(6) *Accident damage protection.* For transportation by highway, external loading and unloading valves and closures must be protected from impact damage resulting from collision or overturn. Spraying equipment and the road oil application portion of a packaging are excepted from this requirement.

(7) *New construction.* Specification packagings that are being manufactured for the transport of elevated temperature materials must be authorized for current construction.

(h) *Exceptions.*

(1) *General.* Packagings manufactured for elevated temperature materials service prior to October 1, 1993, which are not in full compliance with the requirements in paragraph (g) of this section, may continue in service if they meet the applicable requirements of subparts A and B of this part and meet the closure requirements in paragraph (g)(2) of this section by March 30, 1995.

(2) *Kettles.* Kettles in service prior to October 1, 1993, which are used to transport asphalt or bitumen, are excepted from specific provisions of this section as follows:

(i) Kettles with a total capacity of less than 2650 L (700 gallons), which are not in full compliance with the requirements of paragraph (g) of this section, may continue in elevated temperature material service if they meet the applicable requirements of subparts A and B of this part and if, after March 30, 1995, closures are secured during transport to resist opening in an overturn.

(ii) Kettles with a total capacity of 2650 L (700 gallons) or more, which are not in full compliance with the requirements of paragraph (g) of this section, may continue in elevated temperature material service if they meet the applicable requirements of subparts A and B of this part and if, after March 30, 1995, closures are secured during transport to resist opening in an overturn and no opening exceeds 46 cm^2 (7.1 in^2).

(3) *Molten metals and molten glass.* This section does not apply to packagings used for transportation of molten metals and molten glass by rail when movement is restricted to operating speeds less than 15 miles per hour. (See § 172.203(g)(3) of this subchapter for shipping paper requirements.)

(4) *Solid elevated temperature materials.* A material which meets the definition of a solid elevated temperature material is excepted from all requirements of this subchapter except § 172.325 of this subchapter.

Issued in Washington, DC, on January 4, 1993 under authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 93–339 Filed 1–7–93; 8:45 am]

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federal register

Friday
January 8, 1993

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1210

Watermelon Research and Promotion Plan; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[AMS–FV–91–275]

RIN 0581–AA32

Watermelon Research and Promotion Plan; Amendments to Procedures for Nominating Producer and Handler Members to the National Watermelon Promotion Board, and Amendments to the Rules and Regulations Issued Thereunder

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends the procedures for nominating producer and handler members to the National Watermelon Promotion Board (Board). These amendments: simplify voting procedures used at nomination conventions, set a date by which nominee qualification forms must be received by the Department of Agriculture (Department), and clarify that nominees are responsible for submitting their qualification statements to the Board for forwarding to the Department. Additionally, changes are made to clarify the definition of a handler and to update OMB control numbers.

EFFECTIVE DATE: February 8, 1993.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Research and Promotion Branch, F&V, AMS, USDA, Room 2535–South, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–9917.

SUPPLEMENTARY INFORMATION: This final rule is issued under the Watermelon Research and Promotion Plan (7 CFR part 1210), hereinafter referred to as the Plan. The Plan is effective under the Watermelon Research and Promotion Act (7 U.S.C. 4901–4916), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation No. 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1650 of the Act, a person subject to a plan may file a petition with the Secretary stating that such plan, any provision of such plan or any obligation imposed in connection with such plan is not in accordance with law; and requesting a modification of the plan or an exemption from the plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions of the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 750 watermelon handlers and 5,000 watermelon producers subject to regulation under the Plan. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of watermelon handlers and producers may be classified as small entities. During 1991, shipments of U.S. watermelons totalled more than 21.5 billion pounds.

This action will not have significant economic impact on small producers or handlers. This action benefits producers and handlers by simplifying the voting procedures employed at nomination conventions. Producers and handlers also benefit from this action through the further clarification of who is a handler for the purposes of paying assessments.

In accordance with the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and Office of Management and Budget (OMB) regulations [5 CFR part 1320], the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB control numbers 0518–0093 and 0505–0001. These OMB control numbers expire on March 31, 1994.

The Act and Plan provide that handlers are responsible for collecting and submitting both producer and handler assessments to the Board, for reporting their handling of watermelons, and for maintaining records necessary to verify their reportings. This action adds no additional reporting burden.

In the September 15, 1989, issue of the **Federal Register** (54 FR 38202), the Department published an interim final rule with a request for comments establishing the procedures for nominations of producer and handler members to the Board. One comment was received by the November 14, 1989, deadline. The commenter recommended electing both nominees for each available position simultaneously rather than by voting for each nominee separately. The two nominees receiving the greatest number of votes and at least a simple majority of the votes cast would be the two nominees forwarded to the Department for the Secretary of Agriculture's (Secretary) selection for appointment to the Board. Additionally, nominees would no longer be ranked as either the first or second choice of the nominating body.

This comment was deemed to have merit. Therefore, rather than finalizing the September 15, 1989, interim final rule, the Department issued a proposed rule to revise the interim final rule. The proposed rule was published in the January 31, 1992, issue of the **Federal Register** [57 FR 3727]. It included the revision recommended by the commenter as well as additional revisions which were deemed necessary by the Department. The additional revisions included further changes to the nomination procedures, clarification of the definition of a handler, and updated OMB control numbers. Twenty-two comments on the proposal were received from producers, handlers, and one person commenting on behalf of the Board. Two additional comments, one from a dietitian and one from a person representing the National Watermelon Association, were received after the March 2, 1992, deadline. All comments received, including those received late, favored the amendments to the nominating procedures and to the rules and regulations as they were published in the proposed rule. Therefore, these revisions, as described below, are adopted by this final rule.

The nominating procedures as originally set forth in paragraph (f) of § 1210.401 required that the chairperson of each nominating meeting submit the nominee's qualifications statements. Information in such statements is confidential, and having the chairperson responsible for their submission poses a risk of violating nominee's confidentiality. To better ensure that the confidentiality of information supplied by nominees for Board membership is maintained, paragraph (f) of § 1210.401 is hereby amended to require that each nominee bear the responsibility for completing his or her qualifications statement and forwarding it to the Board's office for submission to the Department. The chairperson will be responsible for submitting the nominating meeting report and for assuring the nominees complete and submit their statements in a timely fashion. This amended paragraph also includes time frames in which qualifications statements and meeting reports must be submitted to the Board and to the Department. The chairperson must submit meeting reports and arrange for the completion and submission of qualifications statements to the Board's office within 14 days of the meeting's completion, but no later than July 8 for appointments to become effective on January 1. The Board's staff must forward such information to the Department within 21 days of the meeting, but no later than July 15 for appointments to become effective on the following January 1.

Paragraph (h) of § 1210.403 is also amended by revising the voting procedure used at nomination meetings. The two nominees receiving the greatest number of votes and at least a simple majority of the votes cast will be the two nominees forwarded to the Department for the Secretary's selection for appointment to the Board. Additionally, nominees would no longer be ranked as either the first or second choice of the nominating body. Revising the nominating procedures in this manner simplifies and shortens the nominating process. It also has the added benefit of encouraging each nominee to submit his or her qualifications statement in a timely fashion since neither nominee would have reason to believe that one has preference over the other in the appointment process. Presently, nominees who are elected as the second choice for a position do not feel they will receive consideration by the Secretary for appointment and, therefore, do not have a great incentive to complete and submit their qualifications statements. Revising the procedures is also expected to reduce the number of disqualifications of nominees who do not complete and submit their qualifications statements.

Section 1201.404 is removed and reserved in order to have all the OMB numbers in one section. Section 1210.540 will contain all the required OMB numbers.

Section 1210.517 of the rules and regulations deals with the definition of a handler for the purpose of payment of assessments to the Board. This action adds a new paragraph (a)(3) to § 1210.517 in order to clarify that a producer who purchases watermelons from one or more producers in any amount and for whatever reason becomes a handler. As a first handler, this producer is therefore responsible for the payment of assessments. This change is necessary to improve operations under the Plan. Therefore, § 1210.517 is revised by redesignating paragraphs (a)(3) through (a)(11) as paragraphs (a)(4) through (a)(12), respectively, and a new paragraph (a)(3) is added to § 1210.517.

Further, the Board recommended inserting the words "/Commission House" after the word "Broker" or "Brokers" each time they occur in existing paragraphs (a)(8) and (a)(9) of § 1210.517 (redesignated paragraphs (a)(9) and (a)(10), respectively). This addition clarifies that commission houses are treated the same as brokers for assessment purposes under the Plan.

Section 1210.540 of the rules and regulations issued under the Plan contains the same OMB control number for information collection referred to in § 1210.404. However, since the initial issuance of section 1210.404, a new nominee background information form has been developed which received OMB approval and assignment of a control number. In addition, the information collection provisions of the Plan have been reapproved and the OMB control number revised. Therefore, section 1210.540 is hereby amended to add the new OMB Control Number 0505–0001 for the nominee background information form and 0581–0093 for other information collections under the Plan.

In addition, editorial changes have been made to the following regulatory text for the purpose of clarity.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, it is found that this regulation, as set forth herein, tends to effectuate the declared policy of the Act.

This final rule will become effective 30 days following the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1210

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

For the reasons set forth in the preamble, part 1210, chapter XI of title 7 is amended to read as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901–4916.

2. Section 1210.401 is amended by revising the concluding text of paragraph (f) to read as follows:

§ 1210.401 District conventions.

* * * * *

(f) * * *

This information must be provided by the chairperson to the Board staff in a manner that will ensure receipt, at the address specified in the call for the district convention, within 14 calendar days of the district convention's completion, but not later than July 8 for appointments to become effective on the following January 1. The Board staff must forward such information to the Secretary, in a manner that will ensure receipt, within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1. Further, the chairperson will immediately arrange for completion of qualification statements and other specified information by each nominee, and each nominee shall qualify by forwarding such information to the Board's office within 14 calendar days of completion of the district convention, but not later than July 8 for appointments to become effective on the following January 1. The Board staff must forward the completed qualification statements and other specified information to the Secretary, in a manner that will ensure receipt within 21 calendar days of completion of the district convention, but not later than July 15 for appointments to become effective on the following January 1.

3. Section 1210.403 is amended by revising paragraph (h) to read as follows:

§ 1210.403 Voting procedures.

* * * * *

(h) Two nominees shall be elected for each of the producer and handler positions from each district on the Board. The two nominees for each position shall be elected simultaneously. The convention chairperson will open the floor to the nomination of candidates for possible election as a Board member nominee for each available position. Each position will be dealt with separately (i.e., candidates for one position will be nominated and then elected before the convention moves on to the next available position). Each eligible voter may vote for two of the nominees on one ballot. The two nominees receiving the greatest number of votes and at least a simple majority of the votes cast will be elected as the district's Board member nominees for the position. No individual elected as a nominee for Board membership may be a candidate on subsequent Board member nominee ballots (i.e., two different producer names and two different handler names must be submitted as nominees for each producer and handler position from each district to the Secretary of Agriculture). There shall be no designation of first and second choice nominees.

§ 1210.404 [Reserved]

4. Section 1210.404 is removed and reserved.

5. Section 1210.517 is amended by redesignating paragraphs (a)(3) through (a)(11) as paragraphs (a)(4) through (a)(12) respectively, adding a new paragraph (a)(3), and revising redesignated paragraphs (a)(9) and (a)(10) to read as follows:

§ 1210.517 Determination of handler.

* * * * *

(a) * * *

(3) Producer purchases watermelons from another producer. The producer purchasing the watermelons is the first handler.

* * * * *

(9) Broker/Commission House receives watermelons from a producer and sells such watermelons in the Broker's/Commission House's name. In this instance, the Broker/Commission House is the first handler, regardless of whether the Broker/ Commission House took title to such watermelons.

(10) Broker/Commission House, without taking title or possession of watermelons, sells such watermelons in the name of the producer. In this instance, the producer is the first handler.

* * * * *

6. Section 1210.540 is revised to read as follows:

§ 1210.540 OMB assigned numbers.

The information collection and recordkeeping requirements contained in this part 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, except that Board member nominee background information sheets are assigned OMB Control Number 0505–0001.

Dated: December 29, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–200 Filed 1–7–93; 8:45 am]

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federal register

Friday
January 8, 1993

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1207
Potato Research and Promotion Plan; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1207

[AMS–FV–91–235A]

RIN 0581–AA47

Potato Research and Promotion Plan; Termination of Obsolete Provisions of the Plan and Amendments to the Rules and Regulations Issued Thereunder

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is adopting with change as a final rule an interim final rule which: Terminated obsolete provisions in the Potato Research and Promotion Plan (Plan) that provided for the one-time refund of assessments and provided the Harmonized Tariff Schedule (HTS) categories, the assessment rates for imported tablestock potatoes, frozen or processed potatoes, and seed potatoes, and the applicable factors for converting processed potatoes to fresh potato weight equivalents.

DATES: This final rule is effective January 8, 1993.

FOR FURTHER INFORMATION CONTACT: Georgia C. Abraham, Research and Promotion Branch, F&V, AMS, USDA, room 2535–So., P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–5057.

SUPPLEMENTARY INFORMATION: These amendments to the Plan are issued pursuant to the Potato Research and Promotion Act, as amended on November 28, 1990 (104 Stat. 3865, 7 U.S.C. 2611 *et seq.*), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 311 of the Act, a person subject to a plan may file a petition with the Secretary stating that such plan, any provision of such plan or any obligation imposed in connection with such plan is not in accordance with law; and requesting a modification of the plan or an exemption from the plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided that a complaint is filed within 20 days after the date of entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

There are an estimated 2,000 handlers, 6,000 producers, 80 importers of potatoes and potato products for human consumption, and 25 importers of seed potatoes who are subject to the provisions of the Plan. The majority of these persons may be classified as small agricultural producers and small agricultural service firms. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of potato handlers, producers, and importers may be classified as small entities. During the 1991 crop year, 417.6 million hundredweight of potatoes were produced in the United States. Imports of potatoes for 1991, as reported by the Foreign Agricultural Service, were 6,160,596 hundredweight. Of this total, 4,373,525 hundredweight of tablestock potatoes, 1,787,071 hundredweight of seed potatoes, and 1,628,712 hundredweight of frozen potatoes products were imported from Canada. Potato chip imports from Mexico accounted for 35,935 hundredweight of total potato and potato products imports.

Domestic potato producers are no longer able to apply for and receive refunds of assessments. Importers are subject to the Act's provisions requiring importers to share the cost of the program with domestic potato producers on an equal basis. This burden is not considered significant in light of the benefits all potato producers and importers receive from this program.

In accordance with the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and Office of Management and Budget (OMB) regulations (5 CFR part 1320), the information collection and recordkeeping requirements contained in this action were submitted to the OMB and approved under OMB control numbers 0581–0093 and 0505–0001.

The reporting burden for domestic potato producers and importers has decreased since they are no longer required to complete the forms necessary to receive the one-time refund of assessments paid. The reporting burden on importers requires approximately 6 hours per year for each importer of potatoes, potato products, and seed potatoes.

The Plan, as amended in the August 14, 1991, issue of the **Federal Register** (56 FR 40226), authorizes the National Potato Promotion Board (Board) to collect assessments on potatoes, potato products, and seed potatoes imported into the United States from foreign countries. Importers of such potatoes, potato products, and seed potatoes are required to submit such reports to the Board as it deems necessary to administer the provisions of the Plan. However, no immediate reporting requirements by importers are contemplated at this time since the U.S. Customs Service (Customs Service) of the Department of the Treasury will collect assessments on imported potatoes, potato products, and seed potatoes beginning on November 2, 1992. Importers are required to maintain records, and such records will be subject to inspection. Records are required to be maintained for 2 years beyond the close of the fiscal year in which they were created.

It is estimated that approximately 105 importers are subject to these requirements. Because the assessment is levied at the time of importation or withdrawal for consumption into the United States, there are no added reporting requirements on importers.

An interim final rule was published in the September 2, 1992, issue of the **Federal Register** (57 FR 40081). The interim final rule: (1) Terminated obsolete provisions in the Potato Research and Promotion Plan (Plan) and the Rules and Regulations issued thereunder that provided for the one-time refund of assessments; and (2) provided the Harmonized Tariff Schedule (HTS) categories, assessment rates for imported tablestock potatoes, for frozen or processed potatoes, and for seed potatoes, and the applicable factors for converting processed potatoes to fresh potato weight equivalents. That action was based on the vote in the referendum conducted from August 19 to September 6, 1991. In the referendum, domestic potato producers and importers favored levying assessments on imported potatoes, seed potatoes, and frozen or processed potato products and terminating the Plan's refund provisions.

Section 315 of the Act provides the Secretary the authority to terminate provisions of the Plan which do not tend to effectuate the declared policy of the Act. Paragraph (k) of § 1207.328 and § 1207.343 of the Plan and § 1207.514 of the rules and regulations which, respectively, established an escrow account and permitted the one-time refund of assessments if producers and importers did not favor continuance of the amendments as stated in the above paragraph, were rendered obsolete by the results of the referendum conducted in August and September 1991. Therefore, the interim final rule terminated paragraph (k) of § 1207.328 and § 1207.343 of the Plan and § 1207.514 of the rules and regulations.

The interim final rule incorporated the HTS codes of the Customs Service, provided for assessment rates for imports, and added conversion factors by revising § 1207.510. Conversion factors are needed to compute assessment rates for frozen or processed potato products that equal fresh weight equivalents of potatoes.

The interim final rule provided that interested persons could file written comments through October 2, 1992. No written comments were received. However, several interested parties telephoned the Department regarding the assessment of imported, edible potato starch.

In revising § 1207.510, the HTS code, conversion factor, and assessment rate for potato starch were inadvertently omitted. Therefore, paragraph (b) of § 1207.510 is further revised by this final rule to include the HTS code, the conversion factor, and the assessment rate for potato starch. The HTS code for potato starch is 1108.13.000, the conversion factor is .1111, and the assessment rate is 18.0018 cents per hundredweight or 0.3969 cents per kilogram.

In addition, miscellaneous changes are made for clarity in this final rule.

The 1990 amendments to the Act provide that all imported potatoes for human consumption (fresh or processed) and seed potatoes be assessed at rates equivalent to that levied on domestic potato production. In some cases, Customs Service's HTS codes do not differentiate between potatoes and potato products that are intended for human consumption and those intended for non-human consumption. Therefore, the Customs Service will collect assessments on all imported tablestock, processed potato products, and seed potatoes identified by the HTS codes in paragraph (b) of § 1207.510. As previously established in paragraph (b)(2) of § 1207.513 of the rules and regulations, importers may apply to the Board for refund of assessments paid on exempted imported potatoes and processed potato products. As also previously stated in § 1207.501, communications with the Board may be addressed to: The National Potato Promotion Board, 1385 South Colorado Boulevard, Suite 512, Denver, Colorado 80222.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, it is found that the amendments to the rules and regulations, as set forth in the September 2 interim final rule and adopted with change by this final rule, will tend to effectuate the declared policy of the Act. With regard to the termination of provisions in the Plan and the rules and regulations, as set forth in the September 2 interim final rule and finalized by this rule, it is found that these provisions no longer tend to effectuate the declared policy of the Act.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) This action is required by the 1990 amendments to the Act and the 1991 amendments to the Plan;

(2) The interim final rule provided a 30-day period to allow interested parties to comment prior to this action;

(3) Section 1207.510(b) became effective November 2, 1992;

(4) Importers are notified of this action through Customs Service's Automated Commercial System's Automated Broker Interface; and

(5) No useful purpose would be served by a delay of the effective date.

List of Subjects in 7 CFR Part 1207

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

Accordingly, the interim final rule amending 7 CFR part 1207 which was published at 57 FR 40081 on September 2, 1992, is adopted as a final rule with the following changes:

PART 1207—POTATO RESEARCH AND PROMOTION PLAN

1. The authority citation for 7 CFR part 1207 continues to read as follows:

Authority: Potato Research and Promotion Act, as amended, 7 U.S.C. 2611 *et seq.*

2. Section 1207.510 is amended by revising paragraphs (b) (1), (2), and (3) and (c) to read as follows:

§ 1207.510 Levy of assessments.

* * * * *

(b) *Assessments on imports.* (1) An assessment rate of 2 cents per hundredweight shall be levied on all tablestock potatoes imported into the United States for ultimate consumption by humans and all seed potatoes imported into the United States. An assessment rate of 2 cents per hundredweight shall be levied on the fresh weight equivalents of imported frozen or processed potatoes for ultimate consumption by humans. The importer of imported tablestock potatoes, potato products, or seed potatoes shall pay the assessment to the Board through the U.S. Customs Service at the time of entry or withdrawal for consumption of such potatoes and potato products into the United States.

(2) The following conversion factors shall be used to determine the fresh weight equivalents of frozen and processed potato products:

Frozen potato products	.50
Canned potatoes	.636
Potato chips and shoestring potatoes	.245
Dehydrated potato products	.14
Potato starch	.1111

(3) The Harmonized Tariff Schedule (HTS) categories and assessment rates on imported tablestock potatoes and frozen or processed potatoes for ultimate consumption by humans and on imported seed potatoes are as follows:

Tablestock potatoes, frozen or processed potatoes, and seed potatoes	Assessment	
	cents/cwt	cents/kg
0701.10.0020	2.00	0.0441
0701.10.0040	2.00	0.0441
0701.90.1000	2.00	0.0441
0701.90.5010	2.00	0.0441
0701.90.5020	2.00	0.0441
0701.90.5030	2.00	0.0441
0701.90.5040	2.00	0.0441
0710.10.0000	4.00	0.0882
2004.10.4000	4.00	0.0882
2004.10.8020	4.00	0.0882
2004.10.8040	4.00	0.0882
2005.20.6060	3.1446	0.0693
0712.10.0000	14.2857	0.3149
1105.10.0000	14.2857	0.3149
1105.20.0000	14.2857	0.3149
2005.20.6040	14.2857	0.3149
2005.20.2000	8.1633	0.1800
1108.13.0000	18.0018	0.3969

* * * * *

(c) Potatoes and potato products used for nonhuman food purposes, other than seed, are exempt from assessment but are subject to the disposition of exempted potatoes provisions of § 1207.515 of this subpart.

* * * * *

Dated: December 31, 1992.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-212 Filed 1-7-93; 8:45 am]

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federal register

Friday
January 8, 1993

Part VI

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1211

Pecan Promotion and Research Plan; Subpart C—Rules of Practice Governing Proceedings on Petitions; Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR PART 1211

[FV-91-277]

RIN 0581-AA50

Pecan Promotion and Research Plan; Subpart C—Rules of Practice Governing Proceedings on Petitions To Modify or To Be Exempted From a Plan

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture is adopting with a minor modification as a final rule an interim final rule which specifies rules of practice governing proceedings on petitions to modify or to be exempted from the Pecan Promotion and Research Plan (Plan). This action is needed to provide persons subject to the Plan with rules of practice for such proceedings.

EFFECTIVE DATE: February 8, 1992.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2535-S, Washington, DC 20090-6456, telephone (202) 720-9916.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001 *et seq.*), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order No. 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1913 of the Act, a person subject to a plan may file a petition with the Secretary stating that such plan, a provision of such plan, or an obligation imposed in connection with such plan is not in accordance with law and requesting a modification of the plan or an exemption from the plan. Such person is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person resides or carries on business has jurisdiction to review the Secretary's ruling on the petition, if a complaint is filed within 20 days after the date of the entry of a ruling by the Secretary.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Growers, grower-shellers, and importers of pecans are subject to assessment under the Plan for pecans produced in or imported into the 50 States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. The Plan provides that first handlers, grower-shellers, and importers are responsible for payment of assessments. Appropriate reporting and recordkeeping requirements are also provided for in the Plan.

The most recent available census of agricultural producers indicates that over 21,000 farms in the United States reported having pecan trees. The majority of these producers are subject to the provisions under the Plan and are classified as small businesses. Producers or growers engaged in the production and sale of pecans are subject to being assessed under the Plan. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms, which include pecan handlers, shellers, grower-shellers, and importers, have been defined as those having annual receipts of less than $3,500,000. Also, there are approximately 2,000 pecan handlers, 115 shellers, and 25 importers who will be subject to the provisions of the Plan, the majority of whom are also classified as small entities.

Pecan production increased sharply between the early 1970's and the 1980's, with most of the increase in improved varieties. Average production of improved varieties increased from 109 million pounds in 1970-74 to 173 million pounds in 1981-88, a 59 percent increase. For the same periods all pecan production increased from 199 million pounds to 268 million pounds or 33 percent. The industry still has the capacity to produce large crops, such as those in the 1980's. Consequently, the research and promotion program is needed to help to bring demand in line with current production capacity.

During the 1990-91 crop year, 299 million pounds of pecans were produced in the United States, according to the revised final crop figures in USDA's July 1992 report. Pecan imports reported by the Foreign Agricultural Service for 1990-91 reached approximately 66 million pounds (in-shell weight). Approximately 90 percent of these imports were from Mexico and the remaining 10 percent were from Australia.

This action finalizes rules of practice governing proceedings on petitions filed by persons subject to the Plan to modify or be exempted from the Plan or any provision thereof. Section 1913 of the Act provides that any person subject to the Plan may file a written petition with the Secretary stating that the Plan or any provision of the Plan, or any obligation imposed in connection with such Plan, is not in accordance with law. The person may request a modification of the Plan or an exemption from certain provisions or obligations of the Plan. The Act further provides that the petitioner shall be given an opportunity for a hearing on the petition, in accordance with regulations prescribed by the Secretary.

An interim final rule providing procedures whereby a person subject to the Plan may file a petition to modify or to be exempted from the Plan was issued on June 17, 1992, and published in the **Federal Register** (57 FR 27898) on June 23, 1992.

The interim final rule provided that interested persons could file written comments through July 23, 1992. No comments were received.

However, a minor modification is necessary. Section 1211.251(h), the definition of the term "decision" should refer to the judge's "initial decision" rather than the judge's "report to the Secretary." Therefore, this action adopts the June 23 interim final rule with change.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

It is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 1211

Administrative practice and procedure, Advertising, Agricultural research, Imports, Marketing agreements, Pecans, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 1211 which was published at 57 FR 27898 on June 23, 1992, is adopted as a final rule with the following change:

PART 1211—PECAN PROMOTION AND RESEARCH PLAN

1. The authority citation for part 1211 continues to read as follows:

Authority: The Pecan Promotion and Research Act of 1990; 7 U.S.C. 6001 *et seq.*

2. Section 1211.251(h) introductory text is revised to read as follows:

§ 1211.251 Definitions.

* * * * *

(h) *Decision* means the judge's initial decision and includes the judge's:

* * * * *

Dated: December 29, 1992.

Daniel Haley,

Administrator.

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