



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. No. AMS-CN-14-0037]

Cotton Board Rules and Regulations: Amending Importer Line-Item De Minimis

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Board Rules and Regulations to remove the cotton import *de minimis* provision. The Cotton Research and Promotion (R&P) Program assesses U.S. cotton producers and importers of cotton and cotton-containing products. Importers are exempt from paying the cotton import assessment (known commonly among importers as the “cotton fee”) if a line item on U.S. Customs and Border Protection (CBP) documentation is \$2.00 or less. The exemption was initially established to lessen the administrative burden of collecting an import assessment, which was originally estimated to be \$2.00 per line item, in instances in which the transactions costs of the collection would exceed the actual value of the assessment; however, technological advances in the CBP documentation process significantly reduced the transactions costs associated with collecting import assessments, and CBP has since stopped charging USDA for the processing and collecting of assessments. Given that transactions costs no longer exceed assessment rates of \$2.00 or less, AMS is removing this *de minimis* provision from the regulations. In addition, the definition of cotton with respect to procedures for conducting the sign-up period is being modified.

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

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361-2726, facsimile (540) 361-1199, or email at Shethir.Riva@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to access 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 and therefore has not been reviewed by the Office of Management and Budget.

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 would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Cotton Research and Promotion Act (7 U.S.C. 2101-2118) (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Act, any person subject to an order may file with the Secretary of Agriculture (Secretary) a petition stating that the order, any provision of the plan, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. 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 the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has examined the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be unduly or 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 (importers) as having receipts of no more than \$7,500,000. An estimated 17,000 importers are subject to the rules and regulations issued pursuant to the Cotton Research and Promotion Order. Most are considered small entities as defined by the Small Business Administration.

This rule only affects importers of cotton and cotton-containing products whose calculated assessment for any line item entry of cotton appearing on a CBP entry document is

two dollars (\$2.00) or less. While data allowing for estimates of the number of importers that will be impacted does not exist, it is estimated that a very small portion of the estimated 17,000 importers will be affected by eliminating the *de minimis* exemption. The additional burden placed on those importers will be limited to two dollars (\$2.00) per line item entry that would otherwise have qualified for the exemption. Importers were already required to self-report on all line items being imported, therefore no additional transactions costs or administrative burden will be borne by these importers. Such importers may now be eligible to participate in a sign-up period to determine whether they and eligible producers favor the conduct of referendum on the continuance of the 1991 amendments to the Order.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. chapter 35) the information collection requirements contained in the amended regulation have been previously approved by OMB and were assigned control number 0581-0093, National Research, Promotion, and Consumer Information Programs. This rule does not result in a change to the information collection and recordkeeping requirements previously approved.

Background

Amendments to the Cotton Research and Promotion Act (7 U.S.C. 2101-2118) (Act) were enacted by Congress under Subtitle G of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101-624, 104 stat. 3909, November 28, 1990). These amendments contained two provisions that authorize changes in the funding procedures for the Cotton Research and Promotion Program. These provisions provide for: (1) the assessment of imported cotton and cotton products; and (2) termination of refunds to cotton producers. (Prior to the 1990 amendments to the Act, producers could request assessment refunds.)

As amended, the Cotton Research and Promotion Order (7 CFR part 1205) (Order) was approved by producers and importers voting in a referendum held July 17-26, 1991, and the amended Order was published in the *Federal Register* on December 10, 1991, (56 FR 64470). A proposed rule implementing the amended Order was published in the *Federal Register* on December 17, 1991, (56 FR 65450). Implementing rules were published on July 1 and 2, 1992, (57 FR 29181 and 57 FR 29431, respectively).

The total value of assessment levied on cotton imports is the sum of two parts. The first part of the assessment is based on the weight of cotton imported – levied at a rate of \$1 per bale of cotton, which is equivalent to 500 pounds, or \$1 per 226.8 kilograms of cotton. The second part of the import assessment (referred to as the supplemental assessment) is based on the value of imported cotton lint or the cotton contained in imported cotton products – levied at a rate of five-tenths of one percent of the value of domestically produced cotton. The current assessment on imported cotton is \$0.012013 per kilogram of imported cotton.

The Act provides that “Any *de minimis* figure as established under this paragraph shall be such as to minimize the burden in administering the assessment provision but still provide for the maximum participation of imports of cotton in the assessment provisions of this chapter.” 7 U.S.C. 2116(c)(2). The Import Assessment Table in paragraph (b)(3) of § 1205.510 of the Cotton Research and Promotion Rules and Regulations indicates the total assessment rate (\$ per kilogram) due for each Harmonized Tariff Schedule (HTS) number that is subject to assessment. Subparagraph (i) of this same paragraph provides for an exemption from assessment for any line item entry of cotton appearing on U.S. Customs and Border Protection (CBP) entry documentation whose calculated assessment is two dollars (\$2.00) or less. This *de minimis* exemption was established to minimize the administrative burden of collecting import

assessments, which was originally estimated to be \$2.00 per line item, where administrative costs would exceed the actual value of the assessment.

The *de minimis* figure is an estimate of administrative burden, which is equivalent to the transactions costs of collecting the cotton fee. The *de minimis* provision was necessary to avoid instances where the transactions costs of collecting the cotton fee exceeded the cotton fee being collected.

In January 2014, AMS became aware of CBP's automation processes in connection with documenting and collecting assessments. CBP indicated that the documentation and collection process is automated and costs have been significantly decreased. Taking into account technological advancements in the fee collection process, CBP no longer charges USDA for the collection of assessments on agricultural commodities. This has eliminated the administrative burden associated with the collection of assessments.

AMS is striking subparagraph (i) under paragraph § 1205.510(b)(3) of the Cotton Research and Promotion Rules and Regulations and appending to the paragraph section the language currently in subparagraph (ii). This action reflects the technological efficiencies of the CBP import documentation process by eliminating the *de minimis* provisions in the regulations, and, therefore, helps to ensure that the assessments collected on imported cotton and the cotton content of imported products will be the same as those paid on domestically produced cotton. In addition, AMS is modifying the definition of cotton in § 1205.12 to include imported cotton that previously was exempted due to the *de minimis* exemption. With this action, importers who previously imported *de minimis* amounts of cotton may now be eligible to participate in the sign-up period for a continuance referendum that would determine whether a continuance referendum is favored.

Summary of Comments

A proposed rule was published in the *Federal Register* on December 16, 2014, with a comment period of December 11, 2015, through January 11, 2016 (80 FR 76873). No comments were received by AMS. The proposed rule may be viewed at www.regulations.gov.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and Recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 1205 is amended as follows:

PART 1205--COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101-2118.

2. Revise § 1205.12 to read as follows:

§ 1205.12 Cotton.

The term *cotton* means all Upland cotton harvested in the United States and all imports of Upland cotton, including the Upland cotton content of products derived thereof.

3. In § 1205.510, paragraph (b)(3) is revised to read as set forth below (the Import Assessment Table remains unchanged):

§ 1205.510 Levy of assessments.

* * * * *

(b) * * *

(3) The following table contains Harmonized Tariff Schedule (HTS) classification numbers and corresponding conversion factors and assessments. The left column of the

following table indicates the HTS classifications of imported cotton and cotton-containing products subject to assessment. The center column indicates the conversion factor for determining the raw fiber content for each kilogram of the HTS. HTS numbers for raw cotton have no conversion factor in the table. The right column indicates the total assessment per kilogram of the article assessed. In the event that any HTS number subject to assessment is changed and such change is merely a replacement of a previous number and has no impact on the physical properties, description, or cotton content of the product involved, assessments will continue to be collected based on the new number.

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Dated: June 10, 2016

Elanor Starmer
Administrator

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