

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

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

[Docket No. PY-02-006]

RIN 0581-AC15

**Proposed Rule To Exempt Organic Producers From Assessment by Research and Promotion Programs**

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would exempt any person producing and marketing solely 100 percent organic products from paying assessments to any research and promotion program administered by the Agricultural Marketing Service (AMS). A proposed rule to exempt any person producing and marketing solely 100 percent organic products from paying assessments to certain marketing order programs administered by AMS was published previously in the **Federal Register**.

**DATES:** Comments must be received by May 26, 2004. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by June 25, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to Angela C. Snyder, Office of the Deputy Administrator, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW.; STOP 0256, Room 3932—South; Washington, DC 20250. Comments should be submitted in duplicate. Comments may also be submitted electronically to: [organicassessment@usda.gov](mailto:organicassessment@usda.gov) or [www.regulations.gov](http://www.regulations.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Poultry Programs, AMS, USDA, Room 3932—South; 1400 Independence Avenue, SW.; Washington, DC 20250 during regular business hours. A copy of this proposed rule may be found at: <http://www.ams.usda.gov/2002farmbill/organicexempt>.

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use

of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:**

Angela C. Snyder, Office of the Deputy Administrator, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW.; STOP 0256, Room 3932—South; Washington, DC 20250; (202) 720-4476; (202) 720-5631 (fax); or e-mail at [organicassessment@usda.gov](mailto:organicassessment@usda.gov).

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

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

**Executive Order 12988**

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

The Commodity Promotion, Research, and Information Act of 1996; Cotton Research and Promotion Act; Dairy Production Stabilization Act of 1983; Egg Research and Consumer Information Act; Fluid Milk Promotion Act of 1990; Hass Avocado Promotion, Research, and Information Act of 2000; Honey Research, Promotion, and Consumer Information Act; Mushroom Promotion, Research, and Consumer Information Act of 1990; Popcorn Promotion, Research, and Consumer Information Act; Pork Promotion, Research, and Consumer Information Act of 1985; Potato Research and Promotion Act; Soybean Promotion, Research, and Consumer Information Act; and Watermelon Research and Promotion Act provide that administrative proceedings must be exhausted before parties may file suit in court. Under these acts, any person subject to an order may file a petition with the Secretary of Agriculture stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. The

petitioner is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary will make a ruling on the petition. The acts provide that the district courts of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of the Beef Promotion and Research Act of 1985.

**Background**

Section 10607 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107-171)—known as the 2002 Farm Bill—amended Section 501 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7401) (FAIR Act) on May 13, 2002. The amendment exempts any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or nonorganic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

The U.S. Department of Agriculture is proposing amendments to the orders and/or rules and regulations of the 16 research and promotion programs for which it has oversight. These amendments will establish a provision for organic producers and marketers meeting the specified criteria and procedures to be exempt from paying assessments for research and promotion. The Department proposed amendments to the general regulations affecting 28 marketing order programs in a separate rule published in the December 2, 2003, **Federal Register** [68 FR 67381]. The comment period for this proposed rule ended on February 2, 2004. The comments received in that rulemaking currently are being reviewed by AMS.

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

The FAIR Act amendment would also cover a program for mangos, once one is established. The mango industry has requested a program, and rulemaking is ongoing. A second proposed rule on the

Mango Promotion, Research and Information Order was published in the October 9, 2003, issue of the **Federal Register** [68 FR 58556]. In November 2003, first handlers and importers of mangos voted to approve a national mango promotion, research, and information order. A final rule would have to be issued before the mango research and promotion program could become effective. However, it is anticipated that provisions similar to those proposed in this document for Hass avocados (7 CFR part 1219) would be needed to exempt persons producing and marketing solely 100 percent organic products from paying assessments under a mango research and promotion program.

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

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

#### *Who Is Eligible for Exemption*

To be eligible for an exemption, the person must be subject to an assessment under a research and promotion program. Of the 16 research and promotion programs covered under this proposed rule, 14 assess producers. Most of these programs also assess other entities, including handlers, first

handlers, importers, exporters, feeders, and seed stock producers. The remaining two research and promotion programs assess processors.

The FAIR Act amendment specifies that to be exempt from a commodity promotion assessment, a person—meaning an individual, group of individuals, corporation, association, cooperative, or other business entity—must produce and market solely 100 percent organic products and must not produce any nonorganic or conventional products. For purposes of this proposed rule, “produce” means 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.

To meet this requirement, that person need not be just a producer. Under this proposed rule, producers, handlers, first handlers, processors, importers, exporters, feeders, and seed stock producers may be eligible for exemption if they meet the definition of “produce” as outlined in this proposed rule. Regardless, to be exempt, such persons must possess certification from a USDA-accredited certifying agent and certify that the farm or handling operation meets the requirements of 100 percent organic as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

This definition of “produce” would be added to the regulatory text of all but four of the sixteen programs to ensure that non-traditional producers meeting the criteria and procedures may obtain an exemption. Four programs—dairy, peanuts, soybeans, and eggs—are strictly producer programs. Because traditional producers are the only parties assessed, it is not necessary to redefine “produce” for purposes of obtaining an exemption. The definition referenced above is only needed to include assessment payers other than non-traditional producers.

#### *Examples*

- A farmer grows 100 percent organic soybeans and 100 percent organic corn. The farmer is eligible for exemption under the soybean promotion, research, and consumer information program.
- A farmer grows 100 percent organic soybeans and conventional corn. While the farmer's soybean land may be certified organic as a split farm operation under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), the farmer is not eligible for exemption under the soybean promotion, research, and consumer information program because the farmer's production is not solely 100 percent organic.

- An importer imports 100 percent organic live cattle, feeds and grows the cattle, and is a certified handling operation. The importer is eligible for exemption under the beef promotion and research program.

- An importer imports 100 percent organic boxed beef and sells it to another party. The importer is not eligible for exemption under the beef promotion and research program because the importer is not a producer as defined in this proposed rule.

- An importer imports 100 percent organic boxed beef. The importer also imports 100 percent organic beef and processes it into ground beef. The importer is eligible for exemption under the beef promotion and research program.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35], this proposed rule also announces that AMS is seeking emergency approval for a new information collection request enabling organic entities to apply for an exemption from paying assessments under the following programs: 7 CFR Parts 1150, 1160, 1205, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280.

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

*OMB Number:* 0581-NEW.

*Type of Request:* New collection.

*Abstract:* Research and promotion program, though overseen by AMS, are wholly industry-funded and -operated and are charged with creating and expanding markets for the agricultural commodities they represent. Producers, handlers, importers, and/or others in the marketing chain pay assessments to these commodity boards to fund the programs. Research and promotion programs allow industries to establish, finance, and carry out coordinated programs of research, producer and consumer education, and promotion to improve, maintain, and develop markets for their commodities.

On May 13, 2002, Section 501 of the FAIR Act was amended under the 2002 Farm Bill to exempt any person that produces and markets solely 100 percent organic products, and that does not produce any conventional or non-organic products, from paying assessments under a commodity promotion law with respect to any agricultural commodity that is produced on a certified organic farm as defined in Section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). To be exempt from paying assessments

under a research and promotion program, the person would submit an application—"Organic Exemption Request Form"—to the applicable board or council. The form would need to be submitted to the board, council, or other party designated by the board or council prior to or during the initial applicable assessment period, and annually thereafter, as long as the applicant continues to be eligible for the exemption. This application would include the applicant's name, name and address of the company, telephone and fax numbers, a copy of the applicant's organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the applicant complies with these requirements and is eligible for a promotion assessment exemption, the board or council would approve the exemption and notify the applicant within 30 days of receiving the applicant's application. If the application is disapproved, the board or council would notify the applicant of the reason(s) for disapproval. The Secretary may review any decisions made by the boards or councils at her or his discretion.

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

The form's design has been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping requirements. AMS has determined that there is no practical method for collecting the required information without the use of this form. The form would be available from the boards and councils. In addition, an electronic fillable form would be made available. The information collection would be used only by authorized board or council employees and representatives of USDA, including AMS staff. Authorized board and council employees will be the primary users of the information, and AMS will be the secondary user.

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

Form AMS-15, Organic Exemption Request Form

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

*Respondents:* Eligible Certified Organic Producers and Marketers.

*Estimated Number of Respondents:* 2,159.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1,079.5 hours.

*Comments:* Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology.

A 60-day period is provided to comment on the information collection burden. Comments should reference OMB No. 0581-NEW and be sent to [organicassessment@usda.gov](mailto:organicassessment@usda.gov). All comments received will be available for public inspection during regular business hours at the same address. All responses to this proposed rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

#### Regulatory Flexibility Act

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

As previously mentioned, producers, handlers, first handlers, processors,

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

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

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

The estimated respondents providing new information to the boards or councils and the burden associated with the information collections is as follows. There would be an estimated 2,159 respondents providing new information to the boards or councils under the following programs:

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

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

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

*Dairy:* 600 producers.

*Eggs:* 0 producers.

*Fluid milk:* 0 processors.

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

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

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

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

*Peanuts*: 54 producers.

*Popcorn*: 0 processors.

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

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

*Soybeans*: 1,028 producers.

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

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

The burden associated with the information collection would be \$10,795.00 for all respondents, or \$5.00 per respondent. These totals have been estimated by multiplying the burden hours associated with the exemption request form by \$10.00 per hour, a sum deemed to be reasonable should the respondents be compensated for their time.

Under the 16 research and promotion programs, those assessed pay assessments to the boards and councils that administer the programs. The total annual collections and assessment rates for each board or council are as follows:

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

*Blueberries*: \$1.5 million; \$12 per ton.

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

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

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

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

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

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

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

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

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

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

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

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

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

*Watermelons*: \$1.5 million; 2 cents per cwt for domestic watermelons, 4 cents per cwt for imported watermelons.

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

agricultural service firms covered by the proposed rule would be considered small businesses.

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

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

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

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

*Dairy*: producers—\$1.33 million.

*Eggs*: producers—\$0.

*Fluid milk*: processors—\$0.

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

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

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

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

*Peanuts*: producers—\$18,690.

*Popcorn*: processors—\$0.

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

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

*Soybeans*: producers—\$40,273.

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

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

Program	Paperwork burden costs	Exemption from assessments	Net amount
Beef .....	\$835	\$15,197	\$14,362
Blueberries .....	35	5,833	5,798
Cotton .....	550	77,000	76,450
Dairy .....	3,000	1,330,000	1,327,000
Eggs .....	0	0	0
Fluid milk .....	0	0	0
Hass avocados .....	300	91,000	90,700
Honey .....	50	11,174	11,124
Lamb .....	200	2,987	2,787
Mushrooms .....	10	14,400	14,390
Peanuts .....	270	18,690	18,420
Popcorn .....	0	0	0
Pork .....	90	966	876
Potatoes .....	175	45,000	44,825
Soybeans .....	5,140	40,273	35,133
Watermelons .....	140	18,840	18,700
<b>Total .....</b>	<b>10,795</b>	<b>1,671,360</b>	<b>1,660,565</b>

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

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 impact of this proposed rule on small entities. Comments may indicate the size, number, and type of entities that would be affected by this proposed rule and explain the potential effects of the proposed amendments on those entities.

In accordance with the PRA, the reporting and recordkeeping provisions that would be generated by this proposed rule will be submitted to the Office of Management and Budget (OMB) under OMB No. 0581-NEW.

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

There are no viable alternatives to proposing these organic assessment exemption procedures. The FAIR Act requires USDA to take this action to lessen the assessment costs for persons who produce and market solely 100 percent organic products. The anticipated assessment reductions for eligible persons are expected to greatly outweigh the costs related to the additional reporting.

A 30-day comment period is provided for interested persons to submit written comments on the criteria for identifying persons eligible to obtain an assessment exemption and the procedural details for obtaining an exemption under the various research and promotion programs. Thirty days is deemed appropriate because this action was mandated by Congress under the 2002 Farm Bill and is intended to provide relief to producers and marketers of solely 100 percent organic products. Pursuant to the Paperwork Reduction Act, comments on the information collecting burden must be received within 60 days after the date of publication of this proposed rule in the **Federal Register**.

#### List of Subjects

##### 7 CFR Part 1150

Dairy products, Reporting and recordkeeping requirements, Research.

##### 7 CFR Part 1160

Fluid milk products, Milk, Promotion.

##### 7 CFR Part 1205

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

##### 7 CFR Part 1207

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

##### 7 CFR Part 1209

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

##### 7 CFR Part 1210

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

##### 7 CFR Part 1215

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

##### 7 CFR Part 1216

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

##### 7 CFR Part 1218

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

##### 7 CFR Part 1219

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

##### 7 CFR Part 1220

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

##### 7 CFR Part 1230

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

##### 7 CFR Part 1240

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

##### 7 CFR Part 1250

Administrative practice and procedure, Advertising, Agricultural research, Eggs and egg products, Reporting and recordkeeping requirements.

##### 7 CFR Part 1260

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

##### 7 CFR Part 1280

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

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

#### PART 1150—DAIRY PROMOTION

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

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

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

##### § 1150.157 Assessment exemption.

(a) A producer described in § 1150.152(a) and (b) who produces and markets solely 100 percent organic products and does not produce any conventional or non-organic products shall be exempt from the payment of assessments on milk provided the milk is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

(b) To apply for an exemption under this section, a producer pursuant to § 1150.152(a) and (b) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

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

in paragraph (a) of this section for an assessment exemption.

(d) If a producer described in § 1150.152(a) and (b) complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's request.

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

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

3. Revise § 1150.187 to read as follows:

**§ 1150.187 Paperwork Reduction Act assigned number.**

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.157, 1150.171, 1150.172, and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581-0093.

**PART 1160—FLUID MILK PROMOTION**

4. The authority citation for Part 1160 is revised to read as follows:

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

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

**§ 1160.211 Assessments.**

(a)(1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of \$.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor. Any fluid milk processor who markets milk of its own production directly to consumers as prescribed under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108 or § 1160.215, shall also pay the assessment under this subpart. The Secretary shall have the authority to receive assessments on behalf of the Board.

\* \* \* \* \*

6. Section 1160.215 is added to read as follows:

**§ 1160.215 Assessment exemption.**

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

(b) A fluid milk processor described in § 1160.211(a) who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of assessments on fluid milk products produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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.

(c) To apply for an assessment exemption, a fluid milk processor described in § 1160.211 paragraph (a) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the fluid milk processor continues to be eligible for the assessment exemption.

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

(e) The Board will grant an assessment exemption to any fluid milk processor meeting the criteria in § 1160.215(b) and issue a Certificate of Exemption to the fluid milk processor within 30 days of receipt of the fluid milk processor's request, provided such fluid milk processor meets the requirements of this section.

**PART 1205—COTTON RESEARCH AND PROMOTION**

7. The authority citation for Part 1205 is revised to read as follows:

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

8. Section 1205.519 is added to read as follows:

**§ 1205.519 Organic exemption.**

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic

products, shall be exempt from the payment of assessments with respect to any cotton that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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.

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

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

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application. The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells cotton. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(e) An importer who meets the criteria in paragraph (a) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic cotton and 100 percent organic cotton products—on a form provided by the Board—at any time initially and annually thereafter on or before the beginning of the crop year as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. 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 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic cotton and cotton products bearing this HTS classification assigned by the Board will not be subject to assessments.

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

9. The authority citation for Part 1207 is revised to read as follows:

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

10. Section 1207.514 is added to read as follows:

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

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any potatoes that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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.

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

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

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer

within 30 days of receipt of the producer's application. The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells potatoes. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(e) An importer who meets the criteria in paragraph (a) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic potatoes, potato products, and seed potatoes—on a form provided by the Board—at any time initially and annually thereafter on or before July 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. 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 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic potatoes, potato products, and seed potatoes bearing this HTS classification assigned by the Board will not be subject to assessments.

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

11. The authority citation for Part 1209 is revised to read as follows:

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

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

##### **§ 1209.52 Exemption from assessment.**

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

(1) A person who produces or imports, on average, 500,000 pounds or less of mushrooms annually; and

(2) A person who produces and markets solely 100 percent organic

products on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and does not produce any conventional or nonorganic products. For purposes of this section, *produce* means 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.

13. In § 1209.252, paragraph (a) is revised to read as follows:

##### **§ 1209.252 Exemption procedures.**

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

(2) To apply for an exemption for organic mushrooms, an eligible mushroom producer shall submit a request for exemption to the Council—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: The producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the applicant complies with the requirements of § 1209.52(a)(2), the Council will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's request. An importer who meets the criteria in § 1290.52(a)(2) may submit documentation to the Council and request an exemption from assessment on 100 percent organic mushrooms—on a form provided by the Council—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This

documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. 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 30 days of receipt of the importer's application. The Council will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic mushrooms bearing this HTS classification assigned by the Council will not be subject to assessments.

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

14. The authority citation for Part 1210 is revised to read as follows:

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

15. Section 1210.516 is added to read as follows:

##### **§ 1210.516 Exemption for organic watermelons.**

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any watermelons that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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.

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

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

organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the producer or handler complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer or handler within 30 days of receipt of the application. The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells watermelons. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(e) An importer who meets the criteria in paragraph (a) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic watermelons—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. 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 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic watermelons bearing this HTS classification assigned by the Board will not be subject to assessments.

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

16. The authority citation for Part 1215 is revised to read as follows:

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

17. Section 1215.52 is revised to read as follows:

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

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

(b) Persons who produce and market solely 100 percent organic products and who do not produce any conventional or nonorganic products shall be exempt from the payment of assessments with respect to any popcorn that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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.

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

18. Section 1215.300 is amended by:

(a) Revising paragraphs (b) and (c);

(b) Redesignating paragraph (d) as paragraph (e);

(c) Adding a new paragraph (d).

Revisions read as follows:

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

\* \* \* \* \*

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

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted and issue a Certificate of Exemption to the producer within 30 days of receipt of the applicant's request.

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

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

19. The authority citation for Part 1216 is revised to read as follows:

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

20. Section 1216.56 is added to read as follows:

### § 1216.56 Exemption for organic peanuts.

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any peanuts that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

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

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

(d) If the producer complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application.

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

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

21. The authority citation for Part 1218 is revised to read as follows:

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

22. Section 1218.53 is amended by:

- (a) Redesignating paragraphs (b) through (e) as paragraphs (f) through (i).
- (b) Revising paragraph (a).
- (c) Adding new paragraphs (b) through (e) to read as follows:

### § 1218.53 Exemption procedures.

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

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

(c) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any blueberries that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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.

(d) To apply for this exemption, a producer shall submit a request for exemption to the USACBC—on a form provided by the USACBC—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: the producer's name and address, with a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990, and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If a producer complies with the requirements in paragraph (c) of this section, the USACBC will grant an assessment exemption and issue a certification of exemption to the producer within 30 days of receipt of the producer's request.

(e) An importer who meets the criteria in paragraph (c) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic fresh and frozen

blueberries—on a form provided by the USACBC—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. If the importer complies with the requirements of this section, the USACBC will grant the exemption and issue a Certificate of Exemption to the importer within 30 days of receipt of the importer's application. The USACBC will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic fresh and frozen blueberries bearing this HTS classification assigned by the USACBC will not be subject to assessments.

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

23. The authority citation for Part 1219 is revised to read as follows:

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

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

### Subpart C—Rules and Regulations

#### § 1219.200 Terms defined.

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

#### § 1219.201 Definitions.

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

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

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic

products, shall be exempt from the payment of assessments with respect to any Hass avocados that are produced on a certified organic farm as defined in the Organic Act. For purposes of this section, *produce* means 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.

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

(c) The request shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in the Organic Act, and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the producer complies with the requirements of paragraph (a) of this section, the Board will grant an assessment exemption and shall issue a Certificate of Exemption to the producer within 30 days of receiving the producer's application. The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells Hass avocados. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(e) An importer who meets the criteria in paragraph (b) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic Hass avocados—on a form provided by the Board—at any time initially and annually thereafter on or before November 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Act and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. 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 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff

Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic Hass avocados bearing this HTS classification assigned by the Board will not be subject to assessments.

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

25. The authority citation for Part 1220 is revised to read as follows:

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

26. Section 1220.302 is added to read as follows:

##### **§ 1220.302 Exemption.**

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of assessment with respect to any soybeans that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

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

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

(d) If the producer complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application.

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

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

27. The authority citation for Part 1230 is revised to read as follows:

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

28. Section 1230.102 is added to read as follows:

##### **§ 1230.102 Exemption.**

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of assessment with respect to any porcine animals or pork and pork products that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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.

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

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

(d) If the producer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application.

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

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

(g) An importer who meets the criteria in paragraph (a) above may submit documentation to the Board and request an exemption from assessment on 100 percent organic porcine animals or pork

and pork products—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. 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 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic porcine animals or pork and pork products bearing this HTS classification assigned by the Board will not be subject to assessments.

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

29. The authority citation for Part 1240 continues to read as follows:

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

30. Section 1240.42 is amended by: (a) Redesignating paragraph (d) as paragraph (f).

(b) Revising paragraph (c).

(c) Adding new paragraphs (d) and (e).

Revisions read as follows:

#### **§ 1240.42 Exemption from assessment.**

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

(d) A person who produces and markets solely 100 percent organic

products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any honey that is produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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. A person is a producer, first-handler, or producer-packer.

(e) An importer who meets the criteria in paragraph (d) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic honey and honey products.

\* \* \* \* \*

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

#### **§ 1240.50 Reports.**

\* \* \* \* \*

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

32. Revise § 1240.114 to read as follows:

#### **§ 1240.114 Exemption procedures.**

(a) To obtain a Certificate of Exemption for organic honey, an eligible person shall submit a request for exemption to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer continues to be eligible for the exemption. The request shall include the following: the person's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(b) If the person complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer within 30 days of receiving the producer's application.

(c) A person receiving an organic exemption shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells honey. The handler shall maintain records showing

the exempt producer's name and address and the exemption number assigned by the Board.

(d) An importer who is eligible to be exempt from the payment of assessments on imported organic honey and honey products may request an exemption from assessment on 100 percent organic honey and honey products—on a form provided by the Board—at any time initially and on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. 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 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic honey and honey products bearing this HTS classification assigned by the Board will not be subject to assessments.

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

#### **§ 1240.115 Levy of assessments.**

\* \* \* \* \*

(b) \* \* \*

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

\* \* \* \* \*

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

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

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

35. Revise § 1240.120 to read as follows:

#### **§ 1240.120 Retention period for records.**

Each first handler, producer-packer, importer, or any person who receives an

exemption from assessments under § 1240.42 and is required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability:

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

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

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

36. Revise § 1240.121 to read as follows:

**§ 1240.121 Availability of records.**

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

37. Revise § 1240.122 to read as follows:

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

All information obtained from the books, records, and reports of handlers, producer-packers, importers or any persons who receive an exemption from assessments under § 1240.42 and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

**PART 1250—EGG RESEARCH AND PROMOTION**

38. The authority citation for Part 1250 is revised to read as follows:

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

39. Revise § 1250.530 to read as follows:

**§ 1250.530 Certification of exempt producers.**

(a) *Number of laying hens.* Egg producers not subject to the provisions of the Act pursuant to § 1250.348 shall file with all handlers to whom they sell eggs a statement certifying their exemption from the provisions of the Act in accordance with the criterion of § 1250.348. Certification shall be made on forms approved and provided by the Egg Board to collecting handlers for use

by exempt producers. The certification form shall be filed with each handler on or before January 1 of each year as long as the producer continues to do business with the handler. A copy of the certificate of exemption shall be forwarded to the Egg Board by the handler within 30 days of receipt. The certification shall list the following: the name and address of the producer, the basis for producer exemption according to the requirements of § 1250.348, and the signature of the producer.

(b) *Organic Production.* A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or nonorganic products, shall be exempt from the payment of assessments with respect to any eggs produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502).

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

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

(3) If the producer complies with the requirements of this section, the Board will grant an assessment exemption and issue a certificate of exemption to the producer within 30 days of receipt of the producer's request.

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

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

**PART 1260—BEEF PROMOTION AND RESEARCH**

40. The authority citation for Part 1260 is revised to read as follows:

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

41. Section 1260.302 is added to read as follows:

**§ 1260.302 Exemption.**

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of the promotion and research assessment with respect to any cattle or beef and beef products that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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.

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

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

(d) If the producer complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the producer's application.

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

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

(g) An importer who meets the criteria in paragraph (a) of this section may submit documentation to the Board and request an exemption from assessment on 100 percent organic cattle or beef and beef products on a form provided by the Board at any time initially and annually thereafter on or before January 1 as long as the importer continues to be eligible for the exemption. This documentation

shall include a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502) and a signed certification that the applicant meets all of the requirements specified for an assessment exemption. 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 30 days of receipt of the importer's application. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer, in the appropriate location as determined by the U.S. Customs Service, on the Customs entry documentation. Any line item entry of 100 percent organic cattle or beef and beef products bearing this HTS classification assigned by the Board will not be subject to assessments.

#### **PART 1280—LAMB RESEARCH AND PROMOTION**

42. The authority citation for Part 1280 is revised to read as follows:

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

43. Section 1280.406 is added to read as follows:

##### **§ 1280.406 Exemption.**

(a) A person who produces and markets solely 100 percent organic products, and who does not produce any conventional or non-organic products, shall be exempt from the payment of assessment with respect to any ovine animals or lamb and lamb products that are produced on a certified organic farm as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502). For purposes of this section, *produce* means 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. A person is a producer, seed stock producer, feeder, exporter, or first handler.

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

(c) The request shall include the following: the person's name and

address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and a signed certification that the applicant meets all of the requirements specified for an assessment exemption.

(d) If the person complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the producer within 30 days of receipt of the person's application.

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

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

Dated: April 19, 2004.

**A. J. Yates,**

*Administrator, Agricultural Marketing Service.*

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