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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[CN-06-001]

RIN 0581-AC58

#### 7 CFR Part 28

#### User Fees for 2006 Crop Cotton Classification Services to Growers

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

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) will maintain user fees for cotton producers for 2006 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2005. This is in accordance with the formula provided in the Uniform Cotton Classing Fees Act of 1987. The 2005 user fee for this classification service was \$1.85 per bale. This rule would maintain the fee for the 2006 crop at \$1.85 per bale. The fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

**DATES:** Effective Date: August 17, 2006.

**FOR FURTHER INFORMATION CONTACT:**

Darryl Earnest, Deputy Administrator, Cotton Program, AMS, USDA, Room 2641-S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250-0224. Telephone (202) 720-2145, facsimile (202) 690-1718, or e-mail [darryl.earnest@usda.gov](mailto:darryl.earnest@usda.gov).

**SUPPLEMENTARY INFORMATION:** A proposed rule detailing the revisions was published in the **Federal Register** on April 20, 2006 (71 FR 20350). A 15-day comment period was provided for interested persons to respond to the proposed rule. During the 15-day comment period, one comment was received from the National Cotton Council in support of the proposed rule,

the continued use of the legislative formula for establishing the cotton user fees, and the cotton classing services provided.

#### 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. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that may be exhausted prior to any judicial challenge to the provisions of this rule.

#### Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) 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 an estimated 35,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR § 121.201). Continuing the user fee at the 2005 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2005 user fee for classification services was \$1.85 per bale; the fee for the 2006 crop would be maintained at \$1.85 per bale.)

(2) The fee for services will not affect competition in the marketplace; and

(3) The use of classification services is voluntary. For the 2005 crop, 23,703,000 bales were produced; and, almost all of

these bales were voluntarily submitted by growers for the classification service.

(4) Based on the average price paid to growers for cotton from the 2004 crop of 41.6 cents per pound, 500 pound bales of cotton are worth an average of \$208 each. The proposed user fee for classification services, \$1.85 per bale, is less than one percent of the value of an average bale of cotton.

#### Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), 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-AC58.

#### *Fees for Classification Under the Cotton Statistics and Estimates Act of 1927*

The user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was \$1.85 per bale during the 2005 harvest season as determined by using the formula provided in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102-237. The fees cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This rule establishes the user fee charged to producers for HVI classification at \$1.85 per bale during the 2006 harvest season.

Public Law 102-237 amended the formula in the Uniform Cotton Classing Fees Act of 1987 for establishing the producer's classification fee so that the producer's fee is based on the prevailing method of classification requested by producers during the previous year. HVI classing was the prevailing method of cotton classification requested by producers in 2005. Therefore, the 2006 producer's user fee for classification service is based on the 2005 base fee for HVI classification.

The fee was calculated by applying the formula specified in the Uniform Cotton Classing Fees Act of 1987, as amended by Public Law 102-237. The 2005 base fee for HVI classification exclusive of adjustments, as provided by the Act, was \$2.37 per bale. An increase of 3.29 percent, or 8 cents per bale, due to the implicit price deflator of the gross

domestic product added to the \$2.37 would result in a 2006 base fee of \$2.45 per bale. The formula in the Act provides for the use of the percentage change in the implicit price deflator of the gross national product (as indexed for the most recent 12-month period for which statistics are available). However, gross national product has been replaced by gross domestic product by the Department of Commerce as a more appropriate measure for the short-term monitoring and analysis of the U.S. economy.

The number of bales to be classed by the United States Department of Agriculture from the 2006 crop is estimated at 20,268,150 bales. The 2006 base fee was decreased 15 percent based on the estimated number of bales to be classed (1 percent for every 100,000 bales or portion thereof above the base of 12,500,000, limited to a maximum decreased adjustment of 15 percent). This percentage factor amounts to a 37 cents per bale reduction and was subtracted from the 2006 base fee of \$2.45 per bale, resulting in a fee of \$2.08 per bale.

However, with a fee of \$2.08 per bale, the projected operating reserve would be 35.74 percent. The Act specifies that the Secretary shall not establish a fee which, when combined with other sources of revenue, will result in a projected operating reserve of more than 25 percent. Accordingly, the fee of \$2.08 must be reduced by 23 cents per bale, to \$1.85 per bale, to provide an ending accumulated operating reserve for the fiscal year of not more than 25 percent of the projected cost of operating the program. This would establish the 2006 season fee at \$1.85 per bale.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at \$1.85 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987, as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909 (c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of \$5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910 (c) concerning the fee for new classification memoranda issued from the National

database for the business convenience of an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of \$5.00 per sheet.

The fee for review classification in § 28.911 would be maintained at \$1.85 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

Pursuant to 5 U.S.C. 553, good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because this rule maintains user fees for 2006 crop cotton classification services under the Cotton Statistics and Estimates Act at the same level as in 2005 and a 15-day comment period was provided for public comment and one favorable comment was received.

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

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

■ For the reasons set forth in the preamble, 7 CFR Part 28 is amended as follows:

**PART 28—[AMENDED]**

■ 1. The authority citation for 7 CFR Part 28, Subpart D, continues to read as follows:

**Authority:** 7 U.S.C. 471–476.

■ 2. In § 28.909, paragraph (b) is revised to read as follows:

**§ 28.909 Costs.**

\* \* \* \* \*

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is \$1.85 per bale.

\* \* \* \* \*

■ 3. In § 28.911, the last sentence of paragraph (a) is revised to read as follows:

**§ 28.911 Review classification.**

(a) \* \* \* The fee for review classification is \$1.85 per bale.

\* \* \* \* \*

Dated: August 9, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6–13476 Filed 8–15–06; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 1260**

[No. LS–01–06]

**Amendment to the Beef Promotion and Research Rules and Regulations—Final Rule**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Beef Promotion and Research Order (Order) established under the Beef Promotion and Research Act of 1985 (Act) to reduce assessment levels for imported beef and beef products based on revised determinations of live animal equivalencies and to update and expand the Harmonized Tariff System (HTS) numbers and categories, which identify imported live cattle, beef, and beef products to conform with recent updates in the numbers and categories used by the U.S. Customs and Border Protection (Customs).

**DATES:** *Effective Date:* September 15, 2006.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Chief, Marketing Programs Branch, Room 2638–S, Livestock and Seed Program, Agricultural Marketing Service (AMS), USDA, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; facsimile 202/720–1125; telephone 202/720–1115, or by e-mail at *Kenneth.Payne@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect.

Section 11 of the Act provides that nothing in the Act may be construed to preempt or supersede any other program relating to beef promotion organized and operated under the laws of the United States or any State. There are no administrative proceedings that must be exhausted prior to any judicial challenge to the provisions of this rule.

**Regulatory Flexibility Act**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA)(5