

§ 1221.117

7 CFR Ch. XI (1–1–11 Edition)

the collection of assessments, if the Board is not in place or is otherwise unable to develop such rules and regulations.

(m) Payment remitted pursuant to this subpart shall be in the form of a negotiable instrument made payable to the Board. Such remittances and the reports specified in §§1221.124 and 1221.125 shall be mailed to the location designated by the Board.

§ 1221.117 Exemptions.

(a) Any importer of less than and including 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage per calendar year may claim an exemption from the assessment required under §1221.116.

(b) An importer desiring an exemption shall apply to the Board, on a form provided by the Board, for a certificate of exemption. An importer shall certify that the importer will import less than and including 1,000 bushels of grain sorghum or 5,000 tons of sorghum forage, sorghum hay, sorghum haylage, sorghum billets, or sorghum silage.

(c) Upon receipt of an application, the Board shall determine whether an exemption may be granted. The Board then will issue, if deemed appropriate, a certificate of exemption to each person who is eligible to receive one. It is the responsibility of these persons to retain a copy of the certificate of exemption.

(d) Importers who receive a certificate of exemption shall be eligible for reimbursement of assessments collected by Customs. These importers shall apply to the Board for reimbursement of any assessments paid. No interest will be paid on the assessments collected by Customs. Requests for reimbursement shall be submitted to the Board within 90 days of the last day of the calendar year the sorghum was actually imported.

(e) Any person who desires an exemption from assessments for a subsequent calendar year shall reapply to the Board, on a form provided by the Board, for a certificate of exemption.

(f) The Board may require persons receiving an exemption from assessments to provide to the Board reports on the

disposition of exempt sorghum and, in the case of importers, proof of payment of assessments.

(g) A producer or importer who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces or imports only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (m) of this section; and is not, or does not import products from, a split operation shall be exempt from the payment of assessments.

(h) To apply for an exemption under this section, the applicant shall submit the request to the Board or other party as designated by the Board, on a form provided by the Board, at any time initially and annually thereafter on or before January 1 as long as the applicant continues to be eligible for the exemption.

(i) The request shall include the following: The applicant'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), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(j) If the applicant complies with the requirements of this section, the Board or designee will grant the exemption and issue a Certificate of Exemption to the applicant. The Board will have 30 days from the date of receiving the request to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(k) The producer or importer shall provide a copy of the Certificate of Exemption to each first handler. The first handler shall maintain records showing the name and address of the exempt producer or importer and the exemption number assigned by the Board.

(l) The exemption will apply at the first reporting period following the issuance of the exemption.

Agricultural Marketing Service, USDA

§ 1221.120

(m) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer or importer from exemption under this section, except that producers or importers who produce or import both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR Part 205, provided all other criteria are met.

§ 1221.118 Refund escrow accounts.

(a) The Board shall establish an interest bearing escrow account with a financial institution that is a member of the Federal Reserve System and will deposit into such account an amount equal to the product obtained by multiplying the total amount of assessments collected by the Board during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum by ten percent (10 percent).

(b) Upon failure of the required referendum, the Board shall pay refunds of assessments to eligible persons requesting refunds during the period beginning on the effective date of the Order and ending on the date the Secretary announces the results of the required referendum in the manner specified in paragraph (c) of this section.

(c) If the amount deposited in the escrow account is less than the amount of refunds requested, the Board shall prorate the amount deposited in such account among all eligible persons who request a refund of assessments paid no later than 90 days after the required referendum results are announced by the Secretary.

(d) If the Order is approved by the required referendum conducted under § 1221.130 then:

(1) The escrow account shall be closed; and

(2) The funds shall be available to the Board for disbursement under § 1221.112.

§ 1221.119 Refunds.

Any producer or importer from whom an assessment is collected and remitted to the Board, or who pays an assessment directly to the Board, under authority of the Act and this subpart through the announcement of the results of the required referendum, upon failure of the required referendum shall have the right to receive from the Board a refund of such assessment, or a prorated share thereof, upon submission of proof satisfactory to the Board that the producer or importer paid the assessment for which refund is sought. Any such demand shall be made by such producer or importer in accordance with the provisions of this subpart and in a manner consistent with regulations recommended by the Board and prescribed by the Secretary.

§ 1221.120 Procedure for obtaining a refund.

Upon failure of the required referendum, each producer or importer who paid an assessment pursuant to this subpart during the period beginning on the effective date of the Order and ending on the date the required referendum results are announced may obtain a refund of such assessment only by following the procedures prescribed in this section and any regulations recommended by the Board and prescribed by the Secretary:

(a) A producer or importer shall obtain a Board-approved refund application form from the Board. Such forms may be obtained by written request to the Board and the request shall bear the producer's or importer's signature or properly witnessed mark.

(b) Any producer or importer requesting a refund shall submit an application on the prescribed form to the Board within 60 days from the date the assessments were paid by such producer or importer but no later than the date the results of the required referendum are announced by the Secretary. The refund application shall show:

(1) Producer's or importer's name and address;