

position that has a substantially greater impact on agency performance; and

(3) The need to retain a senior professional whose contributions are critical to the agency and who is likely to leave the agency in the absence of a pay increase.

(c) Each off-cycle pay increase that is based upon such factors as are described in paragraphs (b)(1) through (3) of this section must be documented in accordance with § 534.507(b) through (e), except that the agency must also provide information to explain how each applicable factor was considered in determining the pay increase. This information may be derived from the agency's written pay procedures established under § 534.505, agency performance management system activities, or other sources the agency deems useful for this purpose.

(d) If the maximum rate of basic pay applicable to an agency's senior professionals increases during the one year period following the annual pay adjustment under § 534.507(a)(1) for reasons other than a change in the certification status of an applicable performance appraisal system, the agency head or the designee who performs the functions identified in § 430.404(a)(6) of this chapter may consider whether, and to what extent, an additional pay increase may be warranted for a senior professional based on the same criteria used in determining his or her annual pay increase. However, if the increase in maximum rate of basic pay is due to a change in the certification status of an applicable performance appraisal system, the requirements of paragraphs (a), (b), and (c) of this section apply.

(e) An off-cycle pay increase granted under this section will be effective prospectively, not retroactively.

#### **§ 534.511 Exemption from performance appraisal requirements.**

(a) An agency responsible for setting and adjusting rates of basic pay for SL or ST employees or positions excluded from performance appraisal by or under statute is, with respect to those employees or positions, exempt from any provision of this subpart to the extent that it makes a pay determination contingent upon performance appraisal, including—

(1) Section 534.505(a)(1), (2) and (3) to the extent these paragraphs require that an agency's plan for setting and increasing rates of basic pay reflect meaningful distinctions among SL and ST employees based upon individual performance and include criteria that ensure individuals with the highest levels of individual performance, or the

greatest contributions to agency performance, or both receive the highest pay increases. The agency must still provide written procedures for setting and adjusting rates of pay for covered SL and ST employees that specify criteria that will be applied consistent with applicable law. The remaining provisions of § 534.505 apply, except for references in § 534.505(a)(5) to compliance with certification requirements, centralized review of ratings and pay actions, performance differentiation as described in § 430.404(a)(8) of this chapter, and pay differentiation as described in § 430.404(a)(9) of this chapter;

(2) Section 534.507(b), (c), (d), (e), and (f). The agency must still document in writing the basis for each pay increase under § 534.507 in accordance with criteria specified in the agency's written procedures under § 534.505(a); and

(3) Section 534.510(b) and (c). The agency must still document in writing the basis for each off-cycle pay increase under § 534.510 in accordance with criteria specified in the agency's written procedures under § 534.505(a).

(b) Except as specified in paragraph (a) of this section, an agency responsible for setting and adjusting rates of basic pay for SL or ST employees excluded from performance appraisal by or under statute is subject to the requirements of this subpart with respect to those employees.

(c) The maximum rate of basic pay for an SL or ST employee or position not subject to performance appraisal is the maximum rate described in § 534.504(a)(2)(i). An agency head who uses the exemption in paragraph (a) of this section to set the rate of basic pay for SL or ST employees who are not subject to performance appraisal may not certify that those employees are covered by a performance appraisal system meeting the certification criteria established in part 430, subpart D of this chapter for purposes of authorizing rates of basic pay above the rate for level III of the Executive Schedule.

(d) Notwithstanding paragraph (c) of this section, an agency responsible for setting and adjusting rates of basic pay for SL or ST employees or positions excluded from performance appraisal by or under statute is subject to § 534.509(a) when setting a rate of basic pay for an SL or ST employee upon transfer to such a position. The agency may also apply § 534.509(c) upon movement of an SL or ST employee whose rate of basic pay was initially set under § 534.509(a) or § 534.509(c) to another SL or ST position that is excluded from performance appraisal. Pay may be reduced upon the

movement only as provided in § 534.508. In either case, the employee will not be eligible for a pay increase until he or she is appointed to an SL or ST position that is subject to a certified performance appraisal system or until his or her rate of basic pay is less than the rate for level III of the Executive Schedule.

[FR Doc. 2011-32939 Filed 12-22-11; 8:45 am]

BILLING CODE 6325-39-P

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Parts 27 and 28**

[Doc. # AMS-CN-11-0066]

RIN 0581-AD19

#### **Revision of Cotton Classification Procedures for Determining Cotton Leaf Grade**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to revise the procedure for determining the official leaf grade for Upland and Pima cotton. The leaf grade is a part of the official classification which denotes cotton fiber quality used in cotton marketing and manufacturing of cotton products. Currently, the leaf grade is determined by visual examination and comparison to the Official Cotton Standards by qualified cotton classers. This proposed revision would replace the classer's leaf determination with the instrument leaf measurement made by the High Volume Instrument (HVI) system used in official cotton classification for Upland Cotton since 1991.

**DATES:** Comments must be received on or before January 9, 2012.

**ADDRESSES:** Interested persons may comment on the proposed rule using the following procedures:

Internet: <http://www.regulations.gov>.

Mail: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Comments should be submitted in triplicate. All comments should reference the document number, date, and page number of this issue of the **Federal Register**.

All comments will be available for public inspection at Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Memphis, TN 38133 during regular business hours. A copy of this

notice may be found at:  
[www.ams.usda.gov/cotton/rulemaking.htm](http://www.ams.usda.gov/cotton/rulemaking.htm).

**FOR FURTHER INFORMATION CONTACT:**

Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Telephone (901) 384-3060, facsimile (901) 384-3021, or email [darryl.earnest@ams.usda.gov](mailto:darryl.earnest@ams.usda.gov).

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

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, merchants, and textile manufacturers in the U.S. who voluntarily use the AMS cotton classing services annually under the United States Cotton Standards Act of 1923, as amended (7 U.S.C. 51-65), the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471-476), and the U.S. Cotton Futures Act, [7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g)]. The majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The change in procedures will not significantly affect small businesses as defined in the RFA because:

(1) Classification will continue to be based upon the Official Standards for Upland Cotton Color Grade established and maintained by the Department;

(2) The HVI measurement has been a part of the official classification record since 1991. Implementation of the revision for all cotton classification will not affect competition in the marketplace or adversely impact on cotton classification fees; and

(3) The use of cotton classification services is voluntary. For the 2010 crop, 17.6 million bales were produced by growers, and virtually all of them were voluntarily submitted for USDA classification. Futures classification services provided for merchants during the same period totaled approximately 680 thousand bales.

**Paperwork Reduction Act**

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

**Background**

AMS Cotton and Tobacco Programs propose to revise the procedures for providing cotton leaf grade classification services as authorized by the United States Cotton Standards Act of 1923, as amended, the Cotton Statistics and Estimates Act of 1927, and the U.S. Cotton Futures Act. While measurements for other quality factors are performed by precise HVIs, manual determinations for leaf grade and extraneous matter are currently part of the official USDA cotton classification. Accurate assignment of leaf grade is of economic importance to all participants along the cotton supply chain since leaf content is all waste and there is a cost factor associated with its removal. Furthermore, since small leaf particles cannot always be removed, these particles detract from the quality and, therefore, the value of the finished product.

AMS has instruments with the ability to optically identify, with a high level of confidence, the number of leaf particles (Particle Count) and to measure the surface area covered by non-lint particles (Area). AMS then applies mathematical algorithms to correlate Particle Count and Area data to Universal Leaf Grade Standards. A pilot project was conducted by AMS during 2009 and 2010 cotton classing seasons to evaluate the accuracy of the proposed instrument leaf grade determination process. Results showed that the HVI determines Official leaf grades more accurately than cotton classers. The Cotton and Tobacco Programs propose to introduce instrument leaf grading into the cotton classification process. This proposed change would improve the repeatability, consistency and accuracy of leaf grade classification data provided to the cotton industry, while

potentially improving operational efficiency.

For the reasons set forth above, this proposed rule would amend the sections in Part 28—Cotton Classing, Testing, and Standards, Subpart A—Regulations Under the United States Cotton Standards Act, which establishes the procedures for determining official cotton classification based on the Official Cotton Grade Standards. Since cotton classification services under the United States Cotton Futures Act must conform to the requirements of the Cotton Standards Act, this proposed rule would also amend the sections in Part 27—Cotton Classification Under Cotton Futures Legislation which establish the procedures for determining cotton classification for cotton submitted for futures certification.

In § 27.2 (n), the definition of the term “classification” would be revised to reflect the changes in procedures made under Part 28.

Also under part 27, § 27.31 would be revised to reflect the deletion of the requirement for cotton classers to manually determine leaf grade. The revised section would reflect the changes made in procedures for determination of cotton quality in accordance with the official standards.

In part 28, § 28.8 would be revised to reflect the change in cotton classification procedures which replaces classer visual examinations to determine leaf grade with instrument leaf measurement by High Volume Instruments.

In addition, miscellaneous other changes are proposed to be made to parts 27 and 28 to better reflect current procedures in view of leaf determination change. For example, those determinations made by cotton classers or by authorized Cotton Program employees will be specified.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. The comment period has been limited to 15 days from the date of publication to allow the cotton industry to fully benefit from the increased accuracy and repeatability of cotton leaf grade data provided by instrument leaf grading during the current classing season.

**List of Subjects**

**7 CFR Part 27**

Commodity futures, Cotton.

**7 CFR Part 28**

Administrative practice and procedure, Cotton.

For the reasons set forth in the preamble, 7 CFR parts 27 and 28 are proposed to be amended as follows:

**PART 27—[AMENDED]**

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

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

2. In § 27.2, paragraph (n) is revised 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 Official Cotton Standards of the United States for the color grade, the leaf grade, and fiber property measurements of American Upland cotton. High Volume Instruments will determine all fiber property measurements except extraneous matter. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter.

\* \* \* \* \*

3. Section 27.31 is revised to read as follows:

**§ 27.31 Classification of cotton.**

For purposes of subsection 15b(f) of The Act, classification of cotton is the determination of the quality of a sample in accordance with the Official Cotton Standards of the United States for the color grade and leaf grade of American upland cotton, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter and authorized employees of the Cotton and Tobacco Programs will determine all fiber property measurements using High Volume Instruments.

**PART 28—[AMENDED]**

4. The authority citation for 7 CFR Part 28 continues to read as follows:

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

5. Section 28.8 is revised to read as follows:

**§ 28.8 Classification of cotton; determination.**

For the purposes of The Act, the classification of any cotton shall be determined by the quality of a sample in accordance with Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements

such as micronaire. High Volume Instruments will determine all fiber property measurements except extraneous matter, special conditions and remarks. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter, special conditions and remarks and authorized employees of the Cotton and Tobacco Programs will determine all fiber property measurements using High Volume Instruments. The classification record of a Classing Office or the Quality Control Division with respect to any cotton shall be deemed to be the classification record of the Department.

Dated: December 14, 2011.

**Robert C. Keeney,**

*Acting Administrator.*

[FR Doc. 2011-32926 Filed 12-22-11; 8:45 am]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 58**

[DA-10-0055]

**Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service**

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

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the General Specifications for Dairy Plants Approved for United States Department of Agriculture (USDA) Inspection and Grading Service (General Specifications) by raising the maximum allowable somatic cell count in producer herd goat milk from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter. This will ensure that goat milk can continue to be shipped and recognizes that goats have a need for different regulatory limits for somatic cells than cows.

In addition this document proposes to eliminate mandatory sediment testing on producer milk except for milk in cans. The requirement for sediment testing has become outdated and is no longer needed.

**DATES:** Submit written or electronic comments on or before February 21, 2012.

**ADDRESSES:** You may use any of the following methods to file comments on this action:

*By mail:* Susan Sausville, Chief, Standardization Branch, Dairy Programs, STOP 0230 (Room 2746 South Building), Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250-0230

*By fax:* (202) 720-2643

*By internet:* <http://www.regulations.gov>.

*By email:*

[Susan.Sausville@ams.usda.gov](mailto:Susan.Sausville@ams.usda.gov).

Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments submitted, including name and address, if provided will be included in the record and made available to the public via <http://www.regulations.gov>. The current General Specifications are available either from the above mailing address or by accessing the following internet address: <http://www.ams.usda.gov/dairy/Genspecs.pdf>.

**FOR FURTHER INFORMATION CONTACT:**

Susan Sausville, Chief, Standardization Branch, Dairy Programs, AMS, USDA, telephone (202) 720-9382 or email [Susan.Sausville@ams.usda.gov](mailto:Susan.Sausville@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:****A. 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).

**B. Regulatory Flexibility Act**

The proposed rule has been reviewed in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), and AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

AMS provides, under the authority of the Agricultural Marketing Act of 1946, voluntary, user-fee funded inspection and grading services to approximately 400 dairy manufacturing plants. All of the dairy manufacturing plants utilizing the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

The proposed amendments would not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost to those utilizing the program would not increase.