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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Doc. # AMS–CN–09–0011; CN–09–001]

User Fees for 2009 Crop Cotton Classification Services to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will raise user fees for cotton producers for 2009 crop cotton classification services under the Cotton Statistics and Estimates Act. These user fees also are authorized under the Cotton Standards Act of 1923. The 2008 user fee for this classification service was $2.00 per bale. This rule will raise the fee for the 2009 crop to $2.20 per bale. The proposed fee and the existing reserve are sufficient to cover the costs of providing classification services, including costs for administration and supervision.

DATES: *Effective Date:* Effective July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton and Tobacco Program, AMS, USDA, Room 2639–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.*

SUPPLEMENTARY INFORMATION: A proposed rule detailing the revisions was published in the **Federal Register** on March 26, 2009 (74 FR 13128). A 15-day comment period was provided for interested persons to respond to the proposed rule. Two comments were received from national cotton industry organizations in support of the service and the need for the fee increase.

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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule will 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 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 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 an estimated 25,000 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). The increase above the 2008 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 2008 user fee for classification services was $2.00 per bale; the fee for the 2009 crop would be increased to $2.20 per bale; the 2009 crop is estimated at 14,500,000 bales).

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

(3) The use of classification services is voluntary. For the 2008 crop, 12,740,000 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 2007 crop of 53.50 cents per pound, 500 pound bales of cotton are worth an average of $267.50 each. The proposed user fee increase for classification services, $.20 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. 3501–3520), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–AC43.

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

This final rule will establish the user fee charged to producers for High Volume Instrument (HVI) classification at $2.20 per bale for the 2009 cotton crop. The 2009 user fee charged to cotton producers for HVI classification was calculated using new methodology, as was authorized by section 14201 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234) (2008 Farm Bill). In previous years, the fee was determined using a user-fee formula mandated in the Uniform Cotton Classing Fees Act of 1987 (Pub. L. 100–108, 101 Stat. 728) (1987 Act), as amended. This formula used the previous year's base fee that was adjusted for inflation and economies of size (1 percent decrease/increase for every 100,000 bales above/below 12.5 million bales with maximum adjustment being ±15 percent). The user fee was then further adjusted to comply with operating reserve constraints (between 10 and 25 percent of projected operating costs) specified by the 1987 Act.

The 2008 user fee charged to cotton producers for High Volume Instrument (HVI) classification services under the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476) was $2.00 per bale during the 2008 harvest season as determined by using the formula provided in the 1987 Act. The fee covered salaries, costs of equipment and supplies, and other overhead costs, including costs for administration and supervision. Also, the fee structure for the 2007 crop year was incorporated under the authority of the Cotton Standards Act of 1923 (7 U.S.C. 51–65),

by an interim final rule effective October 1, 2007 (72 FR 56242).

Section 14201 of the 2008 Farm Bill provides that: (1) The Secretary shall make available cotton classification services to producers of cotton, and provide for the collection of classification fees from participating producers or agents that voluntarily agree to collect and remit the fees on behalf of the producers; (2) classification fees collected and the proceeds from the sales of samples submitted for classification shall, to the extent practicable, be used to pay the cost of the services provided, including administrative and supervisory costs; (3) the Secretary shall announce a uniform classification fee and any applicable surcharge for classification services not later than June 1 of the year in which the fee applies; and (4) in establishing the amount of fees under this section, the Secretary shall consult with representatives of the United States cotton industry. At pages 313–314, the Joint Explanatory Statement of the committee of conference for section 14201 stated the expectation that the cotton classification fee would be established in the same manner as was applied during the 1992 through 2007 fiscal years. The classification fee should continue to be a basic, uniform fee per bale fee as determined necessary to maintain cost-effective cotton classification service. Further, in consulting with the cotton industry, the Secretary should demonstrate the level of fees necessary to maintain effective cotton classification services and provide the Department of Agriculture with an adequate operating reserve, while also working to limit adjustments in the year-to-year fee.

Under the provisions of section 14201, a user fee (dollar per bale classed) is established that, when combined with other sources of revenue, will result in projected revenues sufficient to reasonably cover budgeted costs—adjusted for inflation—and allow for adequate operating reserves to be maintained. Costs considered in this method include salaries, costs of equipment and supplies, and other overhead costs, such as facility costs and costs for administration and supervision. In addition to covering expected costs, the user fee is set such that projected revenues will generate an operating reserve adequate to effectively manage uncertainties related to crop size and cash-flow timing while meeting minimum reserve requirements set by the Agricultural Marketing Service, which require maintenance of a reserve fund amount equal to four months of projected operating costs.

Extensive consultations regarding the establishment of the classification fee with U.S. cotton industry representatives were held during the period from September 2008 through January 2009 during numerous publicly held meetings. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers were addressed in various industry-sponsored forums.

The user fee established to be charged cotton producers for High Volume Instrument (HVI) classification in 2009 is $2.20 per bale. This fee is based on the pre-season projection that 14.5 million bales will be classed by the United States Department of Agriculture during the 2009 crop year.

Accordingly § 28.909, paragraph (b) will reflect the increase of the HVI classification fee to $2.20 per bale.

A 5 cent per bale discount will 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 will 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 will remain at 5 cents per bale. The fee in § 28.910 (b) for an owner receiving classification data from the National database will remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period will 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 will increase to $2.20 per bale.

The fee for returning samples after classification in § 28.911 will remain at 50 cents per sample.

In addition to raising user fees for the 2009 crop cotton classification services to $2.20 per bale, this rule finalizes the provisions of the interim final rule published in the **Federal Register** at 72FR56242 on October 3, 2007.

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 uniform user fees for 2009 crop cotton classification services as mandated by the Cotton Statistics and Estimates Act. The earliest harvest and classification of 2009 cotton will occur during July, and the law mandates that the user fee be established sufficiently early so that a uniform fee is charged for the classification of the entire 2009 cotton crop, which will extend from July 2009 to May 2010. Only two comments were received during the public comment period provided in the proposal, and both were supportive of the need for the user fee increase.

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.

PART 28—[AMENDED]

■ For the reasons set forth in the preamble, 7 CFR part 28 is amended by revising subpart D to read as follows:

Subpart D—Cotton Classification and Market News Service for Producers

Sec.

Definitions

28.901 Definitions.

Administration

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Classification and Market News Services

28.903 Classification of samples.
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28.907 Responsibilities of licensed gins or warehouses.
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Subpart D—Cotton Classification and Market News Service for Producers

Authority: 7 U.S.C. 51–65; 7 U.S.C. 471–476.

Definitions

§ 28.901 Definitions.

When used in the regulations in this subpart:

(a) *Act* means the United States Cotton Standards Act of 1923, as amended (7 U.S.C. 51–65) and the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476), unless otherwise noted.

(b) *Service* means the Agricultural Marketing Service of the United States Department of Agriculture.

(c) *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Service to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act for the Administrator.

(d) *Division* means the Cotton Division of the Agricultural Marketing Service.

(e) *Director* means the Director of the Cotton Division, or any officer or employee of the Division to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act for the Director.

(f) *Producer* means any individual, partnership, corporation, association, trust, estate, or other legal entity, a State or political subdivision thereof, or any agency of such State or political subdivision producing American Upland or American Pima cotton in the capacity of landowner, landlord, tenant, or sharecropper.

Administration

§ 28.902 Director.

The Director shall perform for and under the supervision of the Administrator, such duties as the Administrator may require in enforcing the regulations in this subpart.

Classification and Market News Services

§ 28.903 Classification of samples.

The Director, or an authorized representative, upon the receipt of a producer's cotton sample which complies with the regulations in this subpart shall, as hereinafter provided, furnish to such producer or to an agent designated by the producer the classification in accordance with the official cotton standards of the United States.

§ 28.904 Market news.

The Director shall cause to be distributed to producers of cotton and to others on request, timely information on prices for various qualities of cotton.

Sampling

§ 28.906 Sampling arrangements.

(a) Cotton must be sampled by a gin or warehouse that holds a valid license to sample cotton issued pursuant to §§ 28.20 through 28.22.

(b) The Director, or an authorized representative may direct that sampling be performed by employees of the Department of Agriculture for the purpose of appraising the sampling procedures at cotton gins or warehouses, or for the purpose of providing service to producers in special cases where a licensed gin or warehouse is not available.

§ 28.907 Responsibilities of licensed gins or warehouses.

Each licensee shall be primarily responsible for drawing, identifying, handling, and shipping samples of cotton in accordance with this subpart and with instructions furnished by the Director or an authorized representative from time to time.

§ 28.908 Samples.

(a) *Only one sample to be submitted.* Only one sample from each bale of eligible cotton shall be submitted for classification under this subpart. This does not prohibit the submission of an additional sample from a bale for review classification if the producer so desires.

(b) *Drawing of samples manual.* (1) Each cut sample shall be drawn from the bale after it is tied out following the ginning process, and shall be approximately 6 ounces in weight, not less than 3 ounces of which are to be drawn from each side of the bale: *Provided,* That each sample from a bale of American Pima cotton shall be approximately 10 ounces in weight, not less than 5 ounces of which are to be drawn from each side of the bale.

(2) Where it is necessary to draw two sets of samples, a single cut should be made in each side of the bale, and the portion of cotton removed from each cut should be broken in half across the layers to provide two complete samples. In those cases where this method would result in samples of insufficient length, it will be acceptable to split the sample lengthwise along the layers, provided the outside portion from each side is submitted for the official classification.

(c) *Mechanical sampling.* Samples may be drawn in gins equipped with mechanical samplers approved by the Division and operated according to sampling instructions furnished by the Director or an authorized representative. Such samples shall not be less than 6 ounces in weight.

(d) *Samples must be representative.* Each sample must be representative of the bale from which drawn.

(e) *Handling samples.* Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their representative character. Samples shall be handled only by employees of the licensee prior to shipment or delivery to the cotton classing office of the Division.

(f) *Identifying and shipping samples.* Each sample shall be identified with a tag, supplied or approved by the Division, bearing the gin or warehouse number of the bale from which the sample was drawn and the name and address of the producer of the bale. The tag shall be placed between the two halves of the sample, the sample tightly rolled and enclosed in a package or bag for shipment. Each package or bag shall be labeled or marked with the name and address of the licensed gin or warehouse. The packages shall be shipped or delivered direct to the cotton classing office serving the territory in which the cotton is ginned. Samples that were drawn by a mechanical sampler at the gin may be transported with the bales to the warehouse and then shipped or delivered direct to the classing office by the warehouse.

(g) *Request for classification.* Samples received from a licensed gin or warehouse with the identification tag required in § 28.908(f) shall constitute a request for classification service by the producer.

§ 28.909 Costs.

(a) Costs incident to sampling, tagging, and identification of samples and transporting samples to points of shipment shall be assumed by the producer, but tags and containers for the shipment of samples and shipping charges via U.S. Postal Service or duly authorized common carrier will be furnished by the service. After classification the samples shall become the property of the Government. The proceeds of the sale of cotton samples shall be used to defray the costs of providing the services under this subpart.

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $2.20 per bale.

(c) The Division will periodically bill producers or the voluntary agents designated by producers for the cost of classification. A discount of 5 cents per sample will be granted for services provide under this section when billing is made to voluntary agents.

Classification

§ 28.910 Classification of samples and issuance of classification data.

(a)(1) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

(i) Computer diskettes,

(ii) Computer tapes, or

(iii) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

(2) When an additional copy of the classification memorandum is issued by any method listed in paragraph (a)(1) of this section, there will be a charge of five cents per bale. If provided as an additional method of data transfer, the minimum fee for each tape or diskette issued shall be $10.00.

(b) Owners of cotton, other than producers, may receive classification data showing the official quality determination of each sample by means of telecommunications from a central database to be maintained by the Division. The fee for this service shall be five cents per bale, with all long distance telephone line charges paid by the receiver of data. The minimum charge assessed for services obtained from the central database be $5.00 per monthly billing period.

(c) Upon request of an owner of cotton for which classification memoranda have been issued under the subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be 15 cents per bale or a minimum of $5.00 per sheet.

§ 28.911 Review classification.

(a) A producer may request one review classification for each bale of eligible cotton. The fee for review classification is $2.20 per bale.

(b) Samples for review classification must be drawn by gins or warehouses licensed pursuant to §§ 28.20 through 28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 50 cents per sample in addition to the fee established above in this section.

Limitations of Services

§ 28.917 Limitations of Services.

The Director, or an authorized representative, may suspend, terminate, or withhold cotton classing and market news services to any producer upon any failure of the producer to comply with the act or these regulations. Failure to remit fees for classification services shall result in loss of service.

Dated: June 2, 2009.

David R. Shipman,

Acting Administrator.

[FR Doc. E9–13148 Filed 6–2–09; 4:15 pm]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2009–0036]

Karnal Bunt; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to remove certain areas or fields in Riverside County, CA, from the list of regulated areas based on our determination that those areas or fields meet our criteria for release from regulation of Karnal bunt, a fungal disease of wheat. This action is needed to relieve restrictions on certain areas or fields that are no longer necessary.

DATES: This interim rule is effective June 4, 2009. We will consider all comments that we receive on or before August 3, 2009.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2009-0036* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2009–0036, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2009–0036.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, Karnal Bunt Program Manager, Plant Pathogen and Weed Programs, EDP, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1236; (301) 734–7228.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the fungus *Tilletia indica* (Mitra) Mundkur and is spread primarily through the planting of infected seed followed by very specific environmental conditions matched during specific stages of wheat growth. Some countries in the international wheat market regulate Karnal bunt as a fungal disease requiring quarantine; therefore, without measures taken by the Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture, to prevent its spread, the presence of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Upon detection of Karnal bunt in Arizona in March of 1996, Federal quarantine and emergency actions were imposed to prevent the interstate spread of the disease to other wheat-producing areas in the United States. The quarantine continues in effect, although it has since been modified, both in terms of its physical boundaries and in terms of its restrictions on the production and movement of regulated articles from regulated areas. The regulations regarding Karnal bunt are set forth in 7 CFR 301.89–1 through 301.89–16 (referred to below as the regulations). Articles regulated for Karnal bunt are listed in § 301.89–2. Conditions for determining whether an area is regulated for Karnal bunt are set forth in § 301.89–3.