

**AGREEMENT No. 003**  
**Establishing the Operating Regulations Governing Cotton Price Stabilization**  
**Operations of the Agricultural and Fishery Products Price Stabilization Fund**

***The Executive Committee of the Agricultural and Fishery Products Price Stabilization Fund***

By virtue of the powers vested in it, in particular, those provided for in Law 101 of 1993, Chapter VI, and Decree 1827 of 1996, and

**CONSIDERING:**

That Article 29 of Law 101 of 1993 provides that assessments imposed by the Law, in certain cases and conditions, on an agricultural or fishery sector in the interest of the general good and for its own benefit are parafiscal agricultural and fisheries assessments;

That Article 36 of Law 101 of 1993 provides that Agricultural and Fishery Products Price Stabilization Funds are intended to ensure a remunerative income for producers, regulate national production, and increase exports through the stabilization of producer prices;

That Article 1 of Decree 1827 of October 9, 1996 transformed the Cotton Prices Stabilization Fund into an Agricultural and Fishery Products Price Stabilization Fund pursuant to the terms of Chapter VI of Law 101 of 1993;

That Article 5 of Decree 1827 of 1996 grants the Executive Committee of the Agricultural and Fishery Products Price Stabilization Fund for Cotton, hereinafter to be referred to as the Fund, among others, the following powers:

- 1) To determine the policies and guidelines of the Fund in compliance with which the Management Entity may execute administrative acts and measures and enter into any special contracts and agreements that may be necessary for the full achievement of the established objects of the Fund;
- 2) To issue the Operational Regulations of the Fund;
- 3) To determine the stage in the marketing process when the assessments are to be applied to the producer, vendor or exporter, as well as the procedures and sanctions to ensure that they are complied with;

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- 4) To study cases of non-compliance by buyers-withholders and dictate the corresponding sanctions pursuant to the Operational Regulations of the Fund;
- 5) To establish the term in which the amount of the assessment is to be delivered to the Agricultural and Fishery Products Price Stabilization Fund for Cotton, and;
- 6) To assess the activities of the Fund and make whatever recommendations may be in order;

That in compliance with Article 11 of Decree 1827 of 1996, producers, vendors and exporters of cotton lint shall enter into Stabilization Agreements with the Management Entity of the Fund to execute their domestic or foreign operations;

That by virtue of Act No. 10 of September 29, 1993, the Executive Committee of the Fund adopted the Operational Regulations of the Fund and that, by virtue of Act 51 of April 10, 2002, the aforementioned Operational Regulations were amended;

That the stabilization operations executed by the Fund since its last amendment, together with ensuing assessments of the efficiency of the operation of the Fund reveal the need for further adjustment of said Operational Regulations.

**AGREES:**

**CHAPTER 1**  
**GENERAL PROVISIONS**

**ARTICLE ONE: Object.** The object of the present Agreement is to establish the regulations governing the operations of the Agricultural and Fishery Products Price Stabilization Fund for Cotton.

**ARTICLE TWO: Definitions.** For the purposes of the present regulations the following definitions shall apply:

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- 1) **Stabilization assessments:** Mandatory parafiscal contributions that all producers of cotton lint must make to the Fund on sales in markets subject to stabilization operations when, on the day that the operation is filed with the Fund in the sales registration form, the price indicator calculated for said markets is higher than the reference price calculated for price stabilization operations, as per the technical parameters established by the Executive Committee of the Fund.
- 2) **Stabilization Compensations:** Payments the Fund shall make to producers of cotton lint on their sales in markets subject to stabilization operations when, on the day that the operation is filed with the Fund in the sales registration form, the price indicator calculated for said markets is lower than the reference price calculated for price stabilization operations, as per the technical parameters established by the Executive Committee of the Fund.
- 3) **Notification of sale on the export market:** A written notification of an export sale delivered by the producer, vendor or exporter to the Technical Secretariat of the Fund prior to shipment of the goods. The date of the notification shall determine the amount the producer, vendor or exporter is entitled to collect or obligated to contribute when implementation of the technical parameters of the Fund for said market requires collection of compensation or payment of assessments.
- 4) **Statement of withholding of stabilization assessments:** The mandatory monthly report the withholding agent is obligated to deliver to the Technical Secretariat of the Fund, containing the total amount and a detailed breakdown of the quantities withheld from vendors of cotton lint.
- 5) **Sales registration:** The monthly report the producer, vendor or exporter is obligated to deliver to the Technical Secretariat of the Fund containing the value and a detailed breakdown of its sales.
- 6) **First Sale:** The first sales operation executed by a producer, vendor or exporter as defined by: i) the date of the invoice for the domestic market; or ii) the date of actual shipment, provided that the lint had not been previously invoiced in the domestic market.

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**ARTICLE THREE. Products subject to Stabilization Operations.** The product that is subject to Stabilization Operations (compensations and assessments) is uncombed and uncarded cotton lint of Colombian origin.

**ARTICLE FOUR. Entities subject to Stabilization Assessments.** All producers of cotton lint in the territory of Colombia, be they natural or legal persons, who make a first sale destined for the domestic market or for export are subject to Stabilization Assessments when application of the technical parameters of the Fund for said markets requires payment of said assessments.

**ARTICLE FIVE. Responsibility for Withholding Stabilization Assessments.** The natural or legal persons who execute the domestic purchase or export of cotton lint shall be responsible for withholding stabilization assessments.

Liability for payment and withholding of said Stabilization Assessments becomes effective as of the moment of the first sale for domestic consumption or for export when, as a result of the application of the technical parameters of the Fund, those markets are found to be liable for Stabilization Assessments.

**ARTICLE SIX. Entities entitled to Stabilization Payments.** Producers of cotton lint in the Territory of Colombia, be they natural or legal persons, who execute the first sale of cotton lint destined to the domestic market or for export shall be entitled to Stabilization Payments when application of the technical parameters of the Fund for those markets reveals that compensations are warranted.

**ARTICLE SEVEN. Methodology for Stabilization Operations.** Price Stabilization Operations shall be carried out in compliance with the methodology in force as approved by the Executive Committee of the Fund.

**ARTICLE EIGHT. Causation of Obligation to Pay Stabilization Assessments or Entitlement to Receive Stabilization Compensation.** Domestic sale or export of cotton lint shall be causation for payment of stabilization assessments or collection of stabilization compensations. In markets subject to Stabilization Operations, the obligation to make assessment payments to the Fund or the right to collect compensation from the Fund becomes effective as of the first sale in the following cases:

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- 1) *In sales for domestic consumption:* When as a result of the application of the technical parameters of the Fund for stabilization operations by the Fund for domestic sales, said sales shall be cause for payment of assessments or collection of compensations. For the purposes of the present regulations, sales for domestic consumption shall be considered to have been made on the date of payment of the cotton lint on the **basis of SLM 1" <sup>1</sup>/<sub>16</sub> lint duly referenced in the details of the invoice of the first sale.**<sup>1</sup>
  
- 2) *In sales for export:* When as a result of the application of the technical parameters of the Fund for export stabilization operations, said sales shall be cause for payment of assessments or collection of compensations. Export sales shall be considered to have been made in one of the following circumstances, as the case may be:
  - a. On the date of the actual export operation as certified by the corresponding Declaration of Export (DEX in the Spanish acronym);
  - b. On the date of issuance of the corresponding Supplier Certificate (CP in the Spanish acronym) when the export operation is done by an international marketing firm, or
  - c. On the date of issuance of the certificates of the Special Export Program (PEX in the Spanish acronym) when the export operation is carried out under said program.

**PARAGRAPH ONE.** To be eligible for compensation, the producer, vendor or exporter must comply with the prerequisites to that end provided for in the present regulations.

**PARAGRAPH TWO.** The applicable date to be used in the determination of the amount of the assessments to be paid or the compensation to be received shall be the date on which the *notice of sale to the export market* is recorded with the Technical Secretariat of the Fund or, in the case of sales to the domestic market, the date of the sales invoice, pursuant to the terms provided for in Articles 14 and 16 of the present regulations.

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<sup>1</sup> The producer, vendor or exporter must possess the probatory documents that distinguish the value calculated on the basis of SLM 1" <sup>1</sup>/<sub>16</sub> from the premiums and/or fines per ton of cotton lint and deliver them to the internal oversight of the Fund and the control entities when it is so required.

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**ARTICLE NINE. Stabilization Agreement.** Producers, vendors or exporters of cotton lint must enter into a Stabilization Agreement with the Managing Entity of the Fund for it to become operational. Said agreements shall comprise, among others, the following elements:

- 1) The mechanisms and procedures for the collection of compensation by the producers;
- 2) The mechanisms and procedures by which assessments applied to producers shall be collected for the Fund by the withholders;
- 3) The obligation of the signer to know, assume and comply with the regulations established by the Executive Committee of the Fund for stabilization operations as well as the agreements that amend them;
- 4) The procedure for payment of compensations, sanctions and interests on arrears;
- 5) The obligation to enter into a performance policy needed to cover the compensation made by the Fund when the receiver of the payment is not the person legally entitled to the compensation;
- 6) The obligation to have a written authorization from the producer to perform any and all transactions involving the Fund;
- 7) Provisions governing the term of validity and expiration of the Agreement, including the sanctions to which producers, vendors and exporters may be liable for non-performance of the Agreement.

**PARAGRAPH.** Prior to entering into the agreement that is the object of the present paragraph, the following documents must be submitted:

- 1) Certificate of Existence and Legal Representation or Commercial License, as the case may be, with a term of validity of no less than three months from the date of issuance. This Certificate must be renewed annually or whenever it is amended;
- 2) Document empowering the legal representative to sign the agreement, in the event that authorization is required to do so;
- 3) Performance policy for a value of 10 legal minimum monthly salaries;
- 4) Statement by the legal representative, the fiscal oversight officer or the natural person certifying that during the three preceding years neither he, nor any of his

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partners has been sentenced for any violation of the penal code of Colombia;  
and

- 5) Authorization to report to or consult existing data bases with regard to information pertaining to his or his partners' business and financial performance.

**CHAPTER 2**  
**NOTIFICATION OF SALES TO THE EXPORT MARKET**

**ARTICLE TEN. Filing of notice of sale to the export market.** Before making shipments to the export market, the producer, vendor or exporter of cotton lint shall file with the Technical Secretariat of the Fund the relevant notice of sale covering the commercial transaction. This notice must be presented in the established form for *notice of sale to the export market* which shall be dated and recorded on reception by the Technical Secretariat.

**PARAGRAPH.** In the event that the application of the technical parameters of the Fund calls for compensation, exporters who fail to file the relevant *notice of sale to the export market* as provided for in the present Article shall forfeit any right to said compensation.

**ARTICLE ELEVEN. Filing of notices by fax.** The Technical Secretariat may receive notices by fax, in which case the filing date shall be the date of receipt of the fax. However, for the filing to become official, the original of said notice must be presented to the Technical Secretariat within **10 business days** following the date of receipt of the aforementioned fax. Notices containing incomplete or inadequate information shall not be accepted and their filing shall be annulled and notified to the producer, vendor or exporter.

**ARTICLE TWELVE. Term of validity of notices of sale to the export market.** Notices filed with the Technical Secretariat of the Fund shall have a term of validity of **three calendar months** as of their filing and the relevant export operation must be executed within that term.

**PARAGRAPH.** In the event that no additional documentation is received within the five months following the filing of a notice with the Fund, said notice shall lapse and

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the producer, vendor or exporter shall forfeit all claims to compensation, but shall not be held harmless for assessments that may be due.

**ARTICLE THIRTEEN. Contents of notifications of sales to the export market.** Notices of sales to markets subject to operations of the Fund must contain at least the following information:

- 1) The number of the Stabilization Agreement entered into with the Administrative Unit.
- 2) The names of the export firm, the import firm or consignee and the destination country of the export.
- 3) The quantities sold to the export market, with a tolerance of plus or minus 10% vis-à-vis the actual quantities shipped.
- 4) The quality characteristics of the cotton lint to be exported.

**ARTICLE FOURTEEN. Amendment or cancellation of notices of sale to the export market.** The producer, vendor or exporter who may find it necessary to amend or cancel a valid notice of sale must report the reasons thereof in writing. Notices shall be amended or cancelled only when the variation of the amounts sold is in excess of ten percent (10%) or when there has been a change in the date the goods were exported or forwarded overland. In such cases, within two calendar months following the cancellation or amendment, the producer, vendor or exporter filing the new or amended notice of sale, destined for the same importer or consignee appearing in the original notice that was amended or cancelled, shall be entitled to the least amount of compensation or liable for the maximum amount of the assessment that may have been called for between the date of filing of the amended or cancelled notice and the date of filing of the new notice.

**ARTICLE FIFTEEN. Non-performance for reasons of force majeure and/or fortuitous events.** In cases of force majeure and/or fortuitous events that prevent performance of the notices of sale by the producer, vendor or exporter, as provided for in Article 64 of the Civil Code, said force majeure and/or fortuitous events must be reported and duly justified and be accompanied by the documents that may be required by the Technical Secretariat and the Management Entity to verify the causal relation between the events and the non-performance.

**CHAPTER 3**

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**DECLARATION OF ASSESSMENTS AND COLLECTION OF COMPENSATION**

**ARTICLE SIXTEEN. Declaration of withholding of stabilization assessments.**

When the implementation of the technical parameters of the Fund for stabilization operations shows that the withholding of assessments from the producers of cotton lint is required, the buyer or exporter who acts as withholder shall:

- 1) Duly fill out the *Declaration of Withholding of Stabilization Assessments* every month and file it with the Technical Secretariat of the Fund during the first fortnight of the calendar month following the month when the assessment was withheld, regardless of whether they were withheld at payment of the advance or at invoicing;
- 2) Keep separate accounts for the assessments and for his own assets;
- 3) Deposit the amount of the stabilization assessments declared by the withholder in accordance with the application of the technical parameters of the Fund for stabilization operations on sales for domestic consumption or for export in the bank account of the Fund during the first fortnight of the calendar month following the month when the funds were withheld, regardless of whether they were withheld at payment of the advance or at invoicing; and
- 4) Provide the internal auditors of the Fund and the control entities with all the information that supports the statements presented, if so required.

**PARAGRAPH ONE.** Sales for export not previously notified shall be obliged to pay assessments on the following dates: the date of the Export Document (DEX) or of the Special Export Program document (PEX).

**PARAGRAPH TWO.** Natural or juridical persons performing the duty of withholding stabilization assessments shall be responsible for the amount of the assessments receivable, the assessments collected or not collected and for mistaken or incomplete payments.

Withholders who are tardy in presenting the *Declaration of Withholding of Stabilization Assessments* shall disburse and deliver the amount of the sanction to that effect provided for in the Tax Statutes governing income and complementary taxes. Furthermore, withholders of assessments who fail to deliver said assessments in a timely manner to the Fund in compliance with the terms provided

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for in the present Agreement shall be liable for default interest payments at the rate provided for in the Tax Statutes governing income and complementary taxes.

**ARTICLE SEVENTEEN. Sales Registration.** Producers, vendors and exporters who carry out sales of cotton lint must present the form entitled *Sales Registration* signed by the legal representative and the fiscal oversight officer within the first fifteen (15) calendar days following the actual sale.

**ARTICLE EIGHTEEN. Collection of compensation.** When application of the technical parameters of the Fund for stabilization operations determines that compensation is due the producer, vendor or exporter of cotton lint, said producer, vendor or exporter must fill out the form entitled *Collection of Stabilization Compensation* and attach the performance policy covering ten percent (10%) of the compensation requested to cover the compensations awarded by the Fund when the receiver of the compensation is someone other than the person entitled to the compensation, along with copies of the following documents as required by the market calling for compensation:

- 1) Domestic Consumption Market: Copies of the commercial invoices stipulating the period being accounted for and the base value calculated at SLM 1" <sup>1</sup>/<sub>16</sub>.
- 2) Export Market: Copy of the Export Document (DEX) and the Supplier Certificate (CP), when the export operation is carried out by an international marketing firm, or the document of the Special Export Program (PEX).

**PARAGRAPH ONE.** Export sales that have not been previously notified shall not be entitled to compensation.

**PARAGRAPH TWO.** To be eligible to collect stabilization compensations, the producer or vendor or exporter must be up to date in the presentation of *Certifications of Sales*.

**ARTICLE NINETEEN. Term for collection of compensations.**

Compensations must be collected by the producer, vendor or exporter within the two months following the actual domestic sale or exportation as provided for in the present Regulations and in the *Stabilization Agreement*. The Fund shall only accept claims for and pay compensations on export sales backed by prior

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notification through the form entitled *Collection of Stabilization Compensations* correctly filled out and presented within the two (2) calendar months immediately following the date of the actual exportation or domestic sale.

**ARTICLE TWENTY. Transfer of compensation to producers.** When a natural or juridical person other than the direct producer, vendor or exporter is to receive the compensation, said person shall be required to certify the transfer of the totality of the monies accruing therefrom to the producers. Said person shall also present to the Technical Secretariat of the Fund within a term of no more than thirty (30) calendar days following receipt of the compensation the form entitled Transfer of Compensation to Producers, signed by the legal representative and fiscal oversight officer, containing the name of the producer or producers to whom the compensation was transferred, together with his identification, the quantity of cotton lint purchased (kilograms) and the amount of the compensation paid per ton. The abovementioned form must be backed by proof of receipt of the compensation signed by the producer or producers, to be deposited in the offices of the producer, vendor or exporter and made available to the Technical Secretariat, internal oversight of the Fund and of the control entities for their verification.

The producer, vendor or exporter of cotton undertakes to transfer the monies received from the Fund as compensation to his associated, affiliated or registered growers in quantities directly proportional to their share in the production eligible for compensation.

**PARAGRAPH.** This requirement must be fulfilled by the producer, vendor or exporter within the prescribed term to be entitled to file a new notice of exportation.

**ARTICLE TWENTY-ONE. Precedence of Payment of Obligations.** In the event that the producer, vendor or exporter collecting the compensation should have debts outstanding to the Fund, the amount of the stabilization payments shall be applied to their payment in the following order of precedence: sanctions, default interests and payment of debts overdue, beginning with the oldest, in compliance with the provisions of the Tax law. The remaining balance shall be remitted to the producer, vendor or exporter. Payment of debts outstanding to the Fund does not exempt the producer, vendor or exporter from compliance with Article Eighteen.

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**ARTICLE TWENTY-TWO. Payment of Compensations.** Compensations to the producer, vendor or exporter shall be paid by the following procedure:

1) The Technical Secretariat of the Fund shall review the form entitled Collection of Stabilization Compensations, as well as the documentation accompanying the application. In the event that the application is improperly filled out or not accompanied by the required documents, the Technical Secretariat shall return it to the producer, vendor or exporter for introduction of the necessary corrections within the two (2) calendar months provided for in Article Seventeen.

2) When the documentation has been adequately processed and substantiated, the Technical Secretariat shall remit the payment order to the Office of Disbursements for payment, provided that the Fund has the necessary liquidity.

**CHAPTER 4**  
**NOTIFICATION OF PARAMETERS AND OTHER PROVISIONS**

**ARTICLE TWENTY-THREE. Notification of the amount of assessments or compensations to be applied by the Fund.** The Technical Secretariat of the Fund shall, in compliance with the technical parameters of the Fund for price stabilization operations, notify no later than the fifth business day of each month, the amount of the assessments **or compensations** to be levied or withheld or the compensations to be paid from Fund resources during that month per ton of cotton lint sold on the domestic market or exported.

The above information shall be circulated by fax to producers, vendors, exporters and buyers of cotton lint to the fax number and address appearing on the Stabilization Agreement described in Article Nine of the present Agreement or in later communications amending said fax number or address and posted on the web page of the Management Entity. Buyers of cotton lint shall be notified as per the buyers' register compiled on the basis of the *Certifications of Sales* and *Declaration of withholding of stabilization assessments*.

However, for the purposes of stabilization operations executed with the Fund, it shall be the responsibility of the producer, vendor, exporter or buyer of cotton lint to

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be informed of the amount of the applicable monthly assessments and compensations. To that end, the Technical Secretariat of the Fund shall post a public announcement of the amount of said assessments and compensations at the offices of its headquarters in Bogota D.C., by which posting its duty to notify shall be considered adequately discharged.

**PARAGRAPH.** If by the sixth business day of the month, the Technical Secretariat has not posted the amount of the stabilization assessments and compensations in force for that month, the stabilization assessments and compensations valid for the previous month shall remain in force.

**ARTICLE TWENTY-FOUR. Technical Information of the Fund.** With a view to centralizing the information of the Fund and to facilitate its operations, it shall be incumbent on the Technical Secretariat supply all pertinent information on the operation of the Fund to producers, vendors, exporters and buyers of cotton lint, as well as to the public at large,

**ARTICLE TWENTY-FIVE. Transition. Liability of the Fund for compensations to producers of cotton lint before the entry into force of the present Regulations.** Unauthenticated or uncollected sales notifications shall be granted a period of three months as of the adoption of the present Regulations for authentication and collection of outstanding balances stemming from compensation to lint producers. Following the expiration of the above period, producers, vendors and exporters who have failed to authenticate and collect pending compensations shall forfeit any right to those benefits.

**ARTICLE TWENTY-SIX. Validity and Abrogations.** The present Agreement abrogates and replaces the Operational Regulations adopted by Act Number 10 of September 29, 1993 and amended by Act 51 of April 10, 2002, and shall enter into force as of July 1, 2005.

In witness whereof we have hereunto affixed our signatures on the 22nd day of the month of June of 2005 in the city of Bogota D.C.

**Juan Camilo Salazar Rueda**  
President

**Diana Michelle Grusczyński Rincón**  
Technical Secretary

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