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State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
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BATON ROUGE
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OPINION 15-0097

Henry H. Bernard, Jr.
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90-A-1 – PUBLIC FUNDS & CONTRACTS

La. R.S. 3:3534; 3:3544

The assessment on rice produced in this state is to be collected by the Commissioner of Agriculture. The Commissioner is the proper person to sign any agreements related to the collection of the commodity assessment levied on rice.

Dear Messrs. Bernard and Privat:

On behalf of the Louisiana Rice Research Board and the Louisiana Rice Promotion Board, respectively, ("the Rice Boards"), you have requested an opinion from our office regarding proposed agreements between the Rice Boards and the Commodity Credit Corporation ("CCC") for the collection of rice assessments.

Specifically, you ask whether the proposed memoranda of understanding between the Rice Boards and the CCC are in compliance with applicable state laws and the provisions of Section 1(a) of Public Law 108-470.

Pursuant to the Department of Agriculture rule on Collection of State Commodity Assessments, 7 CFR Part 1405 (2005), five items are required for the CCC to collect rice assessments:

1. A request for the CCC to engage in the collection activity must initially be submitted by the Governor of the State;
2. Such request must identify the entity that the Governor has designated to enter into the collection agreement with the CCC;
3. A statement from the Attorney General, at any time prior to final execution of the agreement, that the agreement is in compliance with applicable state laws and the provisions of Section 1(a) of Public Law 108-470;

4. Collection of the assessment as requested by the Governor, may be at either the time the marketing assistance loan is disbursed to the producer or at the time of the forfeiture of the commodity to the CCC, but not both; and

5. The state agrees to indemnify the CCC for any costs incurred in collecting the assessment including costs relating to resolution of disputes arising from the requested collection of the assessment.

This opinion is requested to satisfy item (3).

This issue has been addressed in prior Attorney General Opinion Nos. 06-0198, 06-0198A and 07-0140. These opinions were accepted by the USDA Farm Service Agency (USDA) and MOUs were implemented. However, the USDA has recently notified you that the existing MOUs between the Rice Boards and the CCC must be updated as a result of changes to the relevant state law in 2014. Specifically, certain portions of the rice assessment statutes were declared unconstitutional in 2013¹, and legislation was passed in 2014 to address that jurisprudence.² Per the USDA, updated MOUs must be executed predicated on the new law.

The primary changes made by Acts 216 and 345 of the 2014 legislative session involved eliminating certain elements of discretion on the part of the Rice Boards regarding rice assessments and providing for a right of refund of assessments upon request. However, the provisions of Louisiana law relevant to collection by the CCC did not change.

As to item (1), there is no ambiguity or interpretation necessary. This item requires the governor of a state to make a request for collection by CCC. Relative to item (2), La. R.S. 3:3544 provides in paragraph (C) that assessments shall be collected by the Commissioner of Agriculture and in paragraph (F) that the Commissioner shall thereafter deposit and disburse funds to the Rice Research Board. La. R.S. 3:3534 (E) and (H) contain similar provisions relative to Rice Promotion Board funds. Therefore, it remains the opinion of this office that the Commissioner of Agriculture is the proper person to sign the MOUs with the CCC for the collection of assessments. As previously noted, since the assessments are collected on behalf of the Rice Boards, we suggest that the Boards approve the MOUs regarding them.³

You indicate that as to item (4), you prefer that assessments be collected at the time of loan disbursement. As previously opined, this appears to be permissible under La. R.S. 33:534(A)(5) and La. R.S. 3:3544(A)(6) which states:

¹ See *Krielow v Louisiana Department of Agriculture and Forestry*, 2013-CA-1106 (La.10/15/13), 125 So.3d 384.

² See Act 216 of the 2014 Regular legislative session, pertaining to La. R.S. 3:3533, 3:3534 and 3:3537 relative to the Rice Promotion Board, and Act 345 pertaining to La. R.S. 3:3543, 3:3544, and 3:3547 relative to the Rice Research Board.

³ See Attorney General Opinion Nos. 06-0198, 06-0198A and 07-0140.

Assessments on rice put under loan to the Commodity Credit Corporation or purchased by the Commodity Credit Corporation and delivered to it shall be payable when such rice is placed under loan or is purchased.

Our office does not render opinions on federal law, and thus we cannot opine on the Agreements' compliance with Public Law 108-470 Sec. 1, but we note that the provisions of La. R.S. 3:3544(C) and La. R.S. 3:3544(E), as well as the language of Public Law 108-470 Sec. 1, have not changed since our prior opinions. Thus, we remain of the opinion that these laws appear to be similar regarding payment by the producer.

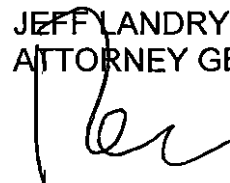
In conclusion, it is the opinion of this office that the MOUs are in compliance with state law. Because the applicable provisions of state law are similar to PL 108-470 Sec.1, they appear to be in compliance with federal law as well.

We hope that this opinion has addressed the issues that you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY:



Patricia H. Wilton
Assistant Attorney General

JL:PHW