

shall be levied on all watermelons imported into the United States for ultimate consumption as human food at the time of entry in the United States.

(b) The import assessment shall be uniformly applied to imported watermelons that are identified by the numbers 0807.11.30 and 0807.11.40 in the Harmonized Tariff Schedule of the United States of any other number used to identify fresh watermelons for consumption as human food. The U.S. Customs Service (USCS) will collect assessments on such watermelons at the time of entry and will forward such assessment as per the agreement between USCS and USDA. Any importer or agent who is exempt from payment of assessments may submit the Board adequate proof of the volume handled by such importer for the exemption to be granted.

(c) Watermelons used for non-human food purposes are exempt from assessment requirements but are subject to the safeguard provisions of § 1210.521.

[55 FR 13256, Apr. 10, 1990, as amended at 60 FR 10800, Feb. 28, 1995; 72 FR 41428, July 30, 2007; 72 FR 61051, Oct. 29, 2007]

§ 1210.516 Exemption for organic watermelons.

(a) A producer who produces only products that are eligible to be labeled as 100 percent organic under the National Organic Program (NOP) (7 CFR part 205), except as provided for in paragraph (h) of this section, or a handler who handles only products that are eligible to be labeled as 100 percent organic under the NOP; and who operates under an approved NOP system plan, and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for this exemption, the producer or handler shall submit the request to the Board—on a form provided by the Board—at any time initially and annually thereafter on or before January 1 as long as the producer or handler continues to be eligible for the exemption.

(c) The request shall include the following: The applicant's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of

the Organic Foods Production Act of 1990 (7 U.S.C. 6502), a signed certification that the applicant meets all of the requirements specified for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If the producer or handler complies with the requirements of this section, the Board will approve the exemption and issue a Certificate of Exemption to the producer or handler. For exemption requests received on or before August 15, 2005, the Board will have 60 days to approve the exemption request; after August 15, 2005, the Board will have 30 days to approve the exemption request. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer shall provide a copy of the Certificate of Exemption to each handler to whom the producer sells watermelons. The handler shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board.

(f) An importer imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic watermelons. The importer may request the exemption—on a form provided by the Board—at any time initially and annually thereafter on or before January 1, as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers and handlers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line

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item entry of 100 percent organic watermelons bearing this HTS classification assigned by the Board will not be subject to assessments.

(g) The exemption will apply immediately following the issuance of the Certificate of Exemption.

(h) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

[70 FR 2756, Jan. 14, 2005]

§ 1210.517 Determination of handler.

The producer and handler assessments on each lot of watermelons handled shall be paid by the handler. Unless otherwise provided in this section, the handler responsible for payment of assessments shall be the first handler of such watermelons. The first handler is the person who initially performs a handling function as heretofore defined. Such person may be a fresh shipper, processor, or other person who first places the watermelons in the current of commerce.

(a) The following examples are provided to aid in the identification of first handlers:

(1) Producer grades, packs, and sells watermelons of own production to a handler. In this instance, it is the handler, not the producer, who places the watermelons in the current of commerce. The handler is responsible for payment of the assessments.

(2) Producer packs and sells watermelons of that producer's own production from the field, roadside stand, or storage to a consumer, trucker, retail or wholesales outlet, or other buyer who is not a handler of watermelons. The producer places the watermelons

in the current of commerce and is the first handler.

(3) Producer purchases watermelons from another producer. The producer purchasing the watermelons is the first handler.

(4) Producer delivers field-run watermelons of own production to a handler for preparation for market and entry into the current of commerce. The handler, in this instance, is the first handler, regardless of whether the handler subsequently handles such watermelons for the account of the handler or for the account of the producer.

(5) Producer delivers field-run watermelons of own production to a handler for preparation for market and return to the producer for sale. The producer in this instance, is the first handler, except when the producer subsequently sells such watermelons to a handler.

(6) Producer delivers watermelons of own production to a handler who takes title to such watermelons. The handler who purchases such watermelons from the producer is the first handler.

(7) Producer supplies watermelons to a cooperative marketing association which sells or markets the watermelons and makes an accounting to the producer, or pays the proceeds of the sale to the producer. In this instance, the cooperative marketing association becomes the first handler upon physical delivery to such cooperative.

(8) Handler purchases watermelons from a producer's field for the purpose of preparing such watermelons for market or for transporting such watermelons to storage for subsequent handling. The handler who purchases such watermelons from the producer is the first handler.

(9) Broker/Commission House receives watermelons from a producer and sells such watermelons in the Broker's/Commission House's name. In this instance, the Broker/Commission House is the first handler, regardless of whether the Broker/Commission House took title to such watermelons.

(10) Broker/Commission House, without taking title or possession of watermelons, sells such watermelons in the name of the producer. In this instance, the producer is the first handler.