Docket Clerk
Marketing Order Administration Branch
Fruit and Vegetable Programs, AMS-USDA
1400 Independence Avenue SW
STOP 0237
Washington, DC 20250-0237

RECEIVED 1/30/04

RE: Docket Number FV03-900-1PR
68 FR 67381-5, December 2, 2003
"Proposed Rule to Exempt Organic Producers and Marketers from Assessments for Market Promotion Activities under Marketing Order Programs".

I am a certified organic farmer writing to log my comments in opposition to the proposed rule. The proposed rule fails to follow the intent of Congress to free up funds from organic sales to allow organic farmers to promote their own products, by making it virtually impossible for a producer to get the exemption. In particular, I would like to make the following points:

- Specific Commodity- 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, as the proposed rule currently states.

- Total Exemption. The proposed rule allows for an exemption from "marketing promotion expenditures." The statute provides that producers "shall be exempt from the payment of an assessment under a commodity promotion law." The rule must be revised to reflect this total, rather than partial, exemption.

- Proof of Qualification. The present proposal is awkward and unworkable because it requires each specific commodity board approve a producer's exemption after review of an application, when in practice, the handler is in possession of the necessary documents and can make the representation to the proper commodity board. The handler will have on site the documentation of organic certification and verification that all of that commodity produced was organic.

- Handler's Organic Status. The USDA's proposed rule improperly requires that handlers be 100% organic and must alter the product in order to qualify for the exemption. The statute only requires that the *producer* be 100% organic for the specific commodity and does not include any requirement for altering products. The USDA's inclusion of these requirements does not conform to the language of the statute.

- Conventional Sales. Under the proposed rule, no exemption applies if any of the specific commodities are sold in the conventional marketplace. No farmer can control whether the product is transferred to the conventional market after he parts with it. Congress mandated that the producer sell an organic product to qualify, and it cannot be grounds for disqualification if the product is subsequently sold conventionally to a third party.

As a certified organic farmer, I urge you to honor the commitment Congress made to organic farmers to allow them access to funds to create a workable program. In addition, I support the comments filed by CROPP Cooperative, OFARM and NODPA with regard to this proposed rule.

Sincerely, Earl A. Le Hay