requirements for requesting an organic assessment exemption to reflect the revised eligibility

criteria and would necessitate modifying Form AMS-15 to reflect the proposed changes. The modified form would continue to be required under the proposed revisions to assist the board or council in the effective administration of the exemption and to ensure compliance with the exemption requirements.

In preparing this initial regulatory flexibility analysis, AMS has attempted to identify the entities that would be affected by the proposed rule and examine the potential impact on such entities. AMS has determined that this proposed rule would have very little negative impact on entities regulated under research and promotion programs. Further, the proposed changes would 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 proposed revisions, the required information collection burden would be reduced for entities who wish to initiate or perpetuate an organic assessment exemption. Applicants would 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 proposed 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 products 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 proposed changes to the regulations is anticipated as follows:

	Current	Estimated
<u>Beef:</u>	30	2,966
<u>Blueberries:</u>	8	204
<u>Christmas trees:</u>	0	0
<u>Cotton:</u>	0	no estimate
<u>Dairy:</u>	1,150	1,823
<u>Eggs:</u>	0	20
<u>Fluid milk:</u>	0	11
<u>Hass avocados:</u>	230	771
<u>Honey:</u>	2	327

<u>Lamb:</u>	3	7
<u>Mangos:</u>	3	75
<u>Mushrooms:</u>	7	246
<u>Paper and Paper-based Packaging:</u>	0	0
<u>Peanuts:</u>	0	85
<u>Popcorn:</u>	0	170
<u>Pork:</u>	5	18
<u>Potatoes:</u>	6	904
<u>Raspberries:</u>	0	232
<u>Softwood lumber:</u>	0	0
<u>Sorghum:</u>	10	10
<u>Soybeans:</u>	39	1,930
<u>Watermelons:</u>	0	412
	=====	=====
<u>Totals</u>	1,493	10,211

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 have been expected under those programs if the smaller entities were not already exempt based on minimum quantities.

Under the proposed 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 X 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 proposed rule would allow eligible producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers to request an exemption from paying assessments on products certified as "organic" or "100 percent organic." The proposed changes would revise 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:

<u>Beef:</u>	\$2,400,000
<u>Blueberries:</u>	no estimate
<u>Christmas trees:</u>	0
<u>Cotton:</u>	no estimate
<u>Dairy:</u>	4,190,000
<u>Eggs:</u>	742,500
<u>Fluid milk:</u>	4,530,000
<u>Hass avocados:</u>	850,000
<u>Honey:</u>	no estimate
<u>Lamb:</u>	114,000
<u>Mangos:</u>	no estimate
<u>Mushrooms:</u>	132,655
<u>Paper and Paper-based packaging:</u>	0
<u>Peanuts:</u>	6,517
<u>Popcorn:</u>	no estimate
<u>Pork:</u>	111,000
<u>Potatoes:</u>	no estimate
<u>Raspberries:</u>	no estimate

<u>Softwood lumber:</u>	0
<u>Sorghum:</u>	122,500
<u>Soybeans:</u>	427,800
<u>Watermelons:</u>	no estimate
	=====
<u>Total</u>	\$13,626,972

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. Should this rule be implemented, these boards and committees would have to adjust programs and reduce budgeted expenses accordingly.

Since this proposed action has the potential to exempt agricultural production, handling, and marketing entities from assessments, AMS believes that this rule would have a net beneficial economic impact on exempted firms. The additional burden associated with the additional information collection

would be more than offset by reduced assessment obligations. The benefits for this proposed rule 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.

To ensure that AMS is able to thoroughly assess the potential impact of this proposed rule on affected entities, interested parties are invited to submit comments, views, and opinions on the probable regulatory and informational impacts of this action on small entities. Comments may indicate the size, number, and type of entities that would be affected by this proposal, explain the potential effects of the proposed amendments on those entities, and provide any pertinent information and data.

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 the 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, reduction in per response time, and an increase in burden hours for these two forms.

While this proposed rule has not received the approval of USDA, it has been determined that it is consistent with and would effectuate the purposes of the Commodity Promotion, Research, and Information Act of 1996, for the programs for which the Act is applicable.

A 30-day comment period for the proposed rule is provided to allow interested persons to submit written comments on the proposed changes to the criteria for identifying persons eligible to obtain an assessment exemption for organic products and the procedural details for obtaining an exemption under the various commodity promotion programs. Thirty days is deemed appropriate because this action was mandated by Congress under

the 2014 Farm Bill and is intended to provide a broader exemption to certified producers, handlers, marketers, feeders, seed stock producers, producers, exporters and importers of "organic" and "100 percent organic" products. All comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 900

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

7 CFR Part 1150

Administrative practice and procedure, Dairy products, Reporting and recordkeeping requirements, Research.

7 CFR Part 1160

Administrative practice and procedure, Fluid milk products, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1205

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

7 CFR Part 1206

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

7 CFR Part 1207

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

7 CFR Part 1208

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

7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Imports, 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, Consumer education, Honey and honey products, Marketing agreements, Promotion, Reporting and recordkeeping requirements.

7 CFR Part 1214

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

7 CFR Part 1220

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

7 CFR Part 1221

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Reporting and recordkeeping requirements, Sorghum and sorghum product.

7 CFR Part 1222

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Paper and paper-based-packaging promotion, Reporting and recordkeeping requirements.

7 CFR Part 1230

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

7 CFR Part 1280

Administrative practice and procedure, Advertising, Lamb and lamb products, Marketing agreements, 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 proposed to be 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 non-organic 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 committee or board 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 e-mail address (optional);

(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, revise paragraphs (a), (b), (c), (d), (e), (g), (i), and (j) 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 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 non-organic 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 e-mail address (optional);

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

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

(j) 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 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 non-organic 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 e-mail address (optional);

(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 and 7 U.S.C. 7401.

8. In § 1205.519, revise paragraphs (a), (b), (c), (d), (e), (f), and (h) and add paragraph (i) 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 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 non-organic 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 e-mail address (optional);

(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 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) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or

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

(i) 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 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 non-organic 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 e-mail address (optional);

(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 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), (f), and (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 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 non-organic 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 e-mail address (optional);

(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 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.

* * * * *

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

PART 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 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 non-organic 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 e-mail address (optional);

(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 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]

(3) [Reserved]

* * * * *

17. In § 1209.252, redesignate paragraph (a) (2) as paragraph (a) (4), add paragraphs (a) (2) and (3), and revise newly redesignated paragraph (a) (4) to read as follows:

§ 1209.252 Exemptions and exemption procedures.

(a) * * *

(2) In addition to the exemption provided for in § 1209.52, a producer who operates under an approved National Organic Program (7 CFR part 205) (NOP) system plan; produces products that are eligible to be labeled as "organic" or "100 percent organic" under the NOP;

(3) An importer who imports products that are eligible to be labeled as "organic" or "100 percent organic" under the NOP (7 CFR part 205);

(4) 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 e-mail address (optional);

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

* * * * *

PART 1210—WATERMELON RESEARCH AND PROMOTION 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), (f), and (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 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 non-organic 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 e-mail address (optional);

(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 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.

* * * * *

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

**PART 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, revise paragraphs (b), (e), and (g) to read as follows:

§ 1212.53 Exemption from assessment.

* * * * *

(b) A first handler or importer who operates under an approved National Organic Program (7 CFR part 205) (NOP) organic 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 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 non-organic 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 e-mail address (optional);

(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 non-organic 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 e-mail address (optional);

(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 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 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 non-organic 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 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 e-mail address (optional);

(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), (d), and (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 non-organic 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 e-mail address (optional);

(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.

* * * * *

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

**PART 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 non-organic 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 e-mail address (optional);

(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 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. Redesignate paragraphs (e) through (k) as paragraphs (g) through (m), respectively;
- c. Add paragraphs (e) and (f); and
- d. Revise newly redesignated paragraphs (g), (i), and (k).

The revisions and addition 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 non-organic 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 e-mail address (optional);

(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 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.

* * * * *

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray

programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

* * * * *

(k) 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), (f), and (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 non-organic 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 e-mail address (optional);

(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 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.

* * * * *

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

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

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), (d), and (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 non-organic 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 e-mail address (optional);

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

PART 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), (j), and (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) 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 non-organic 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 e-mail address (optional);

(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.

* * * * *

(m) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not

sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

PART 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 non-organic 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 e-mail address (optional);

(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 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) and add paragraph (j) 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 non-organic 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 e-mail address (optional);

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

(j) 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 non-organic 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 e-mail address (optional);

(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.

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

* * * * *

PART 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) and add paragraph (j) 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 non-organic 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 e-mail address (optional);

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

(j) 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), (d), and (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 non-organic 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 e-mail address (optional);

(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.

* * * * *

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

Dated: December 10, 2014.

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

Billing Code 3410-02

[FR Doc. 2014-29280 Filed 12/15/2014 at 8:45 am; Publication Date:
12/16/2014]