Angela C. Snyder
Office of the Deputy Administrator, Poultry Programs
AMS-USDA
1400 Independence Avenue SW
STOP 0256
Washington, DC 20250-0256

RE: Docket Number PY-02-006, 68 FR 22690, April 26, 2004 "Proposed Rule to Exempt Organic Producers and Marketers from Assessment by Research and Promotion Programs".

I am a certified organic farmer writing to log my comments to ensure that the final rule follows the intent of Congress to exempt organic farmers from assessments used to promote generic conventional commodities. The exemption must be applied broadly, making it possible for as many organic producers as deserve to receive the exemption. Farmers who are organically certified, and who do not produce any of the covered commodities conventionally, should qualify for the exemption. Because the proposed rule may unnecessarily limit the availability of the exemption, I would like to make the following points:

- Specific Commodity- Commodity promotion programs traditionally only apply to the specific commodity covered by the program. Because Congress sought to exempt organic producers from assessments under all of the commodity promotion programs, it included broad terms in the enacting statute. Congress intended that to qualify for the exemption, a producer must produce organically 100% of the *specific* commodity covered by the market promotion board, not all products from the farm, as the proposed rule suggests. Inconsistent with the commodity by commodity basis of the programs, the USDA seems to interpret the statute to require that *all* products coming off the farm be organic. The proposed rule includes an example involving a organic soybean producer, who also produces conventional corn. According to the example, this producer would not be allowed the exemption from the soybean marketing assessment. If the producer were producing organic and conventional soy, in a split operation, the producer would not be eligible for the exemption. However, because the rule should only apply to the production of the covered commodity, in the example, the soy producer should qualify for the exemption from the soy program's assessment. Another example may occur when an organic dairy farmer sells male calves on the conventional market. The organic farmer's exempt status from the dairy promotion assessment is maintained, because the covered commodity is dairy, not beef. This interpretation provides the broadest opportunity for the exemption, and is consistent with the traditional "commodity by commodity" treatment of commodity promotion programs, thereby fulfilling congressional intent.

  Sales in the Conventional Marketplace. In passing the exemption statute, Congress demonstrated that it recognized that the current commodity promotion laws assist in the marketing of conventional products, and that the organic marketplace represents a separate marketing effort. Congress' use of the language in the statute: "a producer who *produces and markets* solely 100 percent organic products and *does not produce* any conventional or non-organic products," shows that the focus of the exemption is on the *marketing* of the commodities. Because the farmer does not market the commodity in the conventional marketplace, the farmer does not benefit from the commodity promotion laws, and therefore should be exempt and free to use the assessment in separate marketing efforts for the organic marketplace. The manner that the USDA has phrased the proposed rule, however, leaves open the possibility that the exemption might not be available if a farmer is forced, in an

isolated instance, to sell a commodity on the conventional market. For example, if a dairy farmer is forced to give an animal antibiotic treatment, for humane purposes (required by the Organic Food Production Act), the farmer must then sell the animal conventionally. This should not make the farmer lose the exemption. Nor should the farmer lose the exemption if, for reasons beyond the farmer's control, the product is sold conventionally, either by a third party down the supply stream, or from the farm because of a lack of an adequate organic market. If the farm maintains its organic certification, there is no reason the farmer should not be exempt from the assessments on the commodity produced, and be able to concentrate his marketing efforts and marketing dollars in the organic marketplace, as Congress intended.

- Application for the Exemption. The proposed rule requires that the farmer apply annually for the exemption. This is overly burdensome, as organic certification does not expire, and there is no reason to require the farmer to annually re-certify to the board that there has been no change in status. The burden should be on the farmer to notify the board if there is a change in status, and a failure to notify the board would mean that the farmer has to repay assessments he failed to pay in the first place.

As a certified organic farmer, I urge you to honor the commitment Congress made to organic farmers to allow the broadest exemption from the promotion programs. In addition, I support the comments filed by CROPP Cooperative/Organic Valley, and others in the organic industry, with regard to the proposed rule.

Sincerely,

Tony Mikolowsky

received
6-24-04