

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 28

[AMS-CN-15-0051]

#### Classification of Foreign-Growth Cotton

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is amending regulations pertaining to administrative and operational procedures for the classification of foreign-growth cotton. In anticipation that cotton merchants may want to use AMS cotton quality determinations to establish foreign-growth cotton as tenderable against the World Cotton futures contract offered by the Intercontinental Exchange (ICE), representatives of the U.S. cotton industry and ICE formally requested that AMS make any regulatory amendments necessary to better accommodate the classification of foreign-growth cotton. Consequently, AMS seeks to clarify the existing language, update the terms and practices described to comply with today's industry norms and current cotton classification technologies, and establish procedural safeguards to the classification process for foreign-growth cotton that promote accuracy.

**DATES:** This direct final rule is effective April 11, 2016, without further action or notice, unless significant adverse comment is received by March 11, 2016. If significant adverse comment is received, AMS will publish a timely withdrawal of the rule in the **Federal Register**.

**ADDRESSES:** Written comments may be submitted to the addresses specified below. All comments will be made

available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publically disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Comments, identified by AMS-CN-15-0051, may be submitted electronically through the *Federal eRulemaking Portal* at <http://www.regulations.gov>. Please follow the instructions for submitting comments. In addition, comments may be submitted by mail or hand delivery to Darryl Earnest, Deputy Administrator, Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Room 11, Memphis, TN 38133. Comments should be submitted in triplicate. All comments will be available for public inspection during regular business hours at Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. A copy of this rule may be found at: [www.regulations.gov](http://www.regulations.gov).

**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 email at [darryl.earnest@ams.usda.gov](mailto:darryl.earnest@ams.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The U.S. cotton industry and the International Cotton Association (ICA) requested that Intercontinental Exchange (ICE) offer a World Cotton futures contract to better manage price risk in the global cotton market. In response, ICE began offering World Cotton futures contracts on November 2, 2015. With this contract offering, cotton grown outside the United States is allowed to participate in a U.S. commodity exchange for the first time.

The new contract is intended to serve as a price discovery and risk management vehicle for a broad set of cotton traded internationally. Unlike the Cotton No. 2 futures contract, which prices the delivery of U.S. cotton for U.S. delivery points only, the new World Cotton futures contract prices the delivery of cotton regardless of growth for U.S. and foreign delivery points. Cotton grown in the United States,

Australia, Brazil, India, and the west African countries of Benin, Burkina Faso, Cameroon, Ivory Coast and Mali will be eligible for deliveries against the new World Cotton futures contract.

To facilitate the participation of foreign-growth cotton in the World Cotton futures contract, Congress amended the U.S. Cotton Futures Act (Act) (Pub. L. 114-36, July 20, 2015, 129 Stat. 435). This amendment allows for foreign-growth cotton to participate in U.S. cotton futures contracts without being subject to the provisions of the Act. While all cotton grown in the U.S. that is offered as tenderable against any cotton futures contract traded on a U.S. commodity exchange must continue to comply with the Act, commodity exchanges are now able to determine their own contract provisions for foreign-growth cotton. Of particular relevance are the contract provisions that establish the portion of the foreign-growth cotton in each lot that must have official quality determinations and that specify what entities are eligible to make such official determinations of quality for this foreign-growth cotton. Consequently, ICE established a provision requiring that at least twenty percent of the foreign-growth cotton in a lot meet specified quality parameters. ICE also designated AMS and International Cotton Association (ICA) Bremen as two entities eligible to make official cotton quality determinations for its World Cotton futures contract.

In anticipation that cotton merchants may want to use AMS cotton quality determinations to establish foreign-growth cotton as tenderable against the World Cotton futures contract, the U.S. cotton industry and ICE formally requested that the AMS, Cotton & Tobacco Program make any regulatory amendments necessary to better accommodate the classification of foreign-growth cotton. Since the November 2nd offering of the World Cotton futures contract, merchants have already contacted AMS, requesting that foreign-growth cotton samples be classified.

With foreign-growth cotton excluded from the provisions of the U.S. Cotton Futures Act, AMS is no longer authorized to certify the quality of foreign-growth cotton as tenderable against a cotton futures contract as it does for U.S. cotton. However, AMS may provide cotton quality

determinations for foreign-growth cotton under the authority of Cotton Statistics and Estimates Act (7 U.S.C. 471–476). Regulations pertaining to the classification of foreign-growth cotton are found in 7 CFR part 28 in subpart B. Upon review of these regulations, AMS determined that amendments to both administrative and classification procedures are required.

Historically, very little foreign-growth cotton has been imported and, until recently, foreign-growth cotton was not able to be tendered against futures contracts offered by U.S. commodity exchanges. For these reasons, demand for AMS' foreign-growth cotton classification services was almost exclusively limited to providing classification data intended for non-commercial/research purposes only. Significant differences exist between the procedures and processes employed for generating classification data intended for commercial use and classification data intended for non-commercial use.

Cotton classification data that is intended for commercial use is generated by a set of processes and procedures that have multiple safeguards that contribute to confidence in the data's accuracy. One prominent procedural safeguard specifically for commercial classification of cotton futures requires each sample submitted to be classed twice—an initial classification (a.k.a., set-up classification) and an automatic review classification (a.k.a., final classification). In the event that the initial and review classifications fail a statistical comparison, a third classification is performed and its measurements considered in the final quality measurements assigned. Furthermore, in instances where a merchant submits the bale's Permanent Bale Identification (PBI) number along with the futures sample, statistical comparisons are made between the original Smith-Doxey classification data and the futures classification data. None of these safeguards are included in the current regulations pertaining to foreign-growth cotton, making the quality data resulting from current foreign-growth cotton classification procedures unsuitable for commercial use. Therefore, AMS is amending regulations in 7 CFR part 28 to help assure that foreign-growth cotton is classified according to the same rigor as U.S. grown cotton.

#### Subpart A

Subpart A of part 28 defines the administrative and operational regulations pertaining to the classification of Form A determinations, Form C determinations, Form D

determinations, and Micronaire reading services. Amendments in this subpart are limited to sections that are referenced in subpart B and are necessary to comply with recent administrative changes, to be consistent with current industry norms, and to add clarification.

The terms "Division", "Quality Control Section", and "Universal standards" and their definitions are amended in § 28.2, paragraphs (g), (j) and (q), respectively. The terms "Division" and "Quality Control Section", were changed by administrative action. "Division" was changed to "Program" at the same time the Cotton Division and the Tobacco Division were merged into the Cotton and Tobacco Program. Therefore, the term "Division" in paragraph (g) of § 28.2 is replaced by "Program" and the term "Cotton Division" is replaced by "Cotton and Tobacco Program" in the definition of "Program". Likewise, the term "Division" in §§ 28.121 and 28.177 is replaced by "Program". The "Quality Control Section" of the Cotton and Tobacco Program was changed to the "Quality Assurance Division" by administrative action. Therefore, the term "Quality Control Section" in paragraph (j) of § 28.2 is replaced by "Quality Assurance Division". Likewise, the term "Quality Control" in § 28.32(a) subparagraph (3) is replaced by "Quality Assurance" and "Quality Control Section" is replaced by "Quality Assurance Division" in § 28.177. The Universal Cotton Standards are the official cotton standards of the United States. To ensure accuracy and consistency within the regulatory text, the term "Universal standards" in paragraph (q) of § 28.2 is replaced by "Universal Cotton Standards" and the definition is amended to include a note about familiar versions of this term. Likewise, § 28.35 is amended by adding "the Universal Cotton Standards," to clearly identify in part 28 the official cotton standards of the United States.

Both Classing Offices and the Quality Assurance Division provide the services specified in part 28. Therefore, the authorities granted to the Area Director in §§ 28.36 and 28.37 are extended to the Quality Assurance Director also. For the same reason, the term "Classing Office" in § 28.37 is replaced with the broader term, "Program".

It is generally accepted that the term "grade" specifically pertains to color or leaf quality measures. To more accurately reflect that differences in quality between two sub-samples drawn from the same bale may extend beyond just color or leaf grade and staple length, "grade" in the heading of § 28.38 is

replaced with "class" and the phrase "grade or shorter length" in this same section is replaced by the more generic term, "class".

The practice of reducing cotton in grade for the presence of extraneous matter or other irregularities was common when a "grade" reflected multiple quality characteristics. However, this practice has been replaced by the issuance of quality metrics for each individual quality characteristic. Therefore, the current language in § 28.39 is removed and the section number is held in reserve.

Terms pertaining to cotton classification are defined in § 28.40. Since these terms were last amended, several have become irrelevant or are in need of updating to comply with current industry norms and practices. Furthermore, several new terms have become commonplace within the industry and need to be added to the regulations. Amendments are made to paragraphs (a), (c), (d), (g), and (h). In paragraph (a), the definition of the obsolete term, "Cotton of perished staple", is replaced by the new term "Fire-Damaged Cotton" and its definition. The definition of the obsolete term, "Gin-cut cotton", in paragraph (c) is replaced by the new term, "Extraneous Matter", and its definition. Amendments to the definition of Re-ginned cotton in paragraph (d) are intended to add clarity to the definition and specify that the owner of the cotton or owner's agent are responsible for identifying re-ginned cotton. The definition of "Mixed-packed cotton" in paragraph (g) is updated to reflect current cotton classification terminology and to officially assign the designation for mixed-packed cotton that has become commonplace within the industry. "Water-packed cotton", which is defined in paragraph (h), is now more commonly called "water-damaged cotton". In addition to updating the term's name, the amendment provides additional instruction on how water-damaged cotton is marked on the classification record.

Amendments to § 28.47 reflect a change in standard operating procedures, which were made possible by technological advances and motivated to provide complete information to customers. Specifically, the amendment eliminates the subjective rankings of samples ("better," "equal," or "deficient") submitted for comparison and, instead, provides objective quality measures for each sample being compared.

The term "Division", used in § 28.121 to represent the Cotton and Tobacco Program, is replaced by "Program". This

amendment more accurately reflects the current administrative structure, adding clarity to the language.

#### Subpart B

Subpart B of part 28 defines the administrative and operational regulations pertaining to the classification of foreign-growth cotton. Amendments to this subpart seek to clarify the existing language, update the terms and practices described to comply with today's industry norms and cotton classification technologies, and add procedural safeguards to the classification process that promote accuracy.

As previously stated, AMS is no longer authorized by the U.S. Cotton Futures Act to certify the quality of foreign-growth cotton as tenderable against a cotton futures contract as it does for U.S. cotton. However, AMS may provide cotton quality determinations for foreign-growth cotton that are robust enough for commercial purposes under the Cotton Statistics and Estimates Act (7 U.S.C. 471–476). Therefore the authority citation in subpart B is amended by adding “7 U.S.C. 471–476”.

The definition of “foreign-growth cotton” is clarified in § 28.175 to include both cotton produced outside of the continental United States and U.S. cotton that is sampled while being stored at a location outside of the United States. Since samples stored at foreign locations are not drawn from bales under the jurisdiction of a USDA-licensed warehouse, the expansion of the definition of foreign-growth cotton to include U.S. cotton stored at a foreign location is necessary to restrict the representation of classification data to the cotton sample submitted.

Cotton classification terms as they pertain to section 203(h) of the Agricultural Marketing Act of 1946, as amended by Public Law 272, 84th Congress, are defined in § 28.176. Amendments to paragraphs (a), (b), (c) and (d) of this section update and clarify these definitions so as to reflect the classification of foreign-growth cotton. Paragraph (a) expands the definitions of official certificate to include electronic forms; replaces “inspection, sampling, class, grade, quality, quantity, or conditions” with “fiber quality and conditions”; and replaces “products” with “samples submitted” to reflect the more limited scope of services provided under subpart B. Likewise, “inspecting, or sampling” is replaced by “and classing” throughout paragraph (b). The definition of official mark is amended in subsection (c) to limit the types of products “marked” in subpart B to

samples submitted for classification. To reflect the more limited scope of services provided under subpart B in the definition of official identification in paragraph (d), the designation of “quantity” is removed and the term “products” is replaced with “samples submitted”.

The administrative process for requesting the classification and/or comparison of foreign-growth cotton is specified in § 28.177. Amendments update these procedures, specifying that an application provided by the Program is to be used and applications are to be filed with the Quality Assurance Division or the Classing Office designated by the Deputy Administrator of the Cotton and Tobacco Program.

Physical specifications for foreign-growth cotton samples and instructions for submitting these samples to USDA for classification are specified in § 28.178. Amendments to this section include the insertion of new paragraphs (a) thru (g). New paragraphs (a) thru (f) are sample specifications for Form A, Form C and Form D determinations listed in §§ 28.25–28.27 that have been customized to facilitate the process of classifying foreign-growth cotton. New paragraph (g) contains amendments that specify the types of information that must accompany foreign-growth cotton samples. Furthermore, a statement about financial responsibility for transportation charges is removed.

New regulatory language is added to subpart B. Four new sections are inserted after § 28.178 and, therefore, current §§ 28.179–28.182 are redesignated as § 28.183 and §§ 28.185–28.187, respectively.

New language, derived from §§ 28.28–28.30 under subpart A, is added to redesignated §§ 28.179–28.180. This language pertains to financial responsibility for lost or damaged samples and the return and subsequent ownership of U.S. cotton samples submitted for classification. The language was added in order to clearly state that the Program is not financially responsible for lost or damaged samples, and that samples of foreign-growth cotton submitted for classification/comparison become the property of the Program.

New language, based on § 28.19 under subpart A, is added to redesignated § 28.181. It states the right of applicants to withdraw a request for classification/comparison before classing begins and the obligation of applicants to pay for requested services if the classification/comparison process has already begun.

The terms for denial of services expressed in § 28.31 in subpart A are

revised and added to redesignated § 28.182 in order to promote clarity.

Methods of foreign-growth cotton classification and comparison are stipulated in redesignated § 28.183 and its paragraphs. New paragraph (a) is a modified version of § 28.8, while new paragraph (b) refers directly to §§ 28.36 through 28.40 for additional procedures and methods pertaining to the classification of foreign-growth cotton samples. Newly designated paragraph (c) refers to §§ 28.45 through 28.47 for procedures and methods used for comparison of cotton samples.

Since cotton classification results are most commonly communicated electronically, new § 28.184 is added to define the types of information to be included in electronic cotton classification reports. Reports must identify that classification records represent only the samples submitted rather than a particular bale of cotton. This information is necessary because the sampling procedures for foreign-growth cotton are not conducted by or under the supervision of a USDA-licensed agent.

Redesignated § 28.185 defines the information to be included in an optional cotton classification memorandum. The amendment to this section includes the elimination of references to a Classing Office performing the classification. References to the Universal Cotton Standards are corrected in paragraph (d). New language in paragraph (e) explicitly states that classification data resulting from foreign-growth classification/comparison services applies only to the sample submitted. The amendment to new subsection (f) requires that the signature of the Director of the facility providing the classification service be applied to the memorandum rather than just the signature of the Area Director of the Classing Office. This amendment is appropriate since all classification/comparison of foreign-growth cotton may be conducted under the supervision of the Quality Assurance Division.

Amendments to redesignated § 28.186 make immediate review classifications automatic for foreign-growth cotton. Immediate reviews to verify initial classifications are appropriate given that resubmitting samples for an optional review classification at some later date is cost prohibitive. The amendment also states that the cost of an automatic review is included in the classification fee for foreign-growth cotton.

Amendments clarifying to which entity memorandum are surrendered and who has the authority to request the

surrender of memorandum are stated in the redesignated § 28.187.

Amendments to redesignated § 28.188 change which sections in subpart A are cited, limiting citations to only those that pertain specifically to fee amounts. Citations of §§ 28.115, 28.122–28.123 are removed since they do not apply to this subpart. Citations of §§ 28.120 and 28.121 are removed since they require language specific to foreign-growth cotton. Since similar language will exist in a new section of this subpart, citation of § 28.125 is removed. Citation of § 28.126 is removed since it does not exist in current regulations. References to “costs” and “method of payment” are removed from this paragraph as these issues are covered in other amendments. Lastly, the term “foreign-growth cotton” replaces the phrase “cotton produced outside the continental United States” because it is not consistent with previous amendments.

New § 28.189 is derived from § 28.120, explicitly stating that expenses related to sampling and transporting samples are the financial responsibility of the owner of the cotton or the owner’s agent. This section relieves the Program of any financial responsibility for the stated expenses.

New § 28.190 refers back to § 28.121 in order to define when advance deposits are required for services rendered under this subpart.

New § 28.191 defines the acceptable methods of payment or advance deposit for foreign-growth cotton classification services.

New § 28.192 is the same as § 28.125 in subpart A. It is being restated in this subpart for clarity.

### **B. Good Cause Finding That Proposed Rulemaking Is Unnecessary**

Rulemaking under section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) ordinarily involves publication of a notice of proposed rulemaking in the **Federal Register** and the public is given an opportunity to comment on the proposed rule; however, an agency may issue a rule without prior notice and comment procedures if it determines for good cause that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest for such rule, and incorporates a statement of the finding with the underlying reasons in the final rule issued.

As described in this **Federal Register** notice, regulations in 7 CFR part 28 pertaining to administrative and operational procedures for the classification of foreign-growth cotton are being amended to assure that

foreign-growth cotton is classified according to the same rigor as U.S. grown cotton. For the reasons mentioned in section A of this preamble, AMS finds that publishing a proposed rule and seeking public comment is unnecessary because the U.S. cotton industry and ICE have made formal declaration of their support of any regulatory amendments necessary to better accommodate the classification of foreign-growth cotton. Furthermore, implementation of the rule materially enhances the value of U.S. cotton by allowing U.S. cotton merchants to forward cotton onward through the supply chain—store at locations closer to foreign customers—while still providing the price risk mitigating benefits of a futures market. Reducing the transactional costs of cotton marketing will help cotton compete for market share with man-made fibers. Storing cotton closer to customers allows for U.S. merchants to meet demand faster, reducing competitive disadvantage with merchants of cotton grown in the Eastern hemisphere and with manufacturers of man-made synthetic fibers. Therefore, the publishing of a proposed rule and seeking public comment is contrary to the public interest.

If AMS receives significant adverse comment during the comment period, it will publish, in a timely manner, a document in the **Federal Register** withdrawing this direct final rule. AMS will then address public comments in a subsequent direct final rule. AMS will not institute a second comment period on this rulemaking. Any parties interested in commenting must do so during this comment period.

### **C. Regulatory Impact Analysis**

#### *Executive Order 13175*

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

#### *Executive Order 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to access all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the

importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a “non-significant regulatory action” under section 3(f) of Executive Order 12866, and therefore, review has been waived, and this action has not been reviewed by the Office of Management and Budget.

#### *Executive Order 12988*

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

#### *Regulatory Flexibility 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 sixty 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). The Small Business Administration defines, in 13 CFR part 121, small agricultural service firms as having receipts of no more than \$7,500,000. Many of these cotton merchants are small businesses under this criterion. Some of these U.S. cotton merchants, along with non-U.S. cotton merchants, may request AMS classification services for foreign-growth cotton in order to use USDA’s official cotton quality determinations to establish foreign-growth cotton as tenderable against the World Cotton

futures contract. Expanding cotton classification services for foreign-growth cotton will not significantly affect small businesses as defined in the RFA because:

- (1) The use of foreign-growth cotton classification services would be voluntary;
- (2) The fee for this service will not affect competition in the marketplace;
- (3) The per-sample user fee for foreign-growth cotton classification services, determined using standardized formulas established by The Department of Agriculture for calculating and implementing the fees charged by AMS user-funded programs (79 FR 67313), is anticipated to represent a very small portion of the cost per-unit currently borne by those entities that would utilize the service; and
- (4) The 2014 crop-year average "A" Index—a proxy for world price of cotton—was 83.90 cents per pound, making a 500 pound bale of cotton worth an average of \$419.50. The user fee for foreign-growth cotton classification services is anticipated to be less than 1.5 percent of this average value of a bale of cotton on the world market.

*Paperwork Reduction Act*

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 contained in the provisions to be amended by this rule have been previously approved by OMB and were assigned OMB control number 0581-0008, Cotton Classing, Testing, And Standards.

A 30-day comment period is provided to comment on the amendments described herein. This period is deemed appropriate because this rule will enhance access to cotton marketing tools that assist cotton merchants in managing cotton price risk in a very competitive global fiber market. Reducing the transactional cost of cotton marketing will help cotton compete for market share with man-made fibers.

**List of Subjects in 7 CFR Part 28**

Commodity futures, Cotton.

For the reasons set forth in the preamble, 7 CFR part 28 is amended to read as follows:

**PART 28—[AMENDED]**

■ 1. The authority citation for subpart A of 7 CFR part 28 continues to read as follows:

**Authority:** 7 U.S.C. 55 and 61.

■ 2. Amend § 28.2 to revise paragraphs (g), (j) and (q) to read as follows:

**§ 28.2 Terms defined.**

\* \* \* \* \*

(g) *Program.* The Cotton and Tobacco Program of the Agricultural Marketing Service.

\* \* \* \* \*

(j) *Quality Assurance Division.* The national classing supervision office at Memphis, Tennessee performing final review of cotton classification.

\* \* \* \* \*

(q) *Universal Cotton Standards.* The official cotton standards of the United States for the grade of American upland cotton. May be referenced informally as "Universal standards."

\* \* \* \* \*

■ 3. Amend § 28.32 to revise paragraph (a)(3) to read as follows:

**§ 28.32 Misrepresentation; deceptive or fraudulent acts or practices; violations.**

\* \* \* \* \*

(a) \* \* \*

(3) the making, issuing, or using of any memorandum or certificate of classification issued by a Classing Office or the Quality Assurance Division or

\* \* \* \* \*

■ 4. Revise § 28.35 to read as follows:

**§ 28.35 Method of classification.**

All cotton samples shall be classified on the basis of the Universal Cotton Standards, the official cotton standards of the United States in effect at the time of classification.

■ 5. Revise § 28.36 to read as follows:

**§ 28.36 Order of classification.**

All samples for which classification requests are pending shall be classified, as far as practicable, in the order in which the samples are delivered for classification. When in the opinion of the Area Director or Quality Assurance Director there is a need to deviate from this order of classification, the director shall designate which samples will be given priority in classification.

■ 6. Revise § 28.37 to read as follows:

**§ 28.37 Exposing of samples for classification.**

Classification shall not proceed until the samples, after being delivered to the Program, shall have been exposed for such length of time as in the judgment of the Area Director or Quality Assurance Director shall be sufficient to put them in proper condition for the purpose.

■ 7. Revise § 28.38 to read as follows:

**§ 28.38 Lower class (of two samples) to determine classification.**

If a sample drawn from one portion of a bale is lower class than one drawn from another portion of such bale, except as otherwise provided in this subpart, the classification of the bale shall be that of the sample showing the lower class.

**§ 28.39 [Removed and Reserved]**

■ 8. Remove and reserve § 28.39.

■ 9. Revise paragraphs (a), (c), (d), (g), and (h) of § 28.40 to read as follows:

**§ 28.40 Terms defined; cotton classification.**

\* \* \* \* \*

(a) *Fire-damaged cotton.* In those cases where it is certain that the cotton is fire damaged, the classification record shall be marked Code 97 (Fire-Damaged Upland Cotton saw ginned) and no official color grade assigned to the sample.

\* \* \* \* \*

(c) *Extraneous matter.* Extraneous matter is any substance appearing in a cotton sample that is not discernible in the official cotton standards. Such material may consist of rough preparation, sand, dust, oil, grass, whole seeds, parts of seeds, motes, spindle twist, bark, stems, cloth and plastic.

(d) *Re-ginned cotton.* Cotton that, after having been ginned and baled, has been subjected to a ginning process and then re-baled. Responsibility for identifying cotton, which has been actually re-ginned, rests with the owner of the cotton or the owner's agent.

\* \* \* \* \*

(g) *Mixed-packed cotton.* Cotton in a bale which, in the sample taken therefrom, shows a difference of two or more color grades, and/or a difference of two or more color groups, or grade of the other side that is one color grade and one color group higher between the two portions of the sample. White, Light Spotted, Spotted, Tinged, and Yellow Stained shall each constitute a color group. The classification assigned will be that of the portion showing the lower color grade. The classification record for the bale will contain a code 75, to designate mixed quality.

(h) *Water-damaged cotton.* Cotton in a bale that has been penetrated by water during the baling process, causing damage to the fiber, or a bale that through exposure to the weather or by other means, while apparently dry on the exterior, has been damaged by water in the interior. If such condition can be ascertained, the classification record shall be marked Code 98 (Water-Damaged Upland Cotton saw ginned)

and no official color grade will be assigned.

- 10. Revise § 28.47 to read as follows:

**§ 28.47 Statement of finding for comparisons.**

For requests to compare samples to a type, findings shall be stated in terms of the classification of each sample submitted, the classification of the type as measured by the official cotton standards of the United States, and other explanatory notations as needed.

- 11. Revise § 28.121 to read as follows:

**§ 28.121 Advance deposits.**

Upon request, the person from whom any payment under this subpart may become due shall make an advance deposit to cover such payment in such amount as may be necessary in the judgment of the official of the Program requesting the same.

**Subpart B—Classification for Foreign-Growth Cotton**

- 12. The authority citation for subpart B of 7 CFR part 28 is revised to read as follows:

**Authority:** Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624); 7 U.S.C. 471–476.

- 13. Revise subpart B heading to read as set forth above.
- 14. Revise § 28.175 to read as follows:

**§ 28.175 Administrative and general.**

Insofar as applicable, and not inconsistent with this subpart, the provisions of subpart A of this part shall likewise apply to the classification and comparison of foreign-growth cotton. For the purposes of this subpart, foreign-growth cotton is defined as either cotton produced outside the continental United States or cotton produced in the continental United States but it is stored in and sample submitted for classification from location outside the continental United States.

- 15. Amend § 28.176 by revising paragraphs (a), (b), (c) and (d) to read as follows:

**§ 28.176 Designation of official certificates, memoranda, marks, other identifications, and devices for purpose of the Agricultural Marketing Act.**

\* \* \* \* \*

(a) Official certificate means any form of certification, either written, printed or electronic, used under this subpart to certify with respect to the fiber quality and conditions of samples submitted (including the compliance of submitted samples with applicable specifications).

(b) Official memorandum means any initial record of findings made by an

authorized person in the process of grading and classing, pursuant to this subpart, any processing or plant-operation report made by an authorized person in connection with grading and classing under this subpart, and any report made by an authorized person of services performed pursuant to this subpart.

(c) Official mark, for the purposes of this subpart, means the grade mark, inspection mark, and any other mark associated only with the samples submitted to the Department for classification.

(d) Official identification means any United States (U.S.) standard designation of class, grade, quality, or condition specified in this subpart or any symbol, stamp, label, or seal indicating that the submitted sample has been officially graded and/or indicating the class, grade, quality, or condition of the submitted sample.

\* \* \* \* \*

- 16. Revise § 28.177 to read as follows:

**§ 28.177 Request for classification and comparison of cotton.**

The applicant shall make a separate request, using an application supplied by the Program, for each lot or mark of cotton that the applicant desires classified or compared separately. All requests for classification or comparison shall be filed with the Quality Assurance Division or the Classing Office designated by the Deputy Administrator of the Cotton and Tobacco Program.

- 17. Revise § 28.178 to read as follows:

**§ 28.178 Submission of cotton samples.**

Samples for foreign-growth cotton classification or comparison shall be drawn, handled, identified, and shipped according to the methods and procedures specified in this section. Any samples or set of samples which do not meet these specified requirements may be rejected by the Program.

(a) Samples shall be freshly drawn.

(b) Each sample shall consist of two portions, one drawn from each side of the bale. Each portion shall be at least six (6) inches (15.25 cm) wide and approximately twelve (12) inches (30.5 cm) long and shall weigh at least eight (8) ounces (227 grams).

(c) Dressing, trimming, or discarding part of the sample is prohibited. No part of the cotton or pieces of bagging, leaf, grass, dirt, sand, or any other material shall be removed from either side of the sample.

(d) A barcoded coupon showing the correct location/warehouse code and bale number along with the name and address of owner/owner's agent shall be

placed between the two portions of each sample.

(e) Samples shall be identified and sacked immediately after they are cut without further handling prior to shipment to the Program.

(f) Samples shall be addressed to and mailed, shipped, or delivered direct to the Program without being routed through the owner of the cotton or the owner's agent. All expenses related to the sampling and transportation of samples—including but not limited to any fees related to Customs clearance such as fumigation and/or phytosanitary certification—shall be prepaid by the owner of the cotton or the owner's agent.

(g) All foreign-growth cotton samples submitted for classification and/or comparison shall be enclosed in one or more wrappers, which shall be labeled or marked, or both, in such manner as to show the location/warehouse code; name and address of the owner/owner's agent; the number of bales represented by the samples in each wrapper; and such other information as may be necessary in accordance with the instructions of the Deputy Administrator.

- 18. Redesignate §§ 28.179, 28.180, 28.181, 28.182, and 28.183 as §§ 28.183, 28.185, 28.186, 28.187, and 28.188 respectively.

- 19. Add new § 28.179 to read as follows:

**§ 28.179 Lost or damaged samples.**

The Program is not responsible for compensating the owner or owner's agent of cotton samples that are lost, damaged or mutilated prior to the Program taking receipt of said samples. The Program shall inform applicants in the event that samples are lost, damaged or mutilated.

- 20. Add new § 28.180 to read as follows:

**§ 28.180 No return of samples.**

Samples submitted for foreign-growth classification and/or comparison will not be returned to the applicant. Loosed cotton samples shall become the property of the Program.

- 21. Add new § 28.181 to read as follows:

**§ 28.181 Withdrawal of classification request.**

Any classification or comparison request may be withdrawn by the applicant at any time before the classification of the cotton covered thereby. If the withdrawal request is communicated after the classification/comparison has been started, the

applicant shall pay the fees prescribed in § 28.188.

■ 22. Add new § 28.182 to read as follows:

**§ 28.182 Denial of service.**

The Deputy Administrator may for good cause, including the acts or practices set forth in § 28.32(a) or any knowing violation of the regulations in this subpart, deny any person, including the agents, officers, subsidiaries, or affiliates of such person, from any or all benefits of this subpart for a specified period, after notice and opportunity for hearing has been afforded. Procedures outlined, or referred, in part 50 of this chapter (7 CFR 50.1 through 50.12) shall govern proceedings under this section.

■ 23. Revise redesignated § 28.183 to read as follows:

**§ 28.183 Methods of cotton classification and comparison.**

(a) The classification of foreign-growth cotton samples 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 the color grade and the leaf grade of Upland Cotton, the length of staple, and fiber property measurements such as length uniformity, strength, and micronaire. High Volume Instruments will determine all fiber property measurements except the determination of the presence of extraneous matter, special conditions and remarks. High Volume Instrument colorimeter measurements will be used for determining the official color grade. Cotton classers certified by the Cotton and Tobacco Program will determine the presence of extraneous matter, special conditions and remarks and authorized employees of the Cotton and Tobacco Program will determine all fiber property measurements using High Volume Instruments. The classification record issued by the Quality Assurance Division with respect to any cotton sample shall be deemed to be the classification record of the Department.

(b) Additional procedures and methods pertaining to the classification of foreign-growth cotton samples are outlined in §§ 28.36 through 28.40.

(c) When a comparison of such cotton samples with other actual samples or with a type is requested, the procedure and methods shall be as outlined in §§ 28.45 through 28.47.

■ 24. Add § 28.184 to read as follows:

**§ 28.184 Availability of electronic cotton classification data.**

As soon as practicable after the classification or comparison of cotton

has been completed, electronic cotton classification data for each sample submitted will be made available for the owner or the owner's agent to retrieve. The data record transmitted is representative of only the sample submitted by the owner or the owner's agent rather than any particular cotton bale.

■ 25. In redesignated § 28.185, revise the introductory text and paragraph (d); redesignate paragraph (e) as (f); add a new paragraph (e); and revise redesignated paragraph (f) to read as follows:

**§ 28.185 Issuance of cotton classification memoranda.**

Upon request, there shall be issued a cotton classification memorandum which shall embody within its written or printed terms:

\* \* \* \* \*

(d) A statement that any classification made has been on the basis of the Universal Cotton Standards (the official cotton standards of the United States) at the time of such classification.

(e) A statement that any classification made applies only to the samples as submitted by the owner or the owner's agent and does not purport to represent any particular cotton bales.

(f) The signature of the Director of the facility providing the classification service and the date of issuance of the memorandum.

■ 26. Revise redesignated § 28.186 to read as follows:

**§ 28.186 Review of cotton classification or comparison.**

An immediate review of every classification or comparison made pursuant to this subpart is performed automatically. Therefore, separate review classification services for foreign-growth cotton are not offered by the Program. Costs associated with such review classifications are integrated into the fees established in § 28.188.

■ 27. Revise redesignated § 28.187 to read as follows:

**§ 28.187 Surrender of memoranda.**

For good cause, any memorandum issued under this subpart shall be surrendered to the Program, upon the request of the Director of the Quality Assurance Division, and a new memorandum complying with this subpart issued in substitution therefor. If the memorandum is not surrendered upon such request, it shall nevertheless be invalid for the purpose of this subpart.

■ 28. Revise redesignated § 28.188 to read as follows:

**§ 28.188 Fee amounts.**

The provisions of §§ 28.116 through 28.119 relating to fees shall apply to services performed with respect to foreign-growth cotton.

■ 29. Add § 28.189 to read as follows:

**§ 28.189 Expenses to be borne by party requesting classification.**

For any samples submitted for foreign-growth classification, all expenses related to the sampling and transportation of samples, which may include but is not limited to any fees related to Customs clearance such as fumigation and/or phytosanitary certification, shall be prepaid by the owner of the cotton or the owner's agent.

■ 30. Add § 28.190 to read as follows:

**§ 28.190 Advance deposits.**

Advance deposit requirements for services rendered under this subpart are specified in § 28.121.

■ 31. Add § 28.191 to read as follows:

**§ 28.191 Payments methods.**

Acceptable methods of payment or advance deposit for fees specified in § 28.188 are as follows:

(a) Credit card (Visa, MasterCard, Discover, or American Express): For remittance of payment by credit card, cardholder's name, billing address, credit card number, expiration date, etc. are required.

(b) Wire transfers/Electronic Fund Transfers (EFT): Electronic payments are processed through the Federal Reserve Bank. Customer/company name and government issued identification number are required. All fees associated with wire transfers/EFT are the responsibility of the remitter. Orders will not be processed until the total amount of the order is collected.

(c) Check: Checks must be drawn on a United States bank in United States currency and include the bank routing number on the check. Checks should be made payable to "USDA, AMS, Cotton and Tobacco Program".

■ 32. Add § 28.192 to read as follows:

**§ 28.192 No voiding or modifying claims for payment.**

Nothing in this subpart shall be construed to void or modify any claim which a person or party requesting and paying for a service may have against any other person or party for the payment of part or all of such costs.

Dated: February 3, 2016.

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

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