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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. # AMS-CN-10-0027; CN-08-003]

RIN 0581-AC84

Cotton Research and Promotion Program: Designation of Cotton-Producing States

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the Cotton Research and Promotion Order (Cotton Order) following a referendum held October 13 through November 10, 2009, in which Upland cotton producers and importers favored the adoption of two amendments to the Cotton Order. The amendments were proposed by AMS to amend the Cotton Order and implement section 14202 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) that amended the Cotton Research and Promotion Act (Cotton Act). The 2008 Farm Bill provided that Kansas, Virginia, and Florida be separate states in the definition of "cotton-producing state" effective beginning with the 2008 crop of cotton. In addition, AMS proposed to amend the definition of "cotton-producing region" for consistency with the changes to the definition of cotton-producing state.

DATES: *Effective Date:* This rule is effective May 6, 2010.

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Chief, Research and Promotion Staff, Cotton and Tobacco Programs telephone (202) 720-6603, facsimile (202) 690-1718, or e-mail at Shethir.Riva@ams.usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of

Hearing issued on November 24, 2008, and published in the December 1, 2008, issue of the **Federal Register** (73 FR 72747); and the Secretary's Decision and Referendum Order on Proposed Amendments to the Cotton Research and Promotion Order (Order) issued on September 28, 2009, and published in the October 5, 2009, issue of the **Federal Register** (74 FR 51094).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated based on the record of the public hearing held in Washington, DC, on December 5, 2008. Notice of this hearing was issued on November 24, 2008, and published in the December 1, 2008, issue of the **Federal Register** (73 FR 72747). The hearing was held to consider and receive evidence from Upland cotton producers, importers, and other interested parties on the proposed amendments to the Cotton Order (7 CFR part 1205). The hearing was held pursuant to the provisions of the Cotton Research and Promotion Act (Cotton Act) (7 U.S.C. 2101-2118), and the applicable rules of practice and procedure governing research and promotion programs (7 CFR part 1200). The notice of hearing contained Cotton Order changes proposed by the Agricultural Marketing Service (AMS).

AMS concluded that conditions existed that warranted the omission of a recommended decision in this rulemaking proceeding under 7 CFR 1200.13(d) of the Rules of Practice and Procedure with respect to the proposed amendments.

Upon the basis of the evidence introduced at the hearing and the record, a Secretary's Decision and Referendum Order was issued on September 28, 2009, directing that a referendum be conducted during the period October 13 through November 10, 2009, among Upland cotton producers and importers to determine whether they favored the proposed amendments to the Cotton Order. For the amendments to be approved, section 10(b)(2) of the Cotton Act provides that the amendments must be approved by a majority of cotton producers and importers subject to the Cotton Order voting in the referendum. Of the 445

valid ballots cast, 405 or 91 percent favored the amendments to the Order. Opposing ballots totaled 40 or 9 percent.

The amendments favored by vote and included in this final rule will:

(1) Amend the Cotton Order to incorporate the States of Kansas, Virginia, and Florida into the definition of "cotton-producing state" as separate states.

(2) Amend the definition of "cotton-producing region" to list Kansas, Virginia, and Florida as separate states.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) [5 U.S.C. 601-612], AMS has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. There are currently approximately 18,000 producers, and approximately 16,000 importers that are subject to the Cotton Order. In 13 CFR part 121, the Small Business Administration (SBA) defines small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms (importers) as those having annual receipts of no more than \$7.0 million. The majority of these producers and importers are small businesses under the criteria established by the SBA.

The Cotton Act provides authority to establish the Cotton Board to administer the Cotton Research and Promotion Program. The Board is currently composed of 39 members and 39 alternate members (23 producer and 16 importer members and alternate members) and one consumer advisor. The Board is responsible for carrying out an effective and continuous program of research and promotion in order to strengthen the competitive position of Upland cotton by expanding domestic and foreign markets for cotton, improving fiber quality, and lowering the costs of production. The Program, including U.S. Department of Agriculture administrative costs, is financed through producer and importer assessments levied on each bale or bale equivalent of cotton at a rate of \$1 per bale with a supplemental (currently 5/10ths of one percent) assessment not to exceed one percent of the value of lint of each bale. There are approximately

18,000 producers, and approximately 16,000 importers that are subject to the Order. In 2008 budget year, the Board collected \$64.2 million in assessments (\$36.2 million from producers and \$28 million from importers).

Interested persons were invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses. The amendments proposed herein would not result in any additional regulatory requirements being imposed on cotton producers and importers. The proposed amendments to the Cotton Order merely reflect the statutory changes needed to implement the 2008 Farm Bill provisions that provided that Kansas, Virginia, and Florida be separate states in the definition of "cotton-producing state."

There are no new information collection reports as a result of the proposed amendments. Information collection requirements and recordkeeping provisions contained in 7 CFR part 1205 have been previously approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0581-0093 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Civil Justice Reform

The amendments herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect.

The Cotton Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 12 of the Cotton Act, any person subject to an order may file with the Secretary of Agriculture 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 Cotton 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.

Order Amending the Order Regulating the Cotton Research and Promotion Program

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary

and in addition to the findings and determinations previously made in connection with the issuance of the Order; and all of said previous findings and determinations are hereby ratified and affirmed.

(a) Findings and determinations upon the basis of the hearing record.

Pursuant to the provisions of the Cotton Research and Promotion Act (Cotton Act) (7 U.S.C. 2101-2118), and the applicable rules of practice and procedure effective thereunder (7 CFR part 1200), a public hearing was held in Washington, D.C. on December 5, 2008, on the proposed amendments to the Cotton Research and Promotion Order (7 CFR part 1205). Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The Cotton Order, as amended, as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) All cotton produced and handled in the United States is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects interstate or foreign commerce in cotton and cotton products.

(b) Additional findings.

It is necessary and in the public interest to make these amendments to the order effective not later than one day after publication in the **Federal Register**. It is necessary and in the public interest to make these amendments to the order effective not later than one day after publication in the **Federal Register** to allow for organizations in the states of Florida, Kansas, and Virginia to become certified to nominate producers to the Board and to participate in the upcoming nomination caucuses in 2010.

In view of the foregoing, it is hereby found and determined that good cause exists for making these amendments effective one day after publication in the **Federal Register**, and that it would be contrary to the public interest to delay the effective date for 30 days after publication in the **Federal Register** (Administrative Procedure Act; 5 U.S.C. 551-559).

(c) Determinations.

(1) Upland cotton producers and importers who during the period of January 1 through December 31, 2008 (which has been deemed to be the representative period), either produced or imported cotton, as hereby amended the Cotton Order; and

(2) The issuance of this amendatory order is favored or approved by a majority of cotton producers and importers subject to the Cotton Order voting in the referendum.

The provisions of the amended Order are set forth in full herein contained in the Secretary's Decision issued by the AMS Administrator on September 28, 2009, and published in the **Federal Register** on October 5, 2009, shall be and are the terms and provisions of this order amending the Cotton Order.

List of Subjects in 7 CFR Part 1205

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

■ Accordingly, as stated in the preamble, AMS amends 7 CFR part 1205 as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

■ 1. The authority citation 7 CFR part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101-2118 and 7 U.S.C. 7401.

■ 2. Revise § 1205.314 to read as follows:

§ 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.

■ 3. Revise § 1205.319 to read as follows:

§ 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.

Dated: April 29, 2010.

David R. Shipman,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2010-10558 Filed 5-4-10; 8:45 am]

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