Billing code 3410-02 P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[Doc. # AMS-CN-10-0073; CN-10-005]

RIN 0581-AD16

Revision of Cotton Futures Classification Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the procedures for cotton futures quality classification services by using Smith-Doxey classification data in the cotton futures classification process. In addition, references to a separate and optional review of cotton futures certification are being eliminated to reflect current industry practices. These changes in procedures for cotton futures quality classification services, as well as proposed conforming changes, reflect advances in cotton fiber quality measurement and data processing made since the regulations were last updated in 1992.

EFFECTIVE DATE: [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Telephone (901) 384-3060, facsimile (901) 384-3021, or e-mail darryl.earnest@ams.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

AMS Cotton and Tobacco Programs is revising procedures for providing services related to the classification of cotton futures as authorized by Act by using Smith-Doxey classification data in the cotton futures classification process. The Act requires USDA-certified quality measurements for each bale included in futures contracts for the purpose of verifying that each bale meets the minimum quality requirements for cotton futures trading.

USDA was first directed to provide cotton classification services to producers of cotton under the Smith-Doxey Act of April 13, 1937 (Pub. L. 75-28). Therefore, the original classification of a cotton bale's sample and quality data which results from this classification is commonly referred to as the Smith-Doxey classification or Smith-Doxey data. While cotton classification is not mandatory, practically every cotton bale grown in the United States today is classed by USDA under the authority of the Cotton Statistics and Estimates Act (7 U.S.C. 471-476) and the U.S. Cotton Standards Act (7 U.S.C. 51-65) and under regulations found in 7 CFR part 28 – Cotton Classing, Testing, and Standards. The U.S. cotton industry uses Smith-Doxey classification data to assign quality-adjusted market values to U.S. cotton and market U.S. cotton both domestically and internationally. Although the Smith-Doxey classification and the futures classification are independent measures of cotton quality that serve different purposes, the Smith-Doxey data is used by the cotton merchant community to indicate which bales may be tenderable against a cotton futures contract.

USDA's cotton classification capabilities have dramatically improved as a result of the extensive technological progress, increasing data accuracy and operational efficiency. In

addition to the increased accuracy and reliability of Smith-Doxey data, improvements in data management and the desire to increase operational efficiencies have prompted the Cotton and Tobacco Programs to propose the use of Smith-Doxey classification data in the cotton futures classification process.

Currently, the futures classification process is a two-step process that occurs after the Smith-Doxey classification in which an initial futures classification is immediately verified by a review – commonly referred to as a final futures classification. When verified by a futures classification, Smith-Doxey classification data will serve as the initial futures classification with the verifying futures classification serving as the final futures classification, reducing the number of futures classifications required in many instances. Verification of Smith-Doxey classing data is necessary because certain quality characteristics – especially color – are known to change over time and when cotton is subjected to certain environmental conditions.

In cases where the comparison of Smith-Doxey data and futures classification data fail to pass pre-established tolerances, a second futures classification will be required. The use of Smith-Doxey classification data will significantly reduce the need for yet another cotton futures classification. The proposed changes would improve operational efficiency while potentially improving the integrity and accuracy of classification data provided to the cotton industry.

For the reasons set forth above, this rule amends 7 CFR part 27-- Cotton Classification Under Cotton Futures Legislation, which establishes the procedures for determining cotton classification for cotton submitted for futures certification. Specific changes required to implement the revised futures classification procedure include the elimination of outdated procedures in sections 27.61 – 27.67, 27.69 and 27.72 used to guide optional reviews of futures classifications and the elimination of references to fees charged for "initial classification and certification", "review classification and certification" and "combination services" in section 27.80. Conforming changes remove references to eliminated sections 27.9, 27.14, 27.21., 27.36 and 27.47 and apply current organizational terminology in paragraph (h) of section 27.2 and section 27.39.

As stated above, the cotton futures classification includes a process by which an initial futures classification is followed up by a futures final classification. While not mandatory, this two-stage process has been deemed appropriate by the industry. Therefore, sections 27.61 – 27.67, 27.69 and 27.72, which address optional reviews of futures classifications, are irrelevant. Furthermore, reference to "initial classification and certification" fees in paragraph (a) of section 27.80 are removed to avoid confusion with Smith-Doxey classifications and to reflect that initial classification fees are already specified in paragraph (b) of 7 CFR 28.909. Likewise, reference to "review classification and certification" fees in paragraph (b) of section 27.80 are removed since fees for review classifications are already specified in 7 CFR 28.911.

The term "combination services" in paragraph (d) of section 27.80 reflects the current practice of performing an "initial" futures classification and an immediate "review" futures classification. Since Smith-Doxey classification data serves as the initial futures classification when verified by a "review" futures classification, these services are simply defined as "futures classification services."

Summary of Comments

A proposed rule was published on September 29, 2011, with a comment period of September 29, 2011 through October 31, 2011. (76 FR 60388). No comments were received by AMS from individuals or various organizations representing segments of the cotton industry.

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 impact 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. Fees paid by users of the service are not changed by this action; implementation of the new procedures indicates the existing fees remain sufficient to fully reimburse AMS for provision of the services.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are approximately sixty cotton merchant organizations of various sizes active in trading U.S. cotton.

Cotton merchants voluntarily use the AMS cotton futures classification services annually under the Cotton Futures Act (Act) (7 U.S.C. 15b). Many of these cotton merchants are small businesses under the criteria established by the Small Business Administration (13 CFR §121.201).

Revisions being proposed reflect the progress made in quality determination and data dissemination. The proposed process changes in the classification of cotton futures will yield increases of efficiency to the benefit of the cotton marketing industry.

There are no Federal rules that duplicate, overlap, or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501-3520), the information collection requirements contained in the regulation to be amended have been previously approved by OMB and were assigned control number 0581-0008, Cotton Classing, Testing and Standards.

List of Subjects in 7 CFR Part 27

Commodity Futures, Cotton.

For the reasons set forth in the preamble 7 CFR part 27 is amended as follows:

PART 27--[AMENDED]

1. The authority citation for 7 CFR part 27 continues to read as follows:

 Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

2. Section 27.2 paragraph (h) is revised to read as follows:

§ 27.2   Terms defined.

*   *   *   *   *

(h)   *Quality Assurance Division.* The Quality Assurance Division at Memphis, Tennessee; shall provide supervision of futures cotton classification.

*   *   *   *   *

3. Section 27.9 is revised to read as follows:

§ 27.9   Classing Offices; Quality Assurance Division.

Classing Offices shall be maintained at points designated for the purpose by the Administrator. The Quality Assurance Division shall provide supervision of futures cotton classification and perform other duties as assigned by the Deputy Administrator.

4. Section 27.14 is revised to read as follows:

§ 27.14   Filing of classification requests.

Requests for futures classification shall be filed with the Quality Assurance Division within 10 days after sampling and before classification of the samples.

§ 27.21   [Removed and Reserved]

5. Section 27.21 is removed and reserved.

6. Section 27.36 is revised to read as follows:

§ 27.36   Classification determinations based on official standards.

All cotton shall be classified on the basis of the official cotton standards of the United States in effect at the time of such classification.

7. Section 27.39 is revised to read as follows:

§ 27.39   Issuance of classification records.

Except as otherwise provided in this section, as soon as practicable after the classification of cotton has been completed by the Cotton and Tobacco Programs, the Quality Assurance Division shall issue an electronic cotton classification record showing the results of such classification. Each electronic record shall bear the date of its issuance. The electronic record shall show the identification of the cotton according to the information in the possession of the Cotton and Tobacco Programs, the classification of the cotton and such other facts as the Deputy Administrator may require.

8. Section 27.47 is revised to read as follows:

§ 27.47   Tender or delivery of cotton; conditions.

Subject to the provisions of §§27.52 through 27.55, no cotton shall be tendered or delivered on a basis grade contract unless on or prior to the date fixed for delivery under such contract, and in advance of final settlement of the contract, the person making the tender shall furnish to the person receiving the same a valid outstanding cotton classification record complying with the regulations in this subpart, showing such cotton to be tenderable on a basis grade contract.

§ 27.61   [Removed and Reserved]

9. The undesignated center heading preceding §27.61 is removed and §27.61 is removed and reserved.

§§ 27.62-27.67   [Removed and Reserved]

10. Sections 27.62 – 27.67 are removed and reserved.

§ 27.69   [Removed and Reserved]

11. Section 27.69 is removed and reserved.

§ 27.72   [Removed and Reserved]

12. Section 27.72 is removed and reserved.

13. Section 27.80 is revised to read as follows:

§ 27.80   Fees; review classification, futures classification and supervision.

For services rendered by the Cotton and Tobacco Programs pursuant to this subpart, whether the cotton involved is tenderable or not, the person requesting the services shall pay fees as follows:

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

(d) Futures classification—$3.50 per bale.

Dated: January 30, 2012

David R. Shipman
Acting Administrator
Agricultural Marketing Service.

[FR Doc. 2012-2382 Filed 02/02/2012 at 8:45 am; Publication Date: 02/03/2012]