

U.S. Department of Labor
Employment and Training Administration
200 Constitution Avenue, NW
Washington, D.C. 20210

UCFE Program Coverage Ruling No. 92-1
Agricultural Promotion Boards and Marketing Agreement
and Order Administrative Committees

Ruling: Each of the below listed boards and committees is an "instrumentality of the United States" and services performed in the employ of all such boards and committees is "Federal service" within the meaning of 5 U.S.C. 8501(1): the National Dairy Promotion and Research Board (7 U.S.C. 4501-4513; 7 CFR Part 1150), the Honey Board (7 U.S.C. 4601-4612; 7 CFR Part 1240), the National Potato Promotion Board (7 U.S.C. 2611-2627; 7 CFR Part 1207), the Cotton Board (7 U.S.C. 2101-2118; 7 CFR Part 1205), the National Pork Board (7 U.S.C. 4801-4819; 7 CFR Part 1250), the Cattlemen's Beef Promotion and Research Board (7 U.S.C. 2901-2911; 7 CFR Part 1260), the Egg Board (7 U.S.C. 2701-2718; 7 CFR Part 1250) and 44 marketing agreement and order administrative committees (see enclosed list) established under 7 U.S.C. 601-674 (7 CFR Parts 905-998). Members of such boards and committees who are appointed by the Secretary of Agriculture are excluded from program coverage by 5 U.S.C. 8501(1)(K).

Prior Ruling: A ruling on UCFE program coverage of marketing agreement and order administrative committees was issued on June 20, 1957. This 1992 ruling supersedes the 1957 ruling and is now controlling for UCFE program coverage purposes of these agricultural promotion boards and marketing agreement and order administrative committees. No subsequent amendments to title 7 of the United States Code have altered the nature or characteristics of these boards and committees upon which our ruling was based. Nor have there been any amendments to 5 U.S.C. 8501(1) which are relevant to the coverage of such boards and committees. The addition of Section 8509 by Section 1023(b) of the Omnibus Reconciliation Act of 1980 (P.L. 96-499) did not affect coverage of the UCFE program.

Statement of Facts: In holding that employees of such committees perform "Federal service," I have relied on the following factors:

1. The primary function of these committees is to act as agents for the Secretary of Agriculture in carrying out the policy declared by Congress at 7 U.S.C. 602.
2. Such committees have the authority to appoint employees, agents, and representatives, and to determine the salaries and duties of such individuals.
3. The members of such committees, as well as employees and agents, are subject to removal by the Secretary of Agriculture.
4. Every act of such committees is subject to approval by the Secretary of Agriculture.
5. On November 29, 1945, the Internal Revenue Service ruled that services performed in the employ of certain administrative committees established by the Secretary of Agriculture under the Agricultural Marketing Agreement Act were exempt from the provisions of the Federal Unemployment Tax Act by reason of the exclusion from the definition of "employment" in 26 U.S.C. 1607(c) (now, without relevant change, Section 3306(c)(6) of the Internal Revenue Code of 1986). Also, on October 15, 1952, the Director of the Bureau of Employees' Compensation (now the Office of Workers' Compensation Programs) ruled that personnel of the

Federal Milk Market Administrators are "employees" within the meaning of the Federal Employees' Compensation Act.

6. Such committees are authorized to incur such expenses as the Secretary of Agriculture finds reasonable.
7. The funds to cover the expenses of such committees are raised by assessments, paid to the committees by the covered industries and enforceable by the Secretary of Agriculture in the District Courts of the United States.
8. The decision in *United States v. Levine*, 129 F.2d 745 (2d Cir. 1942) found that a Market Administrator (established by order of the Secretary of Agriculture under the Agricultural Marketing Agreement Act) was an agency of the United States. Further, as recently as 1984, the Supreme Court cited with approval the Levine opinion finding that a Market Administrator was an agency of the United States (*Dixon v. United States*, 104 S.Ct. 1172, 1179-1180 (1984)).
9. The Internal Revenue Service affirmed, in a letter from Jerry E. Holmes to Mary Ann Wyrsh, dated November 26, 1990, that there is no change in the positions taken in the above cited rulings.

Discussion/Analysis: With regard to the promotion boards, the purpose of these entities is to carry out coordinated programs of research and promotion designed to strengthen the competitive position of each covered commodity and to maintain and expand domestic and foreign markets for American producers of each such commodity (e.g., 7 U.S.C. 2101 with respect to the Cotton Board). Although the purpose and authorizing statutes of these entities are different from the marketing committees, their manner of creation and method of operation are nearly identical. As with the marketing committees, the promotion boards are created by order of the Secretary of Agriculture (e.g., 7 U.S.C. 2104 and 2106(a) with respect to the Cotton Board). Their members are selected by the Secretary of Agriculture (e.g., 7 U.S.C. 2106(b) and are subject to removal by the Secretary (e.g., 7 CFR 1205.323). The boards have authority to appoint employees and to determine the salaries and duties of such individuals (e.g., 7 CFR 1205.328(b)). The actions of these boards are subject to the approval of the Secretary of Agriculture (e.g., 7 U.S.C. 2106(c)). These boards are authorized to incur such expenses as the Secretary of Agriculture finds reasonable (e.g., 7 CFR 1205.330(a)). The funds to cover the expenses of these boards are raised by assessments paid to the boards by the covered industry and enforceable by the Secretary of Agriculture in the District Courts of the United States (e.g., 7 U.S.C. 2106(e) and 2112(b); 7 CFR 1205.515(d)).

In the Internal Revenue Service's letter of November 26, 1990, referenced above, the Department of Labor was informed that:

. . . it appears that an administrative committee established under the Agricultural Marketing Agreement Act of 1937 would qualify as a wholly owned instrumentality of the United States Government under current law. Under section 3306(c)(6) of the Internal Revenue Code of 1986 . . . , services performed in the employ of an instrumentality of the United States wholly or partially owned by the United States are excepted from the definition of employment for FUTA [Federal Unemployment Tax Act] purposes. If a committee is similar to the committee described in the 1945 ruling, it appears that the committee would constitute a wholly or partially owned instrumentality of the United States under section 3306(c)(6). . . . An examination of the relevant Code of Federal Regulations provisions discloses that organizations created under the Agricultural Marketing Agreement Act of 1937 are subject to the same overriding authority of the Secretary of Agriculture. In addition to the factors enumerated in the 1945 ruling, we note the extensive control over the assets of the committees that the Secretary of Agriculture may exercise under the applicable regulations. Therefore, . . . it appears that service performed in the employ of such committees are excepted from employment as service performed in the employ of an instrumentality of the United States Government. Thus, with regard to the conclusions in the 1945 ruling, our conclusion with respect to entities similar to the entity described in the ruling would appear to be that services for the entities would be excepted from employment by section 3306(c)(6) of the Internal Revenue Code as services performed for a wholly or partially owned instrumentality of the United States. The reasons stated above support the conclusion stated in the first paragraph of this ruling that employees hired by the boards and committees (as distinguished from members) of all of the agricultural boards and committees referred to herein are covered

by the UCFE program. The employing agency may not participate in the UCFE program for the board and committee members due to the exclusion at 5 U.S.C. 8501(1)(K). This coverage ruling is issued pursuant to redelegation of authority from the Assistant Secretary of Labor, in Employment and Training Order No. 2-92, dated March 20, 1992, which is authorized by Section 6 of Secretary's Order No. 4-75 (40 Fed.Reg. 18515) (as amended by Secretary's Order No. 14-75).

MARY ANN WYRSCH DATE March 24, 1992
 Director
 Unemployment Insurance Service

List of 44 Agricultural Marketing Agreement and Order Administrative Committees As of March 1, 1991
 (7 U.S.C. Parts 905-998)

905	Citrus Administrative Committee - Florida
906	Texas Valley Citrus Committee
907	Navel Orange Administrative Committee - California & Arizona
908	Valencia Orange Administrative Committee - California and Arizona
910	Lemon Administrative Committee - California and Arizona
911	Florida Lime Administrative
915	Florida Avocado Administrative Committee
916	Nectarine Administrative Committee - California
917	Control Committee - California, Pear Commodity Committee, Plum Commodity Committee, Peach Commodity Committee
918	Georgia Peach Industry Committee
919	Colorado Peach Administrative Committee
920	Kiwifruit Administrative Committee - California
921	Washington Fresh Peach Marketing Committee
922	Washington Apricot Marketing Committee
923	Washington Cherry Marketing Committee
924	Washington-Oregon Fresh Prune Marketing Committee
925	California Desert Grape Administrative Committee
926	Tokay Grape Industry Committee - California
927	Winter Pear Control Committee - Oregon, Washington, and California
928	Papaya Administrative Committee - Hawaii
929	Cranberry Marketing Committee - Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Oregon, Minnesota, Washington, and Long Island, New York
931	Northwest Fresh Bartlett Marketing Committee - Oregon and Washington
932	California Olive Committee
945	Idaho Eastern Oregon Potato Committee
946	State of Washington Potato Committee

947	Oregon-California Potato Committee
948	Colorado Potato Administrative Committee
950	Maine Potato Committee (currently inactive)
953	Southeastern Potato Committee - Virginia and North Carolina
955	Vidalia Onion Committee - Georgia
958	Idaho-Eastern Oregon Onion Committee
959	South Texas Onion Committee
965	Texas Valley Tomato Committee
966	Florida Tomato Committee
967	Florida Celery Committee
971	South Texas Lettuce Committee<
979	South Texas Melon Committee
981	Almond Board of California
982	Filbert/Hazelnut Marketing Board - Oregon and Washington
984	Walnut Marketing Board - California
985	Far West Spearmint Oil Administrative Committee
987	California Date Administrative Committee
989	Raisin Administrative Committee - California
993	Prune Marketing Committee California
998	Peanut Administrative Committee - Georgia