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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 330 and 333

RIN 3206-AE61

Passing Over Preference Eligibles for Appointments Outside Registers

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is revising its regulations governing procedures used to select candidates for temporary and term appointments outside registers. The revised regulations clarify public notice requirements and the respective responsibilities of agencies and OPM for approving selections of candidates not eligible for veterans preference when preference eligibles with equal or higher ranking are available.

EFFECTIVE DATE: January 9, 1992.

FOR FURTHER INFORMATION CONTACT: Tracy E. Spencer, (202) 606-0960 or FTS 266-0960.

SUPPLEMENTARY INFORMATION: Section 3318 of title 5, United States Code sets out procedures agencies must follow to pass over a preference eligible on a list of eligibles in order to select a nonpreference eligible. These procedures include special protections for preference eligibles who have compensable service-connected disabilities of 30 percent or more. Section 3327 of title 5, United States Code, requires agencies to give public notice through OPM and State Employment Service offices whenever they are accepting outside applications for positions in the competitive service.

OPM issued proposed regulations clarifying agencies' responsibilities under these laws on August 1, 1991 (56 FR 36741). One employee organization and one OPM office commented on those regulations.

The employee organization questioned the provisions for passing over preference eligibles in order to select candidates not eligible for veterans preference. The procedures prescribed in part 333 implement the same legal requirements that apply to competitive examinations, under which passover provisions have always been available. The only change proposed was to delegate to agencies authority to approve passing over preference eligibles other than those whose preference is based on a compensable service-connected disability of 30 percent or more. (The law requires that OPM approve requests to pass over 30 percent disabled veterans.) OPM plans to issue instructions in the Federal Personnel Manual regarding appropriate reasons for passing over preference eligibles. These will parallel the reasons allowed under competitive examinations—i.e., that a preference eligible does not meet a particular qualification or suitability requirement for a postion.

The OPM office noted that §§ 330.102 and 333.102, which treat the same statutory public notice requirement, should include the same requirements for the content of annoucements.

Accordingly, OPM is revising § 330.102 to incorporate the more complete content requirements set out in § 333.102. With this change, OPM is adopting the proposed regulations as final.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the procedures used to appoint certain Federal employees.

List of Subjects

5 CFR Part 330

Government employees, Intergovernmental relations.

5 CFR Part 333

Administrative practice and procedures, Government employees.

Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, OPM is amending 5 CFR parts 330 and 333, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218; § 330.102 also issued under 5 U.S.C. 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart H also issued under 5 U.S.C. 8337(h) and 8457(b).

2. Section 330.102 is revised to read as follows:

§ 330.102 Notification of vacancies to State Job Service and Office of Personnel Management.

Federal agencies (as defined in 5 U.S.C. 5102(a)(1)) must notify State Job Service offices and the Office of Personnel Management of vacant positions in the competitive service which they intend to fill from outside the Federal service, other than through competitive examinations or hiring a person who is eligible for career service entry without competitive examination. The notices must describe the qualifications required and application deadline and must include equal opportunity and veterans preference provisions. OPM will issue specific instructions for preparing notices in the Federal Personnel Manual.

PART 333—RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

3. The authority citation for part 333 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; section 333.203 also issued under 5 U.S.C. 1104, Pub. L. 95–454, sec. 3(5).

§ 333.102 [Redesignated as § 333.103]

4. Section 333.102 is redesignated as § 333.103 but is otherwise unchanged, and a new § 333.102 is added to read as follows:

§ 333.102 Public notice for temporary and term appointments outside the register.

An agency recruiting outside the register must send a vacancy announcement to the OPM job information center(s) and place an order with the State Employment Service office(s) that have geographic jurisdiction over the position(s). The notices must describe the qualifications required and application deadline and must include equal opportunity and veterans preference provisions. OPM will issue specific instructions for preparing notices in the Federal Personnel Manual.

5. In section 333.201, paragraph (c) is revised to read as follows:

§ 333.201 Making appointments from an unranked list.

* * * * *

(c) Except as provided in paragraph (b) of § 333.202 and in § 333.203, qualified candidates not eligible for veteran preference may be selected only when no qualified veteran preference eligibles are available.

6. In section 333.202, paragraph (b)(2) is revised to read as follows, and paragraph (c) is removed.

§ 333.202 Making appointments from a numerically ranked list.

* * * * *

(b) * * *

(2) Consider a preference eligible whose eligibility for further consideration for the position has been discontinued as provided in § 333.203.

7. A new section 333.203 is added to read as follows:

§ 333.203 Passing over a preference eligible.

(a) *Preference eligibles with compensable service-connected disabilities of 30 percent or more.* When an agency making an appointment passes over the name of a preference eligible who is entitled to prior consideration under paragraph (b) of § 333.201 or under paragraph (a) of § 333.202 and who has a compensable service-connected disability of 30 percent or more and proposes to select a nonpreference eligible, the agency must—

(1) Submit its reasons for so doing to the OPM office with examining jurisdiction over the position;

(2) Notify the preference eligible of the proposed passover, the reasons for it, and his or her right to respond to OPM within 15 days after the date of notification; and

(3) Obtain OPM's approval for the proposed passover before selecting the nonpreference eligible.

(b) *Other preference eligibles.* When an agency making an appointment passes over the name of a preference eligible other than one described in paragraph (a) of this section who is entitled to prior consideration under paragraph (b) of § 333.201 or under paragraph (a) of § 333.202 and selects a nonpreference eligible, it must record its reasons for so doing and must furnish a copy of those reasons to the preference eligible and to his or her representative on request.

(c) *Discontinuing consideration.* An agency may discontinue consideration of a preference eligible for a position if, on three occasions, the agency has considered the candidate for the position and has either—

(1) Obtained OPM's approval to pass over his or her name and select a nonpreference eligible in accordance with paragraph (a) of this section; or

(2) Passed over his or her name and recorded its reasons for so doing as provided in paragraph (b) of this section.

[FR Doc. 91-29438 Filed 12-9-91; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN-91-003]

Amendment to the Cotton Research and Promotion Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to order.

SUMMARY: This amendment to the Cotton Research and Promotion Order is issued pursuant to the Cotton Research and Promotion Act Amendments of 1990. Amendments to the Act were enacted by Congress under subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990 on November 28, 1990. A notice of proposed amendments to the Cotton Research and Promotion Order was published for public comment on April 10, 1991. The proposed amendment to the Order, addressing the public comments received, was published on July 9, 1991. The proposed amendment was approved by a majority (60 percent) of importers and producers of cotton voting in a referendum conducted July 17–26 as required by the Act. Results of the referendum were announced in a nationally distributed press release August 2, 1991.

The Order as amended provides for: (1) Importer representation on the Cotton Board; (2) the assessment of imported cotton and cotton products; (3) an increase in the amount the Secretary of Agriculture can be reimbursed for conduct of a referendum from $200,000 to $300,000; (4) reimbursement of government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) termination of the right of producers to demand a refund of assessments.

EFFECTIVE DATE: December 10, 1991.

FOR FURTHER INFORMATION CONTACT: Craig Shackelford, (202) 720–2259.

SUPPLEMENTARY INFORMATION: This amendment to the Cotton Research and Promotion Order has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under Executive Order 12291 since it does not meet the criteria for a major regulatory action contained in that Order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Under this amendment refunds to producers will be eliminated. Therefore, it is estimated that $41,075,853, for 1991, collected by handlers from producers will not be subject to refunds. At current refund rates of approximately 34 percent, $13,965,790 of the estimated $41,075,853 will be retained by the Research and Promotion program. The economic impact of the proposed elimination of refunds is not expected to be significant. It is expected that assessments from imports will total $6,785,816, including reimbursements, and that the total program will generate an estimated total of $47,861,669 based on the 1991 forecast. The economic impact of an assessment on importers is not expected to be significant. The economic impact of the other amendments to the Order as described in the preamble is also not expected to be significant. Furthermore, the Research and Promotion program is expected to benefit producers, handlers and importers by expanding and maintaining new and existing markets.

The amendment will also impose reporting and recordkeeping burdens on importers. This burden should average less than .25 hours per year. Therefore, the economic impact is not expected to be significant.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. chapter 35) and Section 3504(h) of the PRA, the information collection and recordkeeping requirements for domestic handlers and producers contained in this subpart, and the domestic handler reporting and refund application forms used by the Board under the information collection provisions and the recordkeeping requirements were previously approved by OMB and assigned control number 0581-0093 under the PRA.

The agency intends to rely on Customs Service records to satisfy most information collection and reporting requirements concerning importers of cotton needed to effectuate the terms of the amendment, thus minimizing the reporting burden. Periodically, certain information related to specific imports may be required for proper administration of the Order. The nature of such information would be specified in rules and regulations issued pursuant to this Order. Based on comparable Research and Promotion programs, it would require approximately 10 minutes for an importer to complete a reporting form and approximately 10 minutes to complete a reimbursement application. There would be an estimated 1,000 importers per year subject to these information collection requirements. Reporting forms and applications would be filed on a monthly basis yielding an estimated annual burden of 4080 hours. Importers will be expected to maintain and make available to the Secretary such books and records as necessary to carry out the provisions of the Order and regulations. Importers will be required to retain such records for at least two years beyond the marketing year of their applicability.

In addition, importer organizations may direct a request to the Secretary for certification of eligibility to participate in nominating members to represent cotton importers on the Cotton Board. It is anticipated that two organizations will respond with an average reporting burden of two hours per response.

Producers and importers will also have an opportunity to submit referendum ballots. The estimated number of respondents for this form is 200,000 with an estimated average reporting burden of .10 hours per response.

Individual producers and importers nominated for the Board will be required to submit a membership background information sheet. Information sheets have been previously approved by OMB and assigned OMB control number 0505-0001. The estimated number of respondents is 32 per year. Each respondent will submit one response when nominated, with an estimated average reporting burden of 0.5 hour per response.

This Order amendment provides for: (1) Importer representation on the Cotton Board by an appropriate number of persons, as determined by the Secretary of Agriculture, who import cotton and or cotton products into the United States on which assessments are paid, and are selected by the Secretary from nominations submitted by importer organizations certified by the Secretary; (2) assessments and supplemental assessments on imported cotton and cotton content of imported products at rates determined in the same manner as the U.S. cotton. Under this Order, the rate of assessment and supplemental assessment for imported cotton are substantially the same as the rates applicable to domestically produced cotton. Such rates are currently one dollar per bale plus six tenths of one percent of the value of the cotton. For the purpose of supplemental assessments on imported cotton, a value will be placed on imported cotton and cotton content of imported cotton products based on an average of historical cotton prices. It is anticipated that the value of imported cotton will be established annually based on a 12 month average of prices received by domestic producers. It is also anticipated that conversion factors established by the Secretary will be used to determine the assessment on imported cotton and cotton-containing products identified by a classification number under the Harmonized Tariff Schedule. These factors and classification numbers will be specified in rules and regulations issued to implement the Order; (3) an increase in the amount that the Secretary of Agriculture can be reimbursed for conducting any referendum from $200,000 to $300,000; (4) reimbursement to agencies of the federal government that assist in administering the import provisions for a reasonable amount of the expenses incurred by that agency in connection therewith; and (5) termination of the producer's right to demand a refund of assessments.

These amendments are issued pursuant to the Cotton Research and Promotion Act Amendments of 1990 (Subtitle G of title XIX of the Food, Agriculture, Conservation and Trade Act of 1990, Public Law 101-624, November 28, 1990) which amended the Cotton Research and Promotion Act (7 U.S.C. 2101 *et. seq.*) The 1990 amendments to the Act require that after notice and opportunity for public comment, a proposed amendment to the Order implementing the provisions of the Act be issued. The proposed Order amendment was issued in the **Federal Register** on July 9, 1991 (56 FR 31289-31297). The amendment to the Act further requires that the Secretary must conduct a referendum among persons who have been cotton producers during a representative period, and persons who are importers of cotton and who, during a 12 month period ending not later than 90 days prior to the conduct of the referendum under this section, imported a quantity of cotton with a value or weight in excess of the de minimis quantity, if any, established by the Secretary. The referendum was for the purpose of determining if a majority of those voting approve the proposed amendment to the Order. Such a referendum was conducted July 17-26 in which a majority of cotton importers and producers approved the proposed amendments to the Cotton Research and Promotion Order. The Secretary announced the results of this referendum in a national press release issued August 2, 1991, in accordance with the Cotton Research and Promotion Act Amendments of 1990. Of 46,220 valid responses, 27,879, or 60 percent, of persons voting, favored the amendment in the Order, and 18,341, or 40 percent, opposed.

A review will be conducted once every five years in accordance with the requirements of the Cotton Research and Promotion Act Amendments of 1990 by the Secretary to ascertain whether a referendum is needed to determine whether producers and importers favor or disfavor these amendments to the Order. Also, in accordance with the 1990 amendments, if the Secretary does not provide for a referendum, one may be conducted upon the request of a requisite number of producers and importers.

It is found that this action will tend to effectuate the declared policy of the Act.

Pursuant of the provisions in 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this amendment until 30 days after publication in the **Federal Register** because: (1) Cotton producers and importers voting in a referendum have approved the amendment; and (2) in accordance with the Act, the amendment should be published as soon as possible.

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 for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. Section 1205.302 is revised to read as follows:

§ 1205.302 Act.

Act means the Cotton Research and Promotion Act, as amended (7 U.S.C. 2101–2118; Public Law 89–502, 80 Stat 279, as amended).

3. Section 1205.304 is revised to read as follows:

§ 1205.304 Cotton.

Cotton means:

(a) All Upland cotton harvested in the United States, and, except as used in §§ 1205.311 and 1205.335, includes cottonseed of such cotton and the products derived from such cotton and its seed, and

(b) Imports of Upland cotton, including the Upland cotton content of the products derived thereof. The term "cotton" shall not, however, include:

(1) Any entry of imported cotton by an importer which has a value or weight less than a de minimis amount established in regulations issued by the Secretary and

(2) Industrial products as that term is defined by regulation.

4. The sections listed in the first column are redesignated as shown in the second column.

Old section	New section
1205.305	1205.307
1205.306	1205.308
1205.307	1205.309
1205.308	1205.311
1205.309	1205.312
1205.310	1205.313
1205.311	1205.314
1205.312	1205.315
1205.313	1205.316
1205.314	1205.318
1205.315	1205.319
1205.316	1205.320
1205.317	1205.321
1205.318	1205.322
1205.319	1205.323
1205.320	1205.324
1205.321	1205.325
1205.322	1205.326
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1205.328	1205.332
1205.329	1205.333
1205.330	1205.334
1205.331	1205.335
1205.332	1205.336
1205.333	1205.337
1205.334	1205.338
1205.335	1205.339
1205.336	1205.340
1205.337	1205.341
1205.338	1205.343
1205.339	1205.345
1205.340	1205.346
1205.341	1205.347
1205.342	1205.348

5. Section 1205.305 "Upland Cotton" is added to read as follows:

§ 1205.305 Upland cotton.

Upland Cotton means all cultivated varieties of the species Gossypium hirsutum L.

6. Section 1205.306 "Bale" is added to read as follows:

§ 1205.306 Bale.

Except as used in § 1205.322, *Bale* means the package of lint cotton produced at a cotton gin or the amount of processed cotton in a manufactured product that is equivalent to a 500 pound bale of lint cotton.

7. Section 1205.310 "Importer" is added to read as follows:

§ 1205.310 Importer.

Importer means many person who enters, or withdraws from warehouse, cotton for consumption in the customs territory of the United States, and the term *import* means any such entry.

8. Redesignated § 1205.316 is revised to read as follows:

§ 1205.316 Cotton-Producer organization.

Cotton-Producer Organization means any organization which has been certified by the Secretary pursuant to § 1205.341.

9. Section 1205.317 is added to read as follows:

§ 1205.317 Cotton-Importer organization.

Cotton-Importer Organization means any organization which has been certified by the Secretary pursuant to § 1205.342.

10. Redesignated § 1205.322 is revised to read as follows:

§ 1205.322 Establishment and membership.

(a) There is hereby established a Cotton Board composed of:

(1) Representatives of cotton producers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible producer organizations within a cotton-producing state, as certified pursuant to § 1205.341, or, if the Secretary determines that a substantial number of producers are not members of or their interests are not represented by any such eligible organizations, from nominations made by producers in a manner authorized by the Secretary, and

(2) Representatives of cotton importers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible importer organizations, as certified pursuant to § 1205.342, or, if the Secretary determines that a substantial number of importers are not members of or their interests are not represented by any such eligible organization, from nominations made by importers in a manner authorized by the Secretary.

(b) Representation on the Cotton Board shall be as follows:

(1) Each cotton-producing state shall have at least one member and an additional member for each 1 million bales or major fraction (more than half) thereof of cotton produced in the state and marketed above one million bales during the period specified in the regulations for determining Board membership; and

(2) Cotton importers shall be represented by an appropriate number of representatives, as determined by the Secretary, of importers of cotton subject to assessment during the period specified in the regulations for determining Board membership. That number shall not be less than two members. The initial importer representation on the Board shall consist of four representatives. The Secretary may, after consultation with organizations representing importers, reduce or increase the number of importer representatives, in the manner prescribed by the Secretary.

11. Redesignated § 1205.323 is revised to read as follows:

§ 1205.323 Term of office.

All members of the Board and their alternatives shall serve for terms of three years. Each member and alternate shall continue to serve until a successor is selected and has qualified.

12. Redesignated § 1205.324 is revised to read as follows:

§ 1205.324 Nominations.

All nominations authorized under § 1205.322 shall be made within such a period of time and in such a manner as the Secretary shall prescribe. The eligible producer organizations within each cotton-producing state, as certified pursuant to § 1205.341, shall caucus for the purpose of jointly nominating two qualified persons for each member and each alternate member to be selected to represent the cotton producers of such cotton-producing state. The eligible importer organizations, as certified pursuant to § 1205.342, shall caucus for the purpose of jointly nominating two qualified persons for each member and each alternate member to be selected to represent the cotton producers of such cotton-producing state. The eligible importer organizations, as certified pursuant to § 1205.342, shall caucus for the purpose of jointly nominating two qualified persons for each member and alternate member to be selected to represent cotton importers. If joint agreement is not reached with respect to the nominees for any such position, each such organization may nominate two qualified persons for any position on which there is no agreement.

13. Redesignated § 1205.325 is revised to read as follows:

§ 1205.325 Selection.

From the nominations made pursuant to §§ 1205.322 and 1205.324, the Secretary shall select tne members of the Board and an alternate for each member on the basis of representation provided for in §§ 1205.322 and 1205.323.

14. Redesignated § 1205.327 is revised to read as follows:

§ 1205.327 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the Board to qualify, or in the event of death, removal, resignation or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in the manner specified in §§ 1205.322, 1205.324 and 1205.325.

15. Redesignated § 1205.328 is revised to read as follows:

§ 1205.328 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of death, removal, resignation or disqualification of a member, the alternate for the member shall act for the member until a successor for such member is selected and qualified. In the event that both a producer member of the Board and the member's alternate are unable to attend a meeting, the Board may designate any other alternate member from the same cotton-producing state or region to serve in such member's place and stead of such meeting. In the event that both an importer member and the member's alternate are unable to attend a meeting, the Board may designate any other importer alternate member to serve in such member's place and stead at such meeting.

16. In redesignated § 1205.331, of paragraph (b) is revised to read as follows:

§ 1205.331 Powers.

* * * * *

(b) Subject to the approval of the Secretary, to make rules and regulations to effectuate the terms and provisions of this subpart including the designation of the handler, importer, or other person responsible for collecting the assessments authorized by § 1205.335, which designation may be of different handlers, importers, or other persons, or classes of handlers, importers, or other persons, to recognize differences in marketing practices or procedures in any state or area;

* * * * *

17. In redesignated § 1205.332, paragraphs (c) and (i) are revised to read as follows:

§ 1205.332 Duties.

* * * * *

(c) With the approval of the Secretary, to enter into contracts or agreements for the development and submission to it of research and promotion plans or projects authorized by § 1205.333, and for the carrying out of such plans or projects when approved by the Secretary, and for the payment of costs thereof with funds collected pursuant to § 1205.335, with an organization or association whose governing body consists of cotton producers selected by the cotton-producer organizations certified by the Secretary under § 1205.341, in such manner that the producers of each cotton-producing state will, to the extent practicable, have representation on the governing body of such organization in the proportion that the cotton marketed by the producers of such state bears to the total marketed by the producers of all cotton-producing states. Any such contract or agreement shall provide that such contracting organization or association shall develop and submit annually to the Cotton Board, for the purpose of review and making recommendations to the Secretary, a program of research, advertising, and sales promotion projects, together with a budget, or budgets, which shall show the estimated cost to be incurred for such projects, and that any such projects shall become effective upon approval by the Secretary. Any such contract or agreement shall also provide that the contracting organization shall keep accurate records of all its transactions, which shall be available to the Secretary and Board on demand, and make an annual report to the Cotton Board of activities carried out and an accounting for funds received and expended, and such other reports as the Secretary may require;

* * * * *

(i) To act as intermediary between the Secretary and any producer, importer, or handler.

* * * * *

18. In redesignated § 1205.333, the introductory text is revised to read as follows:

§ 1205.333 Research and promotion.

The Cotton Board shall in the manner prescribed in § 1205.332(c) establish or provide for:

* * * * *

19. In redesignated § 1205.334, paragraphs (b) and (c) are revised and new paragraph (d) is added to read as follows:

§ 1205.334 Expenses.

* * * * *

(b) The Board shall reimburse the Secretary for:

(1) Expenses up to $300,000 incurred by the Secretary in connection with any referendum conducted under the Act and

(2) Expenses incurred by the Department of Agriculture for administrative and supervisory costs up to five employee years annually.

(c) The Board shall reimburse any agency of the United States Government that assists in administering the import provisions of the order for a reasonable amount of the expenses incurred by that agency in connection therewith.

(d) The funds to cover such expenses incurred under paragraphs (a), (b) and (c) of this section shall be paid from assessments received pursuant to § 1205.335.

20. Redesignated § 1205.335 is revised to read as follows:

§ 1205.335 Assessments.

(a) Each cotton producer or other person for whom cotton is being handled shall pay to the handler thereof designated by the Cotton Board pursuant to regulations issued by the Secretary and such handler shall collect from the producer or other person for whom the cotton, including cotton owned by the handler, is being handled, and shall pay to the Cotton Board, at such times and in such manner as prescribed by regulations issued by the Secretary, assessments as prescribed in paragraphs (a)(1) and (2) of this section:

(1) An assessment at the rate of $1 per bale of cotton handled;

(2) A supplemental assessment on cotton handled which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in the Cotton Board rules and regulations. The rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation whether the assessment rate shall be levied on:

(i) The current value of the cotton, or

(ii) An average value determined from current and/or historical cotton prices and converted to a fixed amount for each bale.

(b) Each importer of cotton shall pay to the Cotton Board through the U.S. Customs Service, or in such other manner and at such times as prescribed by regulations issued by the Secretary, assessments as prescribed in paragraphs (b)(1) and (2) of this section:

(1) An assessment of $1 per bale of cotton imported or the bale equivalent thereof for cotton products.

(2) A supplemental assessment on each bale of cotton imported, or the bale equivalent thereof for cotton products, which shall not exceed one percent of the value of such cotton as determined by the Cotton Board and approved by the Secretary and published in the Cotton Board rules and regulations. The rate of the supplemental assessment on imported cotton shall be the same as that paid on cotton produced in the United States. The rate of the supplemental assessment may be increased or decreased by the Cotton Board with the approval of the Secretary. The Secretary shall prescribe by regulation the value of imported cotton based on an average of current and/or historical cotton prices.

(c) The Secretary may designate by regulation exemptions to assessments provided for in this section for the following:

(1) Entries of products designated by specific Harmonized Tariff Schedule numbers which the Secretary determines are composed of U.S. cotton or other than Upland cotton, and for;

(2) Cotton contained in entries of imported cotton and cotton products that is U.S. produced cotton or is other than Upland cotton.

(d) Assessments collected under this section are to be used for such expenses and expenditures, including provision for a reasonable reserve, as the Secretary finds reasonable and likely to be incurred by the Cotton Board and the Secretary under this subpart.

21. Redesignated § 1205.336 is revised to read as follows:

§ 1205.336 "Importer Reimbursements".

Any cotton importer against whose imports any assessment is made and collected under the authority of the Act who has reason to believe that such assessment or any portion of such assessment was made on U.S. produced cotton or cotton other than Upland cotton shall have the right to demand and receive from the Cotton Board a reimbursement of the assessment or portion of the assessment upon submission of proof satisfactory to the Board that the importer paid the assessment and that the cotton was produced in the U.S. or is other than Upland cotton. Any such demand shall be made by the importer in accordance with regulations and on a form and within a time period prescribed by the Board and approved by the Secretary. Such time periods shall provide the importer at least 90 days from the date of collection to submit the reimbursement form to the Board. Any such reimbursement shall be made within 60 days after demand therefor.

22. Redesignated § 1205.338 is revised to read as follows:

§ 1205.338 Reports.

Each handler and importer subject to this subpart and importers of de minimis amounts of cotton may be required to report to the Cotton Board periodically such information as is required by regulations, which may include but not be limited to the following:

(a) Number of bales handled or imported;

(b) Number of bales on which an assessment was collected;

(c) Name and address of person from whom the handler has collected the assessments on each bale handled or imported;

(d) Date collection was made on each bale handled or imported.

23. Redesignated § 1205.339 is revised to read as follows:

§ 1205.339 Books and records.

Each handler and importer subject to this subpart and importers of de minimis amounts of cotton shall maintain and make available for inspection by the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

24. Redesignated § 1205.340 is revised to read as follows:

§ 1205.340 Confidential treatment.

All information obtained from such books, records or reports shall be kept confidential by all officers and employees of the Department of Agriculture and of the Cotton Board; and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary of Agriculture, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this § 1205.340 shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of handlers or importers subject to this subpart or importers of de minimis amounts of cotton, which statements do not identify the information furnished by any person, or

(b) The publication by the direction of the Secretary, of the name of any person violating this subpart, together with a statement of the particular provisions of this subpart violated by such person.

25. Redesignated § 1205.341, the concluding text of the section is revised to read as follows:

§ 1205.341 Certification of cotton producer organizations.

* * * * *

The primary consideration in determining the eligibility of an organization shall be whether its cotton producer membership consists of a sufficiently large number of cotton producers who produce a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any cotton producer organization found eligible by the Secretary under this § 1205.341 will be certified by the Secretary, and the Secretary's determination as to eligibility is final.

26. Redesignated § 1205.343 is revised to read as follows:

§ 1205.343 Suspension and termination.

(a) The Secretary will, whenever the Secretary finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cotton producers and importers (if subject to the Order) voting in the most recent referendum, to determine whether cotton producers and importers subject to the Order favor the suspension or termination of this subpart, except that in counting such request for a referendum, not more than 20 percent of such request may be from producers from any one state or importers of cotton (if subject to the Order). The Secretary shall suspend or terminate such subpart at the end of the marketing year whenever the Secretary determines that its suspension or termination is approved or favored by a majority of producers and importers subject to the Order voting in such referendum who, during a representative period determined by the Secretary, have been engaged in the production or importation of cotton, and who produced and imported more than 50 percent of the volume of cotton produced and imported by those voting in the referendum.

27. Redesignated § 1205.345 paragraphs (b) and (c) are revised reads as follows:

§ 1205.345 Proceedings after termination.

* * * * *

(b) The said trustees shall—

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Cotton Board under any contracts or agreements entered into by it pursuant to § 1205.332 (c);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and the trustees, to such person or persons as the Secretary may direct; and

(4) Upon request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such persons full title and right to all funds, property and claims vested in the Board or the trustees pursuant to this § 1205.345.

(c) Any person to whom funds, property or claims have been transferred or delivered pursuant to this § 1205.345 shall be subject to the same obligation imposed upon the Cotton Board and upon the trustees.

* * * * *

28. A new § 1205.342 "Certification of Cotton Importer Organizations" is added to read as follows:

§ 1205.342 Certification of cotton importer organizations.

Any importer organization may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent cotton importers on the Cotton Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Secretary for the making of such determination, including the following:

(a) Nature and size of organization's active membership, proportion of total active membership accounted for by cotton importers and the total amount of cotton imported by the organization's cotton importer members;

(b) The extent to which the cotton importer membership of such organization is represented in setting the organization's policies;

(c) Evidence of stability and permanency of the organization;

(d) Sources from which the organization's operating funds are derived;

(e) Functions of the organization; and

(f) The organization's ability and willingness to further the aims and objectives of the Act.

The primary consideration in determining the eligibility of an organization shall be whether its membership consist of a sufficient large number of cotton importers who import a relatively significant volume of cotton to reasonably warrant its participation in the nomination of members for the Cotton Board. Any importer organization found eligible by the Secretary under this § 1205.342 will be certified by the Secretary, and the Secretary's determination as to eligibility is final.

Dated: December 4, 1991.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 91-29454 Filed 12-9-91; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1240

[AMS-FV-91-272]

RIN 0581-AA46

Honey Research, Promotion, and Consumer Information Order; Amendments to the Order, and the Rules and Regulations Issued Thereunder

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Honey Research, Promotion, and Consumer Information Order (Order) and the General Rules and Regulations issued thereunder in order to remove refund provisions as they pertain to producers and importers. This action is based upon the vote in an industry-wide referendum conducted in August 1991. In the referendum, honey producers and importers favored terminating the refund provisions of the Order. The Honey Research, Promotion, and Consumer Information Act (Act) requires the Order to be amended if such termination is favored by the producers and importers.

EFFECTIVE DATE: December 10, 1991.

FOR FURTHER INFORMATION CONTACT: Sheila Young, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Division, AMS, USDA, Room 2533-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-6930.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the Honey Research, Promotion, and Consumer Information Act, as amended (7 U.S.C. 4601-4612), and the Order issued thereunder (7 CFR part 1240).

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Executive Order 12291 and USDA Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained in the Executive Order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

There are an estimated 145 handlers, 510 producer-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order. The majority of these persons would be classified as small businesses under the criteria established by the Small Business Administration.

The changes to the Order and its rules and regulations are made as a result of the vote in the first reconfirmation referendum conducted pursuant to the 1990 amendments to the Act. The economic impact of these changes may impose additional costs on approximately 4 percent of those persons who have requested and received refunds of assessments paid. However, the benefits of this action are expected to outweigh the costs. The changes will reduce reporting and recordkeeping requirements. Furthermore, the research and promotion program is expected to benefit handlers, producer-packers, producers, and importers by expanding and maintaining new and existing markets.

The Act, as amended, specifies that the Secretary shall conduct a