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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 27

[AMS-CN-13-0043]

RIN: 0581-AD33

Cotton Futures Classification: Optional Classification Procedure

AGENCY: Agricultural Marketing Service, USDA

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending
regulations to allow for the addition of an optional cotton
futures classification procedure - identified and known as
"registration" by the U.S. cotton industry and the
Intercontinental Exchange (ICE). In response to requests from
the U.S. cotton industry and ICE, AMS will offer a futures
classification option whereby cotton bales may be certificated
for the purpose of an exchange's cotton futures contract using
Smith-Doxey data to verify that submitted bales meet more
restrictive quality requirements and age parameters established
by that exchange. AMS anticipates that the futures
classification option will be available in time for the
implementation of ICE's Cotton Resolution No. 2, which is
scheduled to commence with the March 2014 contract month.

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EFFECTIVE DATE: [Insert 1 day after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Room 11, 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 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

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 businesses.

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 60 cotton merchant organizations of various sizes active in trading U.S. cotton. Cotton merchants voluntarily use the AMS cotton futures classification services 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). Establishing the registration option for cotton futures classification will not significantly affect small businesses as defined in the RFA because:

(1) The established user fee for cotton futures classification services is $3.50 per bale (7 CFR § 27.80). Users choosing the registration option would incur no additional charges;

(2) The established cotton futures classification fee represents a very small portion of the cost per-unit currently borne by those entities utilizing the service;

(3) The average price paid to producers for cotton from the 2012 crop was 73.22 cents per pound, making a 500 pound bale of cotton worth an average of $366.10. The current user fee for futures classification services, $3.50 per bale, is less than

one percent of the average value of a bale of cotton;

(4) The fee for this service will not affect competition in the marketplace;

(5) The futures classification option is expected to streamline marketing and create logistical efficiencies for all entities utilizing this option; and

(6) The use of futures classification services is voluntary. For fiscal year 2013, there were 913,179 cotton futures samples (approximately 5.4 percent of the 16,942,409 Smith-Doxey classifications) voluntarily submitted for the futures classification service.

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements associated with this rule have been previously approved by OMB and were assigned OMB control number 0581-0008, Cotton Classing, Testing, And Standards.

Background

The Act requires USDA-verified quality measurements for each bale to be included in futures contracts for the purpose of verifying that each bale meets the minimum quality requirements for cotton futures trading. Furthermore, the Act authorizes the charging of user fees required to recover the cost associated

with providing futures quality verification services.

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 AMS 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 data to assign quality-adjusted market values to U.S. cotton and market U.S. cotton both domestically and internationally. Smith-Doxey data is commonly used by the cotton merchant community to indicate which bales may be tenderable against a cotton futures contract.

Conventional procedures employed for verifying quality measurements for bales to be included in futures contracts consists of two futures classifications: 1) initial futures classification and 2) final futures classification. AMS, Cotton and Tobacco Program revised these procedures to incorporate

Smith-Doxey data into the cotton futures classification process in March 2012 (77 FR 5379). When verified by a futures classification, Smith-Doxey data serves as an initial futures classification with the verifying futures classification serving as a final futures classification. The use of Smith-Doxey data significantly reduced the number of futures classifications required for many of the bales that were submitted for certification.

The successful incorporation of Smith-Doxey data into the futures classification procedures prompted the U.S. cotton industry and ICE to request that the AMS, Cotton and Tobacco Program use Smith-Doxey data to certify that bales submitted for quality verification meet more restrictive quality requirements and age parameters set by ICE for use in a cotton futures contract. The U.S. cotton industry and ICE refer to this optional procedure as the "registration option".

The established user fee for cotton futures classification services is $3.50 per bale (7 CFR 27.80). Customers choosing this cotton futures classification option will incur this charge. In the event that AMS determines that a bale submitted under this option fails to meet quality or age parameters set by the exchange inspection agency, the owner of the bale will be notified of the bale's failure.

AMS, Cotton and Tobacco Program is amending regulations in 7 CFR part 27 to allow for the use of original Smith-Doxey data to certify that bales submitted for quality verification meet quality and age parameters set by the applicable exchange inspection agency. Accordingly, the definition of "Classification" in § 27.2, paragraph (n) is amended to allow the registration option for the futures classification services. Also in § 27.2, the term "Smith-Doxey data" is defined in new paragraphs (p).

Summary of Comments

A proposed rule was published in the Federal Register on September 9, 2013, with a comment period of September 9, 2013 through October 9, 2013 (78 FR 54970). AMS received two comments: one from a national trade organization representing cotton merchant firms that handle over 80 percent of the U.S. cotton sold in domestic and foreign markets; and one from an American commodities exchange that operates regulated exchanges and clearing houses for energy, agricultural, credit, currency, emissions, and equity index products. Both comments expressed support for all provisions outlined in the proposed rule and the future classification services provided by the AMS Cotton and Tobacco Program. Comments may be viewed at www.regulations.gov.

The U.S. cotton industry and ICE requested that AMS, Cotton

and Tobacco Program make this option available in December 2013

to coincide with the implementation of ICE's Cotton Resolution

No. 2, which is scheduled to commence with the March 2014

contract month. Accordingly, pursuant to 5 U.S.C 553, it is

found and determined that good cause exists for not postponing

the effective date of this rule until 30 days after publication

in the Federal Register.

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 to read as follows:

PART 27 - [Amended]

1. The authority citation for 7 CFR part 27 is revised to

read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 473b, 7 U.S.C. 1622(g).

2. In § 27.2, paragraph (n) is revised and new paragraph

(p) is added to read as follows:

§ 27.2 Terms defined.

*   *   *   *   *

(n) *Classification*. The classification of any cotton shall

be determined by the quality of a sample in accordance with the

Universal Cotton Standards (the official cotton standards of the

United States) for cotton property measurements of American

Upland cotton. High Volume Instruments will determine all

cotton property measurements except extraneous matter. Cotton

classers authorized by the Cotton and Tobacco Program will

determine the presence of extraneous matter. Original Smith-

Doxey data may serve as certification that bales submitted for

quality verification meet quality and age parameters set by an

applicable exchange inspection agency as a futures

classification option.

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(p) *Smith-Doxey data*. Data reflecting the original

classification of a cotton bale provided to producers of cotton

under the Smith-Doxey Act of April 13, 1937 (Pub. L. 75–28).

Dated: November 5, 2013

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service.

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