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Marketing Order and Agreement Division
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Agricultural Marketing Service
U.S. Department of Agriculture
1400 Independence Avenue, SW
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January 13, 2015

Re: Docket Number AMS-FV-14-0032
Proposed Rule
Exemption of Organic Products From Assessment Under a Commodity
Promotion Law
79 FR 75006 et seq. December 16, 2014

Dear Docket Clerk:

The Western Organic Dairy Producers Alliance (WODPA) hereby submits its comments on the proposed rule “Exemption of Organic Products From Assessment Under a Commodity Promotion Law.” While our comments may be applicable to other commodity groups, they specifically address the requirements under Part 1150—Dairy Promotion Program [page 75016].

WODPA is a 501(c)(5) MUTUAL BENEFIT CORPORATION. Its membership includes approximately 240 organic dairy farm families in the 12 western states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming.

Position

With one significant exception, WODPA supports the proposed rule as written. Specifically, we oppose the annual application requirement of paragraph (b) of § 1150.157 found in column one on page 75016 of the proposed rule.

Paragraph (b) requires that producers file an initial and annual application for exemption. This information collection requirement does not meet the standard for information collection established by the Paperwork Reduction Act of 1995 (PRA).

This information collection requirement does not comply with the PRA purpose of:

1. Minimizing the paperwork burden of information collection by or for the Federal Government.
2. Ensuring the greatest possible public benefit.
3. Coordinating and integrating information resources to reduce the information collection burden and improve service delivery to the public.
4. Minimizing the cost to the Federal Government of the creation, collection, maintenance, use, dissemination, and disposition of the information.

While the initial collection of this information is necessary, annual collection is not. We recognize that due to the proposed revised eligibility requirements, the application would be modified to remove some of the information collection requirements. However, the reduced information per application does not address the larger issue of redundant collection of required information.

Currently producers need a valid certificate to sell their milk as organic. While certification does not expire (except when surrendered or revoked) the certificates are annually updated. To sell, label, or represent a product as organic the handlers must verify the producer's certification. This National Organic Program (NOP) requirement coupled with the Certificate of Exemption requirements of paragraphs (d) and (e) of § 1150.157 [column two, page 75016 of the proposed rule] should be sufficient to prevent unqualified individuals from not paying the required assessment.

Over time organic dairy producers may change handler, go out of business, or switch to conventional dairy production. Producers changing handlers will still have to provide their Organic Certificate and the Certificate of Exemption. Those who go out of business will not be selling milk. Those who return to conventional will automatically commence payment to the National Dairy Board (NDB). Accordingly, one must question the value to an annual application requirement.

One area of concern might be producers who handle their own production. In this case the NDB can verify compliance by reviewing the NOP database of certified handlers, which is currently updated annually. Checking this database should not be a new burden on the NDB inasmuch as they should be mining this data now, as a compliance tool. By mining this data, the NDB can assure that such handlers are not currently avoiding payment of the producer assessment under the existing exemption program. The same would hold true for the revised exemption program.

According to the Regulatory Flexibility Act Analysis [column one, page 75013] the estimated number of exempt dairies will increase from 1,150 to 1,823.

By coordinating and integrating current information resources, such as the NOP database of certified producers and handlers, USDA can substantially reduce the information collection burden and improve service delivery to the public as required by the PRA.

RECOMMENDATION

We recommend revising paragraph (b) of § 1150.157 to read:

(b) To apply for exemption under this section, a producer subject to assessments pursuant to § 1150.152(a)(1) and (2) shall submit a request to the Board on an Organic Exemption Request Form (Form AMS–15).

The pros and cons of accepting this recommendation are as follows:

PRO: The recommendation:

1. Maximizes the minimization of the information collection burden as required by the PRA.
2. Meets the PRA requirement of ensuring the greatest possible public benefit.
3. Minimizes the cost to the Federal Government and NDB of the creation, collection, maintenance, use, dissemination, and disposition of the information.
4. Eliminates the unnecessary producer burden of annually filing the application.
5. Eliminates the unnecessary NDB burden of annually reviewing an estimated 1,823 applications.
6. Eliminates the unnecessary NDB burden of annually issuing an estimated 1,823 Certificates of Exemption.
7. Eliminates the unnecessary producer and NDB financial burdens associated with the unnecessary annual filing requirement.

CONS: We see no downside to acceptance of our recommendation.

SECONDARY RECOMMENDATION

Should USDA reject our recommendation to elimination the unnecessary and burdensome annual application for exemption, we recommend revising § 1150.157 (b) by adding to the end thereof: To facilitate the annual submission of Form AMS—15 by all eligible producers, the National Dairy Research and Promotion Board shall mail, on or before May 1 of each year, a completed Form AMS—15 to all holders of an exemption for review, correction, signature, and return in the postage paid envelop provided.

With this addition § 1150.157 (b) would read as follows:

(b) To apply for exemption under this section, a producer subject to assessments pursuant to § 1150.152(a)(1) and (2) shall submit a request to the Board on an Organic Exemption Request Form (Form AMS–15) at any time during the year initially, and annually thereafter on or before July 1, for as long as the producer continues to be eligible for the exemption. To facilitate the annual submission of Form AMS—15 by all eligible producers, the National Dairy Research and Promotion Board shall mail, on or before May 1 of each year, a completed Form AMS—15 to all holders of an exemption for review, correction, signature, and return in the postage paid envelop provided.

This provision would annually remind producers of the filing requirement and serve to enhance timely filing of Form AMS—15 while reducing the producer's reporting burden.

PRO: The recommendation would:

1. Remind producers of the filing requirement.
2. Enhance timely filing of Form AMS—15.
3. Reduce the producer's reporting burden.

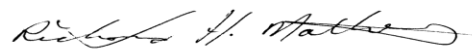
CONS: The recommendation would:

1. Fail to minimize the information collection burden as required by the PRA.
2. Fail to meet the PRA requirement of ensuring the greatest possible public benefit.
3. Fail to minimize the cost to the Federal Government and NDB of the creation, collection, maintenance, use, dissemination, and disposition of the information.
4. Continue the unnecessary producer burden of annually filing the application.
5. Continue the unnecessary NDB burden of annually reviewing an estimated 1,823 applications.
6. Continue the unnecessary NDB burden of annually issuing an estimated 1,823 Certificates of Exemption.
7. Continue the unnecessary producer and NDB financial burdens associated with the unnecessary annual filing requirement.

We have no information regarding how the NDB addresses non receipt of the annual application under the existing program. Thus, we are unable to gage the secondary recommendation's potential economic impact on the NDB relative to timely filing of Form AMS—15. It is clear, however, that the NDB benefits more by USDA accepting our original recommendation calling for the elimination of the annual application requirement.

Thank you for your consideration of this comment.

Sincerely,



Richard H. Mathews
Executive Director
Western Organic Dairy Producers Alliance