



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1212

[Document Number AMS-FV-14-0045]

Honey Packers and Importers Research, Promotion, Consumer Education and Information Order; Assessment Rate Increase

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This rule amends the Honey Packers and Importers Research, Promotion, Consumer Education and Information Order (Order) to increase the assessment rate from \$0.01 per pound to \$0.015 per pound on honey and honey products, over a two-year period. The Order limits an increase in the assessment rate to no more than one-quarter cent per pound per year. Thus, the rate will increase to \$0.0125 per pound for the period January 1 through December 31, 2015, and to \$0.015 per pound on and after January 1, 2016. This increase was unanimously recommended by the Honey Packers and Importers Board (Board) which administers the Order with oversight by the U.S. Department of Agriculture (USDA). Under the program, assessments are collected from first handlers (packers) and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad.

Additional funds will allow the Board to expand its production research activities and promotional efforts. The Board's production research focuses on maintaining the health of honey bee colonies. Increasing demand for honey and honey products will benefit the honey industry as a whole. This action also makes three additional changes to: Clarify that the assessment rate applies not only to the Harmonized Tariff Schedule numbers but to any other numbers used to identify honey; change the length of time that books and records are to be held; and change the exemption requirements.

DATES: Effective: [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Promotion and Economics Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue, SW., Room 1406-S, Stop 0244, Washington, DC 20250-0244; telephone: (202) 720-9915; facsimile: (202) 205-2800; or electronic mail: Patricia.Petrella@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under the Order (7 CFR part 1212). The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act) (7 U.S.C. 7411-7425).

Executive Order 12866 and Executive 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This action has been designated as a "non-significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, the Office of Management and Budget has waived the review process.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Section 524 of the 1996 Act (7 U.S.C. 7423) provides that it shall not affect or preempt any other

Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under the Order now in effect, honey first handlers and importers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate of \$0.0125 per pound will be applicable for all assessable honey for the period from January 1 through December 31, 2015, and that the rate of \$0.015 per pound will be applicable to all assessable honey beginning on January 1, 2016, and continue until amended, suspended, or terminated.

Under section 519 of the 1996 Act (7 U.S.C. 7418), a person subject to an order may file a written petition with USDA stating that an order, any provision of an order, or any obligation imposed in connection with an order, is not established in accordance with the law, and request a modification of an order or an exemption from an order. Any petition filed challenging an order, any provision of an order, or any obligation imposed in connection with an order, shall be filed within two years after the effective date of an order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, USDA will issue a ruling on the petition. The 1996 Act provides that the district court of the United

States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of USDA's final ruling.

Background

This rule amends the Order to increase the assessment rate from \$0.01 to \$0.015 per pound on honey and honey products over a two-year period. The Order limits an increase in the assessment rate to no more than one-quarter cent per pound per year. Thus, the rate will increase to \$0.0125 per pound for the period January 1 through December 31, 2015, and to \$0.015 per pound on and after January 1, 2016. The Order is administered by the Board with oversight by USDA. Under the program, assessments are collected from first handlers and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. Additional funds will enable the Board to expand its production research activities and promotional efforts. The Board's production research focuses on maintaining the health of honey bee colonies. Promotional efforts focus on the innovative ways to market, promote, and utilize honey and honey products. Increasing demand for honey and honey products

will benefit the honey industry as a whole. This action was unanimously recommended by the Board.

The Order specifies that the funds to cover the Board's expenses shall be paid from assessments on first handlers and importers, donations from persons not subject to assessments, and from other funds available to the Board. First handlers are required to file reports and maintain records on the total quantity of honey and honey products acquired during the reporting period, the quantity of honey processed for sale from the handler's own production, and the quantity of honey purchased from a handler or importer responsible for paying the assessment due. Importers are required to report the total quantity of honey and honey products imported during each reporting period, and keep a record of each lot of honey and honey products imported during such period, including the quantity, date, country of origin, and port of entry. Importers are responsible for paying assessments to the Board on honey and honey products imported into the United States through the U.S. Customs and Border Protection (Customs). The Order also provides for two exemptions. First handlers who handle less than 250,000 pounds and importers who import less than 250,000 pounds of honey and honey products annually, and first handlers

and importers of 100 percent organic honey and honey products are exempt from the payment of assessments.

Section 1212.52 of the Order specifies that assessments shall be levied at a rate of \$0.01 per pound on all honey and honey products. The Board may recommend to the Secretary an increase or decrease in the assessment as it deems appropriate by at least a two-thirds vote of members present at a meeting of the Board. The Board may not recommend an increase in the assessment of more than \$0.02 per pound of honey or honey products and may not increase the assessment by more than \$0.0025 in any single fiscal year.

The \$0.01 per pound assessment rate has been in effect since the Order's inception in 2008. The Board's fiscal year runs from January 1 through December 31. Board expenditures have ranged from \$4,157,250 for its first full year in 2009 to \$4,556,490 in 2013. Expenditures for research have ranged from \$465,579 in 2009 (11 percent of total expenses) to \$231,234 in 2013 (5 percent of total expenses). Board expenditures for health messaging and promotion activities have ranged from \$2,311,370 in 2009 (56 percent of total expenses) to \$2,859,743 in 2013 (63 percent of total expenses). Pursuant to section 1212.50(h) of the Order, administrative expenditures have been

less than 15 percent of the assessments and other income received by the Board annually.

Board assessment income has ranged from \$3,345,543 in 2009 (\$2,085,204 in domestic assessments and \$1,260,339 in import assessments) to \$4,443,798 in 2013 (\$1,122,390 in domestic assessments and \$3,321,408 in import assessments).

Additionally, pursuant to section 1212.54 of the Order, the Board maintains a monetary reserve with funds that do not exceed one fiscal period's budget.

Board 2014 Recommendation

The Board held a teleconference on January 23, 2014, and unanimously recommended increasing its assessment rate from \$0.01 to \$0.015 per pound on honey and honey products over a two-year period. The Order limits an increase in the assessment rate to no more than one-quarter cent per pound per year. Thus, the rate will increase to \$0.0125 per pound for the period January 1 through December 31, 2015, and to \$0.015 per pound on and after January 1, 2016. Additional funds will enable the Board to expand its production research activities and promotional efforts. Since the program's inception, the Board has funded several production research projects focused on maintaining the health of honey bee colonies. The honey industry continues to experience considerable production

challenges associated with the Colony Collapse Disorder. The honey industry has attempted to halt the long term decline in the numbers of honeybees (over 30 percent in the past twenty years) through treatment, colony development, maintenance, and replacement. The funds generated by an assessment increase will be spent on conducting research activities designed to address these critical issues. Per section 1212.50(a) of the Order, five percent (5 percent) of the Board's anticipated revenue from assessments each fiscal period is to be allocated towards production research and research related to the production of honey. A possible one to two million dollar increase in assessment revenue would generate an additional \$50,000 to \$100,000 for production research.

Furthermore, the Board also conducts research relating to various health and beauty issues, including alternative uses for honey. However, most of these preliminary findings have been done under laboratory conditions. Additional funds will allow the Board to incorporate specific areas of research into expanded clinical (human) trials. Clinical trials are important for the industry to be able to make health claims consistent with Federal Trade Commission and Food and Drug Administration requirements.

The Board uses health information in its promotion messaging to help build demand for honey and honey products. Worldwide honey production has grown from 357 million pounds in 2009 to 487 million pounds in 2013. Increasing demand will help move the growing supply of honey, which in turn will assist the Board in reaching its goal to continually increase consumption among existing honey and honey product consumers and to attract new honey and honey product users.

At the increased assessment rate on honey and honey products, with assessable pounds averaging 450 million per year, assessment income could reach \$5.6 million in 2015 and \$6.8 million in 2016. This increase could be used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. As an example, if 5 percent of the budget was allocated to production research and 60 percent was allocated to promotion, funds available for production research could average approximately \$340,000 annually, up from \$231,234 in 2013, and funds available for health messaging and promotion could average \$4.0 million annually, up from \$2.8 million in 2013.

In light of the need to allocate more funds towards production and health research activities and build demand for honey, the Board recommended increasing the assessment rate

under the Order from \$0.01 to \$0.015 per pound on honey and honey products over a two-year period. The Order limits an increase in the assessment rate to no more than one-quarter cent per year. Thus, the rate will increase to \$0.0125 per pound for the period January 1 through December 31, 2015, and to \$0.015 per pound on and after January 1, 2016. Section 1212.52 of the Order is amended accordingly.

Paragraph (e) of section 1212.52 is also revised to clarify that the assessment rate applies not only to the listed Harmonized Tariff Schedule of the United States (HTSUS) numbers, but also any other numbers that may be used to identify honey or honey products in the event the HTSUS numbers change; this change has no impact on the assessment rate.

Section 1212.71 of the Order is also revised to change the length of time that books and records are to be held from two years to three years. This change conforms with the Board's compliance procedures, which provide that the Board conduct audit reviews every three years. Section 1212.53 of the Order is revised to state that exemptions from assessments for a calendar year are effective on the date approved by the Board. This change is being made to clarify exemption requirements. These changes pose no additional information collection burden on honey first handlers and importers.

Final Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS is required to examine the impact of this rule on small entities. Accordingly, AMS has considered the economic impact of this action on such entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. The Small Business Administration defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (first handlers and importers) as those having annual receipts of no more than \$7.0 million.

There are 661 importers and 42 first handlers of honey and honey products covered under the program. Seventeen out of the 42 first handlers (40 percent) and 21 out of the 661 importers (3 percent) accounted for 90 percent of the assessments in their respective categories. Total assessments for 2013 were \$4.44 million, of which \$1.12 million (25 percent) came from first handlers and \$3.32 million (75 percent) was paid by importers. This data can be used to compute an estimate of average annual revenue from honey sales from each of these categories, which in turn helps to estimate the number of large and small first

handlers and importers. As mentioned above, 17 first handlers account for 90 percent of the domestic assessments. Multiplying first handler assessments in 2013 of \$1,122,390 by 0.9 and then dividing by 17 yields an average annual assessment of \$59,421 for the first handlers in this category. Dividing the assessment rate of one cent per pound yields an average quantity per first handler of 5.942 million pounds. Multiplying 5.942 million pounds by the average 2013 U.S. domestic price¹ of \$2.12 per pound yields an average, annual honey revenue per packer of \$12.60 million, which is well above the SBA threshold of \$7.0 million. It should be noted that this revenue estimate is based on the average price at the producer level, and the \$12.6 million is an estimate of the total value at which the average size packer acquired the honey from producers. Therefore most of the 17 first handlers that pay 90 percent of the domestic assessments are likely to be large firms according to the SBA definition.

An equivalent computation can be made for the 21 importers who paid 90 percent of the \$3,321,408 in assessments in 2013. Of the 21 importers, the average assessment per importer was \$142,346. Dividing the average assessment per importer by the

¹ Honey, March 2014, USDA, National Agricultural Statistics Service, p. 3

assessment rate of \$0.01 per pound yield an average quantity per importer estimate of 14.235 million pounds.

For honey imports, the equivalent of the season average price for domestic honey is referred to as a "unit value." The unit value of \$1.42 per pound is computed by dividing annual imported honey value of \$480.25 million by average quantity of 337.05 million pounds (import data from the U.S. Census Bureau). Multiplying the \$1.42 unit value by the average quantity of 14.235 million pounds yields average annual honey revenue per importer figure of \$20.21 million, nearly three times the SBA threshold figure of \$7.0 million for a large firm. Therefore the majority of the 21 importers that pay 90 percent of the assessments are large firms, according to the SBA definition.

Comparable computations can be made to determine the average 2013 honey revenue for the 25 first handlers and 640 importers that paid 10 percent of the assessments in the first handler and importer categories. The first handler and importer average annual honey revenue figures are approximately \$950,000 and \$75,000, respectively, indicating that the vast majority are small businesses (in terms of honey sales), under the SBA large business threshold of \$7.0 million in annual sales.

Based on the foregoing, the majority of first handlers and importers may be classified as small entities.

This final rule amends section 1212.52 of the Order to increase the assessment rate from \$0.01 to \$0.015 per pound (an increase of \$0.0025 per pound per year over a two-year period). The Order is administered by the Board with oversight by USDA. Under the program, assessments are collected from first handlers and importers and used for research and promotion projects designed to maintain and expand the market for honey and honey products in the United States and abroad. Additional funds will enable the Board to expand its production research activities and promotional efforts. The Board uses its health information in its promotion messaging to help build demand. Increasing demand will help move the growing supply of honey and honey products, which will benefit producers, importers, first handlers, and consumers. Authority for this action is provided in section 1212.52(f) of the Order and section 517 of the 1996 Act.

Two additional sections of the Order are also revised. Section 1212.71 of the Order is revised to change the length of time that books and records are to be held from two years to three years. This change conforms to the Board's compliance procedures, which instructs the Board to conduct audit reviews every three years. Section 1212.53 of the Order is revised to state that exemptions from assessments for a calendar year are

effective on the date approved by the Board. This change is being made to clarify exemption requirements. These changes pose no additional information collection burden on honey first handlers and importers.

Regarding the economic impact of the final rule on affected entities, this action increases the assessment obligation on first handlers and importers. While assessments impose additional costs on first handlers and importers, the costs are minimal and uniform on all. The costs will also be offset by the benefits derived from the operation of the program. It is estimated that 42 first handlers and 661 importers pay assessments under the program.

There has been one economic study conducted since the Order's inception that evaluated the effectiveness of the Board's promotion program. The study was conducted by Dr. Ronald M. Ward at the University of Florida in 2014 and titled "Honey Demand and the Impact of the National Honey Board's Generic Promotion Program." This study may be obtained from <http://www.ams.usda.gov/>. The 2014 study included data from 1987 through 2012, and evaluated the effectiveness of the former Honey Research, Promotion, and Consumer Information Order, and the current honey marketing program. The earlier honey program operated from 1986 through 2008, as a producer program. The

earlier program was replaced in 2008 with the current packer and importer program; producers are no longer directly subject to the mandatory assessment. Otherwise, the two programs are similar, including the administrative and operational oversight.

The purpose of the economic study was twofold: (1) To determine the market implications of the Board's promotion program and (2) to determine a return-on-investment (rate of return) for the promotion activities conducted by the Board.

To evaluate the effectiveness of the Board's domestic promotion activities, econometric models were developed for each of two distinct honey market segments: manufacturing (honey used as an ingredient) and non-manufacturing (table honey). The models measured the impact of the Board's annual promotion expenditures while taking into account the impact of other factors that influence demand.

For the non-manufacturing model, the other factors were domestic supplies of honey, personal income, and the historical support price for honey. For the manufacturing model, the other factors were the quantity of sugar used in food manufacturing (as a proxy measure of the overall demand for sweeteners, including honey), and a variable which captured the structural change in the honey market that began in 2007, when the market share of honey imports began to increase significantly. The

manufacturing model using Board expenditure lagged one year because Board promotion expenditure in the prior year was found to have the most significant impact on honey manufacturing demand in the current year.

Due to differences in data availability, the manufacturing model covered the time period of 1965 through 2012 and the non-manufacturing model spanned 1987 through 2012.

The econometric models used statistical methods to analyze annual data over these time periods and measure how strongly the various honey demand factors affect (a) the quantity of honey as an ingredient (manufacturing model) and (b) the price for table honey (non-manufacturing model). In both models, Board program expenditures were found to have a positive and statistically significant impact on demand. The models had reasonably strong explanatory power, with 80 percent of the variation in quantity demanded explained by the independent variables in the manufacturing model, and 89 percent of the variation in price explained by the non-manufacturing model variables.

The return on investment (ROI) for honey promotion was obtained by dividing the increased value of honey sales (for the two market segments combined) by Board program expenditures. The ROI for Board programs for the period 1987 to 2012 was 14.12, meaning \$14.12 in returns (increased honey value) for

every \$1 spent on promotion. The results were similar for 2008 through 2012, the period covered by the new program funded by honey first handlers and importers.

An additional step in assessing promotional program effectiveness was to analyze the potential impact of alternative honey promotion spending levels. The two demand models were used to simulate gains for various percentages of actual 2012 promotional expenditures. The results show a range of increased honey demand impacts from increased spending, depending on alternative assumptions about the level of honey price and honey quantity. The simulation results suggest that a 50 percent increase in Board promotional expenditure would yield an additional \$29 million in honey sales, if quantity demanded increased, but prices stayed the same. Alternatively, crop value would increase \$44 million if prices went up, but quantity stayed the same. Returns on investment were 14 to 1 or higher over this range of alternative assumptions about market conditions. These results were similar to the ROI cited earlier. Focusing on 2012 illustrates the effectiveness of the program under the funding mechanism that began in 2008.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that are imposed by the Order have been approved

previously under OMB control number 0581-0093. This final rule does not change the information collection and recordkeeping requirements previously approved and imposes no additional reporting and recordkeeping burden on honey first handlers and importers.

As with all Federal promotion programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Board has been considering an increase in the assessment rate since 2011. The Board explored the need and justification for an increase as well as obtained feedback from the Board's stakeholders. Additionally, beginning in 2011, the Board has done extensive outreach to include presentations, handouts, and industry meeting attendance. As an alternative to an assessment rate increase, the Board considered cutting programs. The Board reduced honey research in order to maintain

marketing programs and considered cutting additional marketing programs. However, after further analysis, it was determined that additional cuts would hurt the program. In late 2013, the Board presented the proposed assessment increase to the various honey associations. Ultimately, at its January 2014 meeting, the Board unanimously recommended increasing the assessment rate to \$0.0125 per pound for the first year (January 1 through December 31, 2015) and to \$0.015 per pound for the second year and beyond (on and after January 1, 2016).

A proposed rule concerning this action was published in the **Federal Register** on November 18, 2014 (79 FR 68636). The Board included notifications about the proposed rule in its newsletters and also mailed related information to honey packers and importers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending December 18, 2014, was provided to allow interested persons to submit comments.

Analysis of Comments

Three comments were received in response to the proposed rule; two supported the increase, and one opposed the action. The two comments which supported increasing the assessment rate stated that the additional funds would allow the Board to expand its programs to promote the benefits of honey and honey products

and develop new products that contain honey as a key ingredient. A commenter further stated that honey and honey bees are important to agriculture and the environment.

The commenter in opposition to the proposal did not see the need to increase the assessment rate by 50 percent. The commenter stated that honey assessments have increased over the years because honey consumption has increased. The commenter opined that any increase in the honey budget should come from increased honey sales rather than increasing the assessment rate. USDA concurs that an increase in honey sales and consumption will increase Board income. However, maintaining the current \$0.01 per pound assessment rate will not generate the amount of funds necessary to fund additional production research, human clinical trials, and conduct promotion activities needed to continue to build demand to move the growing supply of honey and honey products. Thus, no changes have been made to the rule based on this comment.

After consideration of all relevant matters presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, is consistent with and will effectuate the purposes of the 1996 Act.

List of Subjects in 7 CFR Part 1212

Administrative practice and procedure, Advertising, Consumer information, Honey Packer and importer promotion, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, part 1212, Chapter XI of Title 7 is amended as follows:

PART 1212 – HONEY PACKERS AND IMPORTERS RESEARCH, PROMOTION, CONSUMER EDUCATION AND INDUSTRY INFORMATION ORDER

1. The authority citation for 7 CFR part 1212 continues to read as follows:

Authority: 7 U.S.C. 7411-7425; 7 U.S.C. 7401.

2. In § 1212.52, paragraphs (a), (b), (c), (d), and (e) are revised to read as follows:

§ 1212.52 Assessments.

(a) The Board will cover its expenses by levying in a manner prescribed by the Secretary an assessment on first handlers and importers. For the period January 1 through December 31, 2015, the assessment rate shall be \$0.0125 per pound of assessable honey and honey products. On and after January 1, 2016, the assessment rate shall be \$0.015 per pound of assessable honey and honey products.

(b) Each first handler shall pay the assessment to the Board on all domestically produced honey or honey products the first handler handles. A producer shall pay the Board the

assessment on all honey or honey products for which the producer is the first handler.

(c) Each first handler responsible for remitting assessments shall remit the amounts due to the Board's office on a monthly basis no later than the fifteenth day of the month following the month in which the honey or honey products were marketed.

(d) Each importer shall pay an assessment to the Board on all honey or honey products the importer imports into the United States. An importer shall pay the assessment to the Board through the United States Customs and Border Protection (Customs) when the honey or honey products being assessed enters the United States. If Customs does not collect an assessment from an importer, the importer is responsible for paying the assessment to the Board.

(e) The import assessment recommended by the Board and approved by the Secretary shall be uniformly applied to imported honey or honey products that are identified as HTS heading numbers 0409.00.00 and 2106.90.9988 by the Harmonized Tariff Schedule of the United States or any other numbers used to identify honey or honey products.

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3. In § 1212.53, paragraph (d) is revised to read as follows:

§ 1212.53 Exemption from assessment.

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

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4. Section 1212.71 is revised to read as follows:

§ 1212.71 Book and records.

Each first handler and importer, including those who are exempt under this subpart, must maintain any books and records necessary to carry out the provisions of this part, and any regulations issued under this part, including the books and records necessary to verify any required reports. Books and records must be made available during normal business hours for inspection by the Board's or Secretary's employees or agents. A

first handler or importer must maintain the books and records for three years beyond the fiscal period to which they apply.

Dated: April 16, 2015.

Rex A. Barnes
Associate Administrator

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