

**§ 1205.301**

State and County FSA offices in conducting a referendum. Such additional instructions may include procedures for FSA county and State offices to report and announce the results of the preliminary count of the votes in the county and the State.

**Subpart—Cotton Research and Promotion Order**

SOURCE: 31 FR 16758, Dec. 31, 1966, unless otherwise noted.

DEFINITIONS

**§ 1205.301 Secretary.**

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

**§ 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).

[56 FR 64472, Dec. 10, 1991]

**§ 1205.303 Person.**

*Person* means any individual, partnership, corporation, association, or any other entity.

**§ 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.

[56 FR 64472, Dec. 10, 1991]

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**§ 1205.305 Upland cotton.**

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

[56 FR 64472, Dec. 10, 1991]

**§ 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.

[56 FR 64472, Dec. 10, 1991]

**§ 1205.307 Fiscal period.**

*Fiscal period* is the 12-month budgetary period and means the calendar year unless the Cotton Board, with the approval of the Secretary, selects some other 12-months budgetary period.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

**§ 1205.308 Cotton Board.**

*Cotton Board* means the administrative body established pursuant to §1205.318.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

**§ 1205.309 Producer.**

*Producer* means any person who shares in a cotton crop actually harvested on a farm, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

**§ 1205.310 Importer.**

*Importer* means any 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.

[56 FR 64472, Dec. 10, 1991]

**§ 1205.311 Handler.**

*Handler* means any person who handles cotton, including the Commodity Credit Corporation.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

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### § 1205.312 **Handle.**

*Handle* means to harvest, gin, warehouse, compress, purchase, market, transport, or otherwise acquire ownership or control of cotton.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### § 1205.313 **United States.**

*United States* means the 50 States of the United States of America.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### § 1205.314 **Cotton-producing State.**

*Cotton-producing State* means each of the following States and combination of States: Alabama; Arizona; Arkansas; California-Nevada; Florida; Georgia; Kansas; Louisiana; Mississippi; Missouri-Illinois; New Mexico; North Carolina; Oklahoma; South Carolina; Tennessee-Kentucky; Texas; Virginia.

[75 FR 24374, May 5, 2010]

### § 1205.315 **Marketing.**

*Marketing* includes the sale of cotton or the pledging of cotton to the Commodity Credit Corporation as collateral for a price support loan.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### § 1205.316 **Cotton-Producer organization.**

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

[56 FR 64472, Dec. 10, 1991]

### § 1205.317 **Cotton-Importer organization.**

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

[56 FR 64472, Dec. 10, 1991]

### § 1205.318 **Contracting organization or association.**

*Contracting organization or association* means the organization or association with which the Cotton Board has en-

tered into a contract or agreement pursuant to § 1205.328(c).

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### § 1205.319 **Cotton-producing region.**

*Cotton-producing region* means each of the following groups of cotton-producing States:

(a) Southeast Region: Alabama, Florida, Georgia, North Carolina, South Carolina, and Virginia;

(b) Midsouth Region: Arkansas, Louisiana, Mississippi, Missouri-Illinois, and Tennessee-Kentucky;

(c) Southwest Region: Kansas, Oklahoma and Texas;

(d) Western Region: Arizona, California-Nevada, and New Mexico.

[75 FR 24374, May 5, 2010]

### § 1205.320 **Marketing year.**

*Marketing year* means a consecutive 12-month period ending on July 31.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### § 1205.321 **Part and subpart.**

*Part* means the cotton research and promotion order and all rules, regulations and supplemental orders issued pursuant to the act and the order, and the aforesaid order shall be a "subpart" of such part.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

## COTTON BOARD

### § 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

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(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.

[56 FR 64472, Dec. 10, 1991]

### § 1205.323 Term of office.

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

[56 FR 64472, Dec. 10, 1991]

### § 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 nomi-

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nating 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.

[56 FR 64472, Dec. 10, 1991; 56 FR 66670, Dec. 24, 1991]

### § 1205.325 Selection.

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

[56 FR 64473, Dec. 10, 1991]

### § 1205.326 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the Board shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### § 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.

[56 FR 64473, Dec. 10, 1991]

### § 1205.328 Alternate members.

An alternate member of the Board, during the absence of the member for whom the person is the alternate, shall

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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.

[56 FR 64473, Dec. 10, 1991]

### § 1205.329 Procedure.

A majority of the members of the Board, or alternates acting for members, shall constitute a quorum and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person. For routine and non-controversial matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph or telephone, but any such action by telephone shall be confirmed promptly in writing.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### § 1205.330 Compensation and reimbursement.

The members of the Board, and alternates when acting as members, shall serve without compensation but shall be reimbursed for necessary expenses, as approved by the Board, incurred by them in the performance of their duties under this subpart.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### § 1205.331 Powers.

The Board shall have the following powers:

(a) To administer the provisions of this subpart in accordance with its terms and provisions;

(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;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(d) To recommend to the Secretary amendments to this subpart.

[31 FR 16758, Dec. 31, 1966, as amended at 42 FR 4813, Jan. 26, 1977. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

### § 1205.332 Duties.

The Board shall have the following duties:

(a) To select from among its members a chairman and such other officers as may be necessary for the conduct of its business, and to define their duties;

(b) To appoint or employ such persons as it may deem necessary and to determine the compensation and to define the duties of each;

(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

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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;

(d) To review and submit to the Secretary any research and promotion plans or projects which have been developed and submitted to it by the contracting organization or association, together with its recommendations with respect to the approval thereof by the Secretary;

(e) To submit to the Secretary for his approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of advertising and promotion and research and development projects as estimated in the budget or budgets submitted to it by the contracting organization or association, with the Board's recommendations with respect thereto;

(f) To maintain such books and records and prepare and submit such reports from time to time to the Secretary as he may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal period and at such other times as the Secretary may request, and to submit a copy of each such audit to the Secretary;

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(h) To give the Secretary the same notice of meetings of the Board as is given to members in order that his representative may attend such meetings;

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

(j) To submit to the Secretary such information as he may request.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

**RESEARCH AND PROMOTION**

**§ 1205.333 Research and promotion.**

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

(a) The establishment, issuance, effectuation, and administration of appropriate plans or projects for the advertising and sales promotion of cotton and its products, which plans or projects shall be directed toward increasing the general demand for cotton or its products in accordance with section 6(a) of the act;

(b) The establishment and carrying on of research and development projects and studies with respect to the production, ginning, processing, distribution, or utilization of cotton and its products in accordance with section 6(b) of the act, to the end that the marketing and utilization of cotton may be encouraged, expanded, improved, or made more efficient.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

**EXPENSES AND ASSESSMENTS**

**§ 1205.334 Expenses.**

(a) The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart.

(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

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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.

[42 FR 4813, Jan. 26, 1977. Redesignated and amended at 56 FR 64472, 64473, Dec. 10, 1991]

**§ 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, as-

sessments 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.

[56 FR 64473, Dec. 10, 1991]

**§ 1205.336 "Importer Reimburse-  
ments".**

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

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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.

[56 FR 64474, Dec. 10, 1991]

**§ 1205.337 Influencing governmental action.**

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except in recommending to the Secretary amendments to this subpart.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

**REPORTS, BOOKS, AND RECORDS**

**§ 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.

[56 FR 64474, Dec. 10, 1991]

**§ 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 provi-

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sions 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.

[56 FR 64474, Dec. 10, 1991]

**§ 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.

[56 FR 64474, Dec. 10, 1991]

**CERTIFICATION OF COTTON PRODUCER ORGANIZATION**

**§ 1205.341 Certification of cotton producer organization.**

Any cotton producer organization within a cotton-producing State may request the Secretary for certification of eligibility to participate in nominating members and alternate members to represent such State 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) Geographic territory within the State covered by the organization's active membership;
- (b) Nature and size of the organization's active membership in the State, proportion of total of such active membership accounted for by farmers, a map showing the cotton-producing counties in such State in which the organization has members, the volume of cotton produced in each such county, the number of cotton producers in each such county, and the size of the organization's active cotton producer membership in each such county;
- (c) The extent to which the cotton producer membership of such organization is represented in setting the organization's policies;
- (d) Evidence of stability and permanency of the organization;
- (e) Sources from which the organization's operating funds are derived;
- (f) Functions of the organization; and
- (g) 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 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.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64474, Dec. 10, 1991]

**§ 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.

[56 FR 64475, Dec. 10, 1991]

MISCELLANEOUS

**§ 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



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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.

[56 FR 64474, Dec. 10, 1991]

**§ 1205.345 Proceedings after termination.**

(a) Upon the termination of this subpart the Cotton Board shall recommend not more than five of its members to the Secretary to serve as trustees, for the purpose of liquidating the affairs of the Cotton Board. Such persons, upon designation by the Secretary, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such 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.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be turned over to the Secretary to be disposed of, to the extent practicable, in the interest of continuing one or more of the cotton research or promotion programs hitherto authorized.

[31 FR 16758, Dec. 31, 1966. Redesignated and amended at 56 FR 64472, 64475, Dec. 10, 1991]

**§ 1205.346 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder, or (b) release or extinguish any violation of this subpart or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person, with respect to any such violation.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

**§ 1205.347 Personal liability.**

No member or alternate member of the Cotton Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or alternate, except for acts of dishonesty or willful misconduct.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

**§ 1205.348 Separability.**

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances

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is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

[31 FR 16758, Dec. 31, 1966. Redesignated at 56 FR 64472, Dec. 10, 1991]

### Subpart—Members of Cotton Board

#### § 1205.401 Definitions.

(a) *Cotton Division.* *Cotton Division* means the Cotton Division of the Agricultural Marketing Service of the U.S. Department of Agriculture.

(b) *Director.* *Director* means the Director of the Cotton Division.

[32 FR 1084, Jan. 31, 1967, as amended at 41 FR 37092, Sept. 2, 1976]

#### § 1205.402 Determination of Cotton Board membership.

(a) In determining whether any cotton-producing state is entitled to be represented by more than one member of the Cotton Board as provided in §1205.322, average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years will be used as the criteria for determination of such additional members.

(b) In determining whether importers of cotton and cotton-containing products are entitled to be represented by more than a minimum of two members on the Cotton Board as provided in §1205.322, the average annual volume of imported cotton and the cotton content of imported products on which assessments have been collected will be used as the criteria for determination of such additional members. This volume of cotton will be expressed in terms of 480-pound net weight bales for the five most recent calendar years. The initial importer representation on the Board shall consist of four importer representatives.

(c) All members appointed from a state will be entitled to serve a full three-year term even though it is determined in a subsequent year that a state should have fewer additional members by using the average production of the five most recent marketing

years as specified in paragraph (a) of this section.

(d) All members appointed to represent importers will be entitled to serve a full three-year term even though it is determined in a subsequent year that importers should be represented by fewer additional members by using the average volume of imports of cotton and the cotton content of products on which assessments have been collected as specified in paragraph (b) of this section.

(e) Each year the Director shall:

(1) Based on the average annual production of Upland cotton in terms of 480-pound net weight bales for the five most recent marketing years, notify all certified cotton producer organizations in each cotton-producing state of the number of vacancies to be filled by cotton producers on the Cotton Board; and

(2) Based on the average annual volume of imports of cotton and the cotton content of cotton-containing products on which assessments as provided for in §1205.335 have been collected in terms of 480-pound net weight bales for the five most recent calendar years, notify all certified cotton importer organizations of the number of vacancies to be filled by cotton importers on the Cotton Board.

[56 FR 65980, Dec. 20, 1991]

#### § 1205.403 Nomination procedure.

(a) The Director shall notify all certified producer organizations within each cotton-producing state and all certified importer organizations of the location, date, and time of the caucus for nominating producer and importer representatives for the Cotton Board as specified in §1205.324. The Director will designate a representative from the Cotton Division to attend the caucus meeting of cotton producer organizations in each state, and of cotton importer organizations. Each eligible cotton producer organization within each cotton-producing state and each importer organization will be entitled to only one representative at the caucus for the purpose of nominating two qualified persons for each member and for each alternate member to be selected. The representative of a cotton producer organization shall be a cotton