

May 24, 2004

Angela C. Snyder  
Office of the Deputy Administrator  
Poultry Programs  
Agricultural Marketing Service (AMS) USDA  
1400 Independence Avenue, SW  
STOP 0256, Room 3932-South  
Washington DC 20250

Dear Ms. Snyder:

We appreciate the opportunity for input regarding the proposed amendment to the Beef Promotion and Research Order (BPRO) that will add a new paragraph 1260.302 authorizing an organic exemption to beef checkoff assessments.

As the agency administering the BPRO, the Cattlemen's Beef Board (CBB) would like to make recommendations and comments to facilitate managing this proposed new aspect of the program. We have amended or added information in paragraphs (a) through (h) addressing our concerns with the implementation and administration of this program. Additions are in italics and recommended deletions are shown as stricken.

Before we review specific recommendations to the proposed amendment to the BPRO, it is important to note that the organic exemption does not preempt or supersede any applicable state statute or regulation and mandates the payment of an assessment on the sale of cattle. To that end, any "person" who would be exempt under the organic exemption would still be required to pay the assessment due pursuant to state statute or regulation unless the state had a similar exemption. It should be the responsibility of the CBB to inform the person seeking an exemption of this obligation should they be exempt under the BPRO.

With regard to the specific proposed amendments to the BPRO, we offer the following comments.

7 CFR Part 1260  
§1260.302 Organic Exemption

**Comment:** Please specify "Organic" exemption.

**Section 1260.302(a)** provides "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." The CBB has several comments relating to this section.

**Comment:**

(1) The organic exemption provides that a "person" must be "produc[ing] and market[ing] solely 100 percent organic product." However, based on the examples set forth in the proposed rule, it is unclear whether a person that produces and markets some organic products, while only marketing other organic products, is exempt. One of the examples used in the proposed Rule is as follows:

An importer imports 100% organic box beef. The importer also imports 100% organic beef and processes it into ground beef. The importer is eligible for exemption under the Beef Promotion and Research program.

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This is inconsistent with paragraph (a) as presented above. The importer in the above example has not "produced and marketed" 100% organic product. The importer in the example may have marketed 100% organic product, but they did not produce all of the product that they marketed. Therefore, they should not be eligible for an exemption under the BPRO. The act of producing and marketing must apply to all of the product handled by that producer or importer. Under the above example, an importer could import 10,000 pounds of 100% organic boxed beef and import 2 pounds of 100% organic beef and process it into ground beef and be exempt for all of the product under the BPRO. That is not the intent of the legislation authorizing the exemption. The exemption was for a person who *produces and markets* 100% organic product. The organic exemption should only apply to a person who produces and markets 100% organic product for all of the product marketed by that person.

(2) Paragraph (a) includes a definition of the word "produce" which provides ". . . 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." Using a definition of "produce" which diverges so sharply from the already-existing definition of "producer" in the BPRO is not only confusing, but also not supported by statutory authority. Section 3(12) of the Beef Promotion and Research Act (7 U.S.C. §2902(12)) states: "The term 'producer' means any person who owns or acquires ownership of cattle, except that a person shall not be considered to be a producer if the person's only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee or other service fee." The proposed definition goes beyond the current definition of "producer" to include processing activities. This will be confusing and impractical to implement.

In addition, the proposed definition lacks statutory authority. The statutory authority for the proposed rule is the 2002 amendment to the Federal Agriculture Improvement and Reform Act of 1996 (the "FAIR Act"). The exemption in the amendment to the FAIR Act provides: "Notwithstanding any provision of a commodity promotion law, a person that produces and markets solely 100% organic products shall be exempt from the payment of an assessment under a commodity promotion law. . . ." 7 U.S.C. §7401. The expansion of the definition of "produce" to include processing activities expands the application of the exemption to persons not intended to be covered by the FAIR Act amendment. In fact, the application of this definition to importers inappropriately modifies the activity eligible for exemption from the assessment. Under the Beef Promotion and Research Act, the "importation" of beef or beef products is the activity which subjects an importer to the liability to pay the assessment. By attempting to expand the definition of "produce" in the proposed rule to include the processing of 100% organic product, the procedure for the assessment of imported beef products is impractical. The assessment is due upon the importation of the product. If an act after importation of a product could result in a product being eligible for an exemption from the assessment, the exemption could arise after the assessment had already been paid. This is unworkable. There is nothing in the FAIR Act amendment that justifies expanding the exemption to activities such as processing (grinding hamburger), following the importation and assessment of a product. The proposed definition of produce wrongly attempts to expand the applicability of the exemption to importers that are not performing a producer function by including processing functions in the definition of produce. The Board proposes that the definition of "produce" be modified to read as follows: "For purposes of this section, 'produce' means to *own or acquire ownership of cattle as a producer, as defined in Section 1260.116 of the Beef Promotion and Research Order.*"

(3) Paragraph (a) as presented in the proposed Rule should be amended to add the following sentence: "In order to be eligible under the exemption under this section, a person must not be owned, in whole or in part, or otherwise affiliated with a person that is subject to and pays assessments to a research and promotion program administered by the USDA or that produces or imports conventional non-organic agricultural products." This language needs to be added to prevent producers or importers who produce both organic and conventional products from using the exemption to circumvent payment of assessments. Under the proposed Rule, a company that is subject to assessments could create a subsidiary and argue that it deals in 100% organic products and therefore should benefit from the organic exemption.

This can be highlighted as follows:

Company A is a producer that produces and markets a 100 percent organic commodity. However, Company A is a wholly owned subsidiary of Company B that produces and markets non-organic commodities. Company A is not exempt.

Company A is an importer that produces and markets a 100 percent organic commodity. However, Company A is

the parent company of Company B that produces non-organic commodities. Company A is not exempt.

Company A is an importer that produces and markets a 100 percent organic commodity. However, Company B has a majority ownership interest in Company A and Company B produces non-organic commodities. Company A is not exempt.

Company A is an importer that produces and markets a 100 percent organic commodity. However, Company B has a minority ownership interest in Company A and Company B produces non-organic commodities. Company A is not exempt.

**Section 1260.302 (b)** To apply for an exemption under this section, the producer/ *importer* shall submit the request to the Board or other party as designated by the Board on a form provided by the Board. *Producers/ importers shall submit their request* at any time initially and annually thereafter on or before January 1 as long as the producer/ *importer* continues to be eligible for the exemption.

**Section 1260.302 (c)** The request shall include the following: the producer's/ *importer'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.

**Comment:** This paragraph combines elements of Paragraph (c) and (g) addressing the application process for producers and importers which are essentially the same except for who the application is addressed to which is covered in paragraph (b). I have enclosed a proposed form that the CBB would use in granting the Certificate of Organic Exemption request.

**Section 1260.302 (d)** If the producer/ *importer* ~~meets~~ ~~complies with~~ the requirements of this section *and complies with the proper application procedures*, the Board or designee will grant the exemption and issue a *book of Certificate of Exemption forms* to the producer/*importer* within ~~60~~ ~~30~~ days of receipt of the producer's application. *If the producer/ importer fails to meet the requirements of this section, the Board or its designee will inform the producer/ importer in writing that their application is denied. Copies of the Certificate of Exemption forms shall be maintained by the producer/importer and the QSBC for a period of 7 years.*

**Comment:** This section specifies granting authority, timeline and a requirement to inform applicant of a denied request in writing. Thirty days may be too short. Sixty days allows for the request and presentation of any backup material that may be needed. Compliance audits usually look at up to 7 years worth of records. Having the requirement to keep these forms for 7 years spelled out in the order would standardize record keeping.

**Section 1260.302 (e)** ~~The producer shall provide a copy of the Certificate of Exemption to each person responsible for collecting and remitting the assessment. The producer/ importer claiming the exemption shall provide a correctly completed original and numbered Certification of Exemption form to the collecting person at the time of the transaction. If the organic producer/ importer does not provide the Certificate of Exemption form at the time of the transaction with the collecting person, the assessment must be collected by the collecting person. The collecting person shall use the Certificate of Exemption form to document the exemption at the time of the sale and shall submit the form with the monthly remittance report to the Qualified State Beef Council.~~

**Comment:** Replaces paragraph (e) in its entirety. Allowing copies of forms makes programs vulnerable to abuse by those not eligible for the exemption. The new paragraph (e) specifies that there will be a numbered form that will be issued by the CBB to use specifically to claim this exemption. Issuance of this form will be controlled by CBB. The order must specify that this form must be filled out **COMPLETELY** and **CORRECTLY** and presented **AT THE TIME OF THE TRANSACTION** in order to claim the exemption. The amended Order should also specify that the exemption is granted to the producer/ handler/ importer, not the cattle, beef or beef product. If there are multiple transactions involving the same animal, unless each owner has an organic exemption specific to such owner, the dollar is due for every transaction past the first sale. The Certification of Organic Exemption Form will be a three part form with copies going to the producer, buyer and the QSBC for reporting purposes.

**Section 1260.302 (f)** ~~The collecting person person responsible for collecting and remitting the assessment,~~ shall maintain

records showing the exempt producer's name, address and the exemption number assigned by the Board or designee. *Any time cattle are sold at a sale barn or part of another consignment-type sale, the collecting point, i.e. auction market, packer or sale company, shall separate organic cattle from other non-assessed cattle on the Monthly Remittance Report. Certified organic producers marketing cattle of that producers own production in the form of beef or beef products, to consumers, either directly or through retail or wholesale outlets, or for export purposes, shall submit to a qualified state beef council or to the board a certificate of exemption and a monthly report claiming the exemption in the same manner as the assessment.*

**Comment:** We recommend the following procedure for record keeping pursuant to this Paragraph (f): If certified organic cattle are sold to or at a sale barn, packer, or other purchaser, (Collecting Point) that collecting point (who reports to the state beef council), shall list organic cattle on the monthly remittance report the same way they would report another state of origin (separate line) listing the total number of head marketed, total number of head not assessed, and in the area where they would normally list "Number of Head per State Assessed, they will insert "ORGANIC". The collecting point will ensure that a copy of the organic exemption certificate accepted by the collecting point is included with the monthly remittance report. If the collecting point does not collect the mandatory \$1 per head beef checkoff assessment because an organic producer claims the exemption, it is the responsibility of that collecting point to make sure the certificate is collected at the time of the sale.

~~**Section 1260.302 (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 consult with the U.S. Customs Service to obtain 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classifications that the Board can issue to importers. Board will also issue the importer an 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 bearing this HTS classification assigned by the Board will not be subject to assessments.~~

**Comment:** Changes paragraph (g) to specify how the HTS numbers should be used. Application procedures for importers combined with application procedures for producers in paragraph (c).

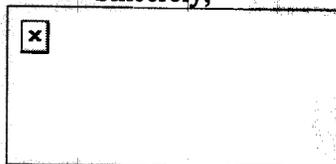
As noted previously, the CBB believes that the inappropriate expansion of the exemption to importers creates a significant problem with regard to collection of assessments on imported product. At the time the product is imported, it is the responsibility of the importer to establish that the importer "produced" the product in question. This means he would have to prove that he processed the product or the importer is subject to the exemption. Based on the definition, if a person brings 100% organic cattle across the border, they are importing the product. How do they establish that they have "produced" that product? Can they "process" the product following importation and payment of the assessment and then be exempt? This is impractical. USDA should reconsider the expansion of the definition of "produce" to exclude processing.

~~**Section 1260.302 (h)** The Secretary shall provide the Board with quarterly updates of producers/importers certified as organic farms or an organic handling operations by a USDA accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 and those whose certification has been revoked.~~

**Comment:** Adds paragraph (h) to codify a requirement for USDA to provide information to CBB in order to track authorized use of the program. There is concern in the industry about possible abuses of this exemption. The Certification process must be stringent and the forms tightly controlled in order to monitor the program and prevent misuse/abuse. Organic producers, handlers, importers and others must know that THEY are responsible for ensuring the proper documentation is presented at the appropriate place and time. All collecting points must be alert for possible forgeries, unauthorized duplicates, and insist on proper documentation.

Thank you for your consideration. If you have any questions about implementing this program or its impact on the industry, please call me at 303-850-3453 or email me at [sbarratt@beef.org](mailto:sbarratt@beef.org).

Sincerely,



**Steve M. Barratt**  
Director, Collections Compliance

Enclosure



# BEEF PROMOTION AND RESEARCH BOARD

## CERTIFICATION OF ORGANIC PRODUCER EXEMPTION FROM CATTLE ASSESSMENTS

**FAILURE TO PAY THE BEEF CHECKOFF IS A VIOLATION OF FEDERAL LAW (7 U.S.C. 2901 et seq.).** This form must be properly completed and signed to be valid. You may by law be fined up to \$10,000, imprisoned up to five years, or both for knowingly or willfully making false statements within this document (18 U.S.C. p 1001).

Date: \_\_\_\_\_

Producer's Name: \_\_\_\_\_ SSN or TIN \_\_\_\_\_

Address: \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Telephone Number \_\_\_\_\_

USDA Organic Certification date/ number \_\_\_\_\_

I certify that these cattle are of my own production; I produce these cattle under organic conditions in compliance with 7 C.F.R. § 1260.302.

I understand that an original "Certification of Organic Exemption" must be provided to the purchaser (collecting person) at the time of sale to document that the \$1 per head assessment is not due in this transaction or I will be required to pay the assessment.

Signature of Owner (Producer) \_\_\_\_\_

### For Cattlemen's Beef Board Use Only:

This producer meets all the requirements of the USDA Certified Organic Program and has been assigned Certified Organic Status. This producer is exempt from paying beef checkoff assessments on purely organic cattle, beef or beef products. This producer understands that he is fully responsible for providing the Certification of Organic Exemption at the time of sale in order to claim this exemption. Please refer any questions to the \_\_\_\_\_ Beef Council at \_\_\_\_\_.

\_\_\_\_\_ Organic Certification Number \_\_\_\_\_  
(state)

Organic Exemption Approved. \_\_\_\_\_  
(CBB Representative) (Date)

Collection of your social security number is authorized by Executive Order 9397 and will be used only for the purpose of positive identification. Furnishing this information is voluntary.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0093. The time required to complete this information collection is estimated to average 1.8 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call 202-720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

### When approved by the Cattlemen's Beef Board:

RETAIN WHITE COPY FOR YOUR FILES.

EXEMPTION IS ONLY VALID FOR THE APPROVED ORGANIC PRODUCER/ HANDLER NAMED ON THIS DOCUMENT.

**CERTIFICATION OF ORGANIC EXEMPTION (FOR THE SELLER)**

**1231231**

Failure to pay the beef checkoff is a violation of federal law. This form must be properly completed and signed to be valid. You may by law be fined up to \$10,000, imprisoned up to five years, or both for knowingly or willfully making false statements within this document (18 U.S.C. p 1001).

CLAIM ORGANIC EXEMPTION ON \_\_\_\_\_ HEAD OF CATTLE WHICH I AM SELLING ON \_\_\_\_\_ TO:  
(number) (date)

BUYER'S NAME/ADDRESS: \_\_\_\_\_

I certify upon selling these cattle in compliance with 7CFR 1260.302 that I have produced these cattle under Organic conditions in compliance with regulations set forth in the USDA National Organic Program.

I understand that an original of this "Certification of Organic Producer Exemption from Cattle Assessments" must be provided to the purchaser (collecting person) at the time of sale to document that the \$1 per head assessment is not due in this transaction or I will be required to pay the assessment.

**Copies or Facsimiles WILL NOT be accepted.**

Collection of your social security number is authorized by Executive Order 9397 and will be used only for the purpose of positive identification. Furnishing this information is voluntary.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0093. The time required to complete this information collection is estimated to average 1.8 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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<p align="center"><b>Person who owns these cattle at the time of sale and is Claiming Organic Exemption</b></p> <p><b>SELLER'S NAME:</b> _____</p> <p><b>ORGANIC EXEMPTION NUMBER</b> _____ (Issued by state beef council)</p> <p><b>SOCIAL SECURITY # OR Tax ID #:</b> _____</p> <p><b>ADDRESS:</b> _____</p> <p><b>CITY:</b> _____</p> <p><b>STATE/ZIP:</b> _____</p> <p><b>SIGNATURE OF SELLER:</b> _____</p>
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**BUYER:** Send this copy in with your monthly Remittance Report when required by state beef council or Beef Board