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BY ELECTRONIC TRANSMISSION

Submission No. 08-63
November 13, 2008

Mr. David Stawick
Secretary of the Commission
Office of the Secretariat
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Request for Commission Rule Approval: Amendments to Rules 7.42(d), 7.46(b), 7.50(b), 10.03(d) and (h), 10.11, 10.12(a)(v), 10.22(a) and (d)(i), 10.24(b), 10.26(a)(iii) and (vii), 10.28(c) and 10.37–10.40 and the adoption of new Rule 7.52 - Submission Pursuant to Section 5c(c)(2) of the Act and Regulation 40.4(a)

Dear Mr. Stawick:

Pursuant to Section 5c(c)(2) of the Commodity Exchange Act, as amended, and Commission Regulation 40.4(a), ICE Futures U.S., Inc. (“Exchange”) is requesting approval of amendments to Rules 7.42(d), 7.46(b), 7.50(b), 10.03(d) and (h), 10.11, 10.12(a)(v), 10.22(a) and (d)(i), 10.24(b), 10.26(a)(iii) and (vii), 10.28(c) and 10.37–10.40 and the adoption of new Rule 7.52, attached as Exhibit A.

The amendments to Rules 7.46(b), 7.50(b) and 10.26(a) (iii) and (vii) will remove references to the Board of Cotton Examiners and a designated agent which are no longer in use. The amendment to Rule 7.42(d) will conform the Rule to the current practice of allowing a cotton warehouse applicant to post a letter of credit in lieu of the required bond.

The addition of new Rule 7.52 Duty to Notify will require a cotton warehouse operator to report to the Exchange any material and/or adverse change in its financial condition, any convictions, or failure to meet the requirements prescribed in the Rules. New Rule 7.52 is similar to Licensing Rule 7.19 applicable to coffee and cocoa warehouses and to Licensing Rule 7.64(p) applicable to FCOJ tank facilities.

The amendments to the remainder of the Cotton No. 2 rules are as follows:

- Rule 10.03(d) and (h) - redefine deliverable growths by referring specifically to geography rather than to rain or non rain grown cotton and adds a decimal point when referring to the numerical value of grams per tex;
- Rule 10.11 – clarify the meaning of what constitutes a good delivery;
- Rule 10.12 – geographically define the delivery point of New Orleans;
- Rule 10.22(a) and (d)(i) - further refine the definition of the type of cotton to be used for calculating the invoice at delivery;
- Rule 10.24(b) – change the time the deliverer must provide the receiver with the invoice and tag list from the day of delivery to the day before delivery;
- Rule 10-28 – change the weight of a portion of a sample to be provided to the receiver from three ounces to a minimum of two ounces;
- Rules 10.37 through 10.40 – revise the adjudication of delivery disputes by (i) increasing the administrative fee for appeals; (ii) increasing the interest charged claims not timely paid after final adjudication; (iii) increasing the penalty for frivolous claims; and (iv) clearly defining the terms “default” and “delivery of non-conforming cotton” and clarifying the settlement procedures for such claims.

The Exchange certifies that the amendments comply with the requirements of the Commodity Exchange Act and the rules and regulations promulgated thereunder.

The amendments were adopted by the Exchange’s Board of Directors on November 12, 2008. No substantive opposing views were expressed by members or others with respect to the amendments. The amendments and new rule will become effective on a date set by the President after approval by the Commission.

If you have any questions or need further information, please contact me at 212-748-4084 or jill.fassler@theice.com.

Sincerely,

Jill S. Fassler
Vice President
Associate General Counsel

cc: Division of Market Oversight
New York Regional Office

EXHIBIT A

(In the text of the amendments below, additions are underlined and deletions are bracketed and lined out.)

Rule 7.42. Licenses

* * *

(d) Licensed warehouses shall give such bonds or letter of credit to the Exchange as may be required by the Rules.

Rule 7.46. Samples

(a) Two (2) sets of samples shall be drawn in accordance with the Rules and the Secretary of Agriculture.

(b) The duplicate samples shall be the property of the holder of the EWR. The original samples of all bales submitted [~~to a Board of Cotton Examiners~~] for certification become the property of the United States Department of Agriculture.

[REMAINDER OF RULE UNCHANGED]

Rule 7.50. Charges for Inspection and Supervision

* * *

(b) The Exchange [~~or its designated agent~~] shall render bills to the Person requesting the aforementioned service or services. Any failure to pay the amount billed shall be reported to the Cotton Warehouse and Delivery Committee.

Rule 7.52. Duty to Notify

All Persons granted a license by the Exchange shall immediately notify Commodity Operations in writing of the occurrence of any of the following events:

(a) acquisition of a license issued by any other commodity exchange;

(b) any material and adverse change in financial condition or of an emergency event or a financial emergency (as those terms are defined in Chapter 21 of the Rules);

(c) if a Licensee is a Firm, any change in the ownership of or controlling interest in the Firm if it is a corporation, limited liability company or sole proprietorship and, if a Licensee is a partnership, any change in the identity of the general partners;

(d) any conviction, finding of guilt, confession of guilt, plea of guilty, or plea of *nolo contendere* to a felony or misdemeanor charging misrepresentation, fraud, deceit, theft, embezzlement, gambling, conversion, abuse of a fiduciary relationship or other such act on the part of the Licensee;

(e) any refusal to be granted a license of any type by any commodity exchange; withdrawal of any application for a license from any commodity exchange; suspension, or cancellation of a license or the issuance of any bar, fine, or censure against such Licensee by any commodity exchange; issuance of a cease and desist order, temporary or permanent injunction, or any other sanction or discipline through an adverse determination, voluntary settlement or otherwise, by any commodity exchange, related clearing

organization, registered futures association, self-regulatory organization or other business or professional association, the CFTC or, the Securities and Exchange Commission or equivalent authority of any state, territory, the District of Columbia or foreign country, any federal court, state court, regulatory agency not mentioned above or quasi-governmental body;

(f) becoming subject to any material unsatisfied liens or judgments;

(g) the discovery of any false statement made in or in connection with any application filed with the Exchange;

(h) the issuance of a bar by any agency of the United States from contracting with the United States;

(i) failure or inability to meet continuously the criteria for eligibility for a license, including without limitation the eligibility of any Licensed Store operated by a licensed warehouse operator, or such other qualifications as the Board may from time to time determine are in the best interests of the Exchange;

(j) failure to meet the requirements prescribed in the Rules or specified by the Board or the Cocoa, Coffee and Pulp Warehouse and License Committee from time to time; and

(k) the inability to function as a Licensee, or the inability of a Licensed Store to be used as such, due to a physical emergency such as damage to or destruction of business facilities, strike or other labor dispute, or other similar events.

Rule 10.03. Official Standards and Undeliverable Cotton

* * *

(d) Deliveries shall be for only [~~rain grown cotton or for non-rain grown cotton. Non Rain Grown Cotton shall mean cotton grown in California, Nevada, Arizona, New Mexico (except Lea County), El Paso and Pecos Valleys of Texas.~~] Eastern/Memphis/Orleans/Texas (EMOT) Upland growth cotton or Far Western Upland growth cotton. Far Western Upland growth shall be defined as cotton ginned in Arizona, California, Nevada, New Mexico (except Lea County), and the El Paso and Pecos Valleys of Texas. All Upland cotton produced in the states or areas not designated as Far Western shall be described as Eastern/ Memphis/Orleans/Texas (EMOT) growth.

* * *

(h) All cotton tenderable under a Cotton No. 2 Futures Contract must have been tested for Grams Per Tex under Department of Agriculture Regulations. Cotton with a Gram Per Tex of less than twenty-five (25.0) shall not be deliverable on contract.

Rule 10.11. Good Delivery

A tender shall be considered a good delivery when all requirements of the Rules pertaining thereto shall have been performed by both parties and can be re-delivered or a settlement made in lieu of performance thereof.

Rule 10.12. Designated Delivery Points

(a) The following are designated as points for delivery of cotton on the Cotton No. 2 Futures Contract as indicated:

* * *

(v) New Orleans, La. - The New Orleans Delivery Point includes all areas within a fifteen (15) mile radius from the New Orleans city limits.

[REMAINDER OF RULE UNCHANGED]

Rule 10.22. Invoicing and Grade and Staple Differences

(a) In the case of cotton being tendered against the Cotton No. 2 Futures Contract, it shall be invoiced by calculating in bale units the average value on or off color grade of strict low middling white (41), leaf grade 4, staple length 1-1/16 inch (34), micronaire 3.5 to 4.7, Grams Per Tex of twenty five (25.0) or higher and adding or deducting such average premium or discount to or from the notice price and figuring the net weight of the total quantity being invoiced (deliverable weight less weight allowance) by the price ascertained in the manner outlined.

* * *

(d)(i) The notice price shall be the invoice price for all cotton with a color grade of Strict Low Middling White (41), leaf grade 4, staple length of 1-1/16 inch (34) [~~one and one-sixteenth of an inch staple~~], Micronaire 3.5 to 4.7, and Grams Per Tex of twenty-five (25.0) or higher. Additions and deductions for other deliverable grades shall be made at the average of the differences quoted on the sixth (6th) Business Day prior to the Date of Delivery for corresponding grades in the spot markets designated by the Secretary of Agriculture for the purpose of quoting grade differences in accordance with the United States Cotton Futures Act and the regulations issued thereunder.

[REMAINDER OF RULE UNCHANGED]

Rule 10.24. Time of Delivery of Invoice and Documents

* * *

(b) On the Business Day prior to the Date of Delivery [~~On or~~] before 2:00 pm [~~on the Date of Delivery~~] or 2:30 pm if it is the Last Delivery Day, the Deliverer shall provide each Receiver with two (2) copies of the invoice and two (2) copies of the tag list.

[REMAINDER OF RULE UNCHANGED]

Rule 10.26. Delayed Certification

(a) When the Deliverer delivers by “delayed certification” because he is unable to tender to the Receiver certificates of grade, staple and micronaire and strength determination classed by the [~~Board of Cotton Examiners~~] USDA, on the Date of Delivery set forth in the Delivery Notice (the “stated delivery date”) as provided in Rule 10.14(b), the procedure for delivery set forth in Rule 10.14 shall be revised as follows and delivery shall take place on a later date (the “delayed delivery date”) as follows:

* * *

(iii) Certification of grade, staple, micronaire and strength reading shall be issued to the Deliverer by the [~~Board of Cotton Examiners~~] USDA promptly after classification at which time the Board shall transmit to the warehouse the Board's classification.

* * *

(vii) On or before the delayed delivery date, the Deliverer shall provide each Receiver with two (2) copies of the invoice, two (2) copies of the tag list, and certificates of grade, staple, micronaire and strength determination issued by the [~~Board of Cotton Examiners~~] USDA.

[REMAINDER OF RULE UNCHANGED]

Rule 10.28. Samples

* * *

(c) Each sample must consist of two (2) portions, one (1) drawn from each side of the bale. Each portion should be as near six (6) inches wide and twelve (12) inches long as possible. Each portion must weigh [~~at least three (3)~~] a minimum of two (2) ounces each. Samples should not be drawn from old sample holes.

[REMAINDER OF RULE UNCHANGED]

Rule 10.37. Levels of Authority for Adjudication of Claims

(a) The following levels per contract will be established for ruling on all disputed Claims:

(i) Level One: Claims up to four hundred fifty dollars (\$450.00) per contract will be ~~ruled on~~ determined by ~~[the Vice President,]~~ Commodity Operations ~~[or his designee]~~ and approved by the President and/or Chairman of the Cotton Warehouse and Delivery Committee, and upon approval, the determination shall be final and may not be appealed to any committee or the Board ~~[of Governors]~~.

(ii) Level Two: Claims of four hundred fifty-one dollars (\$451.00) to one thousand nine hundred fifty dollars (\$1,950.00) per contract will be ~~ruled on~~ determined by a Panel of the Cotton Warehouse and Delivery Committee, whose determination shall be final and ~~[shall]~~ may not be appeal~~[able]~~ed to any committee or the Board ~~[of Governors]~~.

(iii) Level Three: Claims in excess of one thousand nine hundred fifty dollars (\$1,950.00) per contract will be ruled on by a Panel of the Cotton Warehouse and Delivery Committee and ~~[will]~~ may be appeal~~[able]~~ to the Cotton Committee. If a Level Three Claim is appealed to the Cotton Committee, the Exchange shall invoice the Claimant an administrative fee of three hundred seventy-five dollars (\$375) per contract, provided, however, that no administrative fee shall be less than one thousand dollars (\$1,000.00).

(b) Notwithstanding the above, any Claim by any one (1) Customer during a delivery period in excess of fifty thousand dollars (\$50,000) ~~[would]~~ may be appeal~~[able]~~ed to the Cotton Committee.

Rule 10.38. Time Period for Payment of Disputed Claims

(a) Five (5) Business Days after receipt of written notification of final disputed Claim determination, interest at prime plus three percent (3%) shall be assessed. Payment shall be made within twenty (20) Business Days. On the twentieth (20th) Business Day, payment must be wired by 3:00 p.m. (New York Time) or an Official Teller's check or similar instrument issued by a bank or such other financial institution acceptable to the Exchange must be delivered by hand by 4:30 p.m. to the Claimant. If payment is not made in twenty (20) Business Days, the Claim payment due becomes doubled. Interest at prime plus ~~[three percent (3%)]~~ six percent (6%) shall apply to the original Claim. The Claimant will receive the original Claim money plus interest. The Exchange will receive the penalty money from the doubled Claim. If payment is not received as outlined above, the matter shall be referred to the Compliance Staff for disciplinary proceedings.

(b) Final disputed Claim determination shall mean a decision by ~~[the Vice President,]~~ Commodity Operations ~~[or his designee,]~~ and approved by the President and/or the Chairman of the Cotton Warehouse and Delivery Committee, in the case of Level One, or a Panel of the Cotton Warehouse and Delivery Committee if Level Two or by the Cotton Committee if Level Three or Claims by any one (1) Customer in excess of fifty thousand dollars (\$50,000).

Rule 10.39. Penalties for Frivolous Claims

Any Claims submitted to the Exchange which are determined by the Cotton Committee to be frivolous in nature shall subject the Claimant to a penalty payable to the Exchange of ~~[one]~~ two thousand dollars (~~[+]~~2,000.00) per contract.

Rule 10.40. Defaults in Delivery and Delivery of Nonconforming Cotton

~~[(a) A Clearing Member shall be in default who shall fail to issue a Delivery Notice, by Last Notice Day and/or fails to make delivery against said Notice as required in the Rules, in fulfillment of any sale contracts outstanding in its name after trading in the current month has ceased; or when the Deliverer fails to tender to~~

the Clearing Organization, before 4:30 pm [in the case of a Late Delivery authorized under Rule 10.24(d)(i)] or 12:00 pm (in all other cases) on the Business Day prior to the Date of Delivery, EWRs, with the appropriate classing memorandum representing the minimum net weight of forty-nine thousand five hundred (49,500) pounds of cotton.

(b) A Clearing Member shall be in default who shall fail to pay in full the amount of the Deliverer's invoice in accordance with Rule 10.25.

(c) Defaults shall be reported to the Cotton Warehouse and Delivery Committee by the Clearing Member that has failed to receive satisfaction of the contract. An intentional default shall be deemed to be a violation of the Rules.

(d) A Clearing Member who

(i) tenders EWRs for cotton which does not conform to the cotton set forth in the Delivery Notice with respect to grade, staple or type (rain grown or nonrain grown), hereinafter referred to as "non-conforming cotton," or

(ii) tenders EWRs for cotton warehoused at a delivery point other than the delivery point set forth in the Delivery Notice (provided, however, that all such cotton tendered under a contract is stored in one (1) warehouse), hereinafter referred to as "non-conforming delivery point," or

(iii) tenders EWRs for a greater or lesser number of bales than the number set forth in the Delivery Notice, hereinafter referred to as "bale variance," which tender, in any such case, otherwise meets the requirements for a good delivery pursuant to the Rules,

shall pay the following amounts to the buyer:

(A) A penalty of five dollars (\$5.00) per bale for nonconforming cotton, a penalty of five hundred dollars (\$500) per contract shall apply for each non-conforming delivery point; and a charge of five dollars (\$5.00) per bale for the number of bales delivered with respect to which there is a bale variance.

(B) The amount of proven loss incurred by the buyer by reason of any such non-conforming cotton, nonconforming delivery point or bale variance, as determined by the Cotton Warehouse and Delivery Committee.

(e) The provisions in paragraph (d) relating to non-conforming cotton shall not apply with respect to grade, staple or type (rain grown or non rain grown) to a Clearing Member who issued a Delivery Notice on delayed certification in accordance with the Rules; provided the grade, staple and type set forth in said Notice is in accordance with its best information and belief.

(f) The foregoing provisions relating to bale variance shall not apply to a Clearing Member who issues a Delivery Notice on delayed certification in accordance with the Rules, provided the number of bales actually delivered is within 10% of the number of bales set forth in the Delivery Notice. In the event the number of bales actually delivered deviates by more than 10% from the number set forth in the Delivery Notice, the foregoing provisions shall apply to the said number of bales in excess of a 10% deviation.

(i) Upon the receipt by a Clearing Member of EWRs for nonconforming cotton or with a non-conforming delivery point, or with a bale variance, it shall, within fifteen (15) days after such receipt, notify the Cotton Warehouse and Delivery Committee of such discrepancy. If a Claim is made for loss, such notice shall set forth the amount of loss, if any, which the Clearing Member claims by reason of such discrepancy and shall be accompanied by evidence in support of its Claim. The Cotton Warehouse and Delivery Committee shall promptly mail a copy of such notices to the Clearing Member from which the EWRs were transferred. Said Clearing Member shall file with the Committee, with a copy to the Claimant, a statement of its defenses to said Claim and evidence in support thereof within thirty (30) days from the date of the mailing of notice of the Claim by the Cotton Warehouse and Delivery Committee. The Committee shall promptly consider

~~said Claim and defenses and render its decision thereon, a copy of which shall be mailed to each Clearing Member affected.~~

~~(g) Violation of the Rules respecting deliveries on contract, including but not limited to the following, shall be grounds for disciplinary proceedings:~~

~~(i) the issuance by a Clearing Member of a Delivery Notice for cotton with respect to which it does not have EWRs, unless the Clearing Member issues the Delivery Notice pursuant to one of the provisos of Rule 10.14(b)(iv);~~

~~(ii) the delivery of non-conforming cotton, unless the Delivery Notice was issued on Deliverer's classification;~~

~~(iii) the delivery of cotton with a non-conforming delivery point;~~

~~(iv) the delivery of cotton with a bale variance, unless the Delivery Notice was on Deliverer's classification and the number of bales actually delivered is within 10% of the number of bales set forth in the Delivery Notice.~~

PENALTY

~~(h)(i) Where the weight of cotton delivered under a contract is less than forty nine thousand five hundred (49,500) pounds, the Deliverer shall be subject to the payment of a penalty, when claimed by the Receiver, of three cents (.03¢) per pound on the deficiency in weight and an additional penalty of four hundred ninety five dollars (\$495), being one cent (.01¢) per pound on the total minimum weight, or for any deficiency in the payment of the full amount of the invoice, plus any proven loss incurred by reason of any of said defaults as determined by the Cotton Warehouse and Delivery Committee. Where default results from the failure to issue a Delivery Notice as provided in Rule 10.14, the loss found to have been sustained by the holders of such defaulted contracts shall be allocated among the defaulting Clearing Members in proportion to the number of contracts in default.~~

~~(ii) If the one cent (.01¢) per pound penalty is waived by a Clearing Member entitled to same on any default resulting from failure to issue a Delivery Notice, the sum representing the amount waived shall be credited against the penalty due from all defaulting Clearing Members in proportion to the number of contracts in default.~~

~~(iii) Upon the occurrence of a default, each Clearing Member aggrieved thereby shall within fifteen (15) days after such default notify the Cotton Warehouse and Delivery Committee in writing of the amount of loss which it claims by reason of such default and shall submit to the Committee in writing at the same time evidence in support of its Claim. Each defaulting Clearing Member shall file with the Committee in writing its defense to said Claims and evidence in support thereof within thirty (30) days from the occurrence of said default. Each defaulting Clearing Member shall file with the Committee in writing its defense of said default. The Committee shall promptly consider said Claims and defenses and render its decision thereon, a copy of which shall be mailed to each Clearing Member affected. Each defaulting Clearing Member and each Clearing Member affected by a default shall have the right to examine the Claims, defenses, and evidence in support thereof, at the office of the Vice President, Commodity Operations at any time.~~

SETTLEMENT

~~(i) The basis of settlement for deliveries in default under the Cotton No. 2 Futures Contract shall be the value of basis Strict Low Middling Cotton 1 1/16 inch staple in deliverable form in the delivery market on the day that default is made known; provided, that where default arises from failure to issue a Delivery Notice, the basis of a settlement shall be an average of the value of the basis Strict Low Middling Cotton 1 1/16 inch staple in deliverable form in all delivery markets, as determined by the Cotton Warehouse and Delivery Committee. Where the default is made known after business hours or during a Business Day on which the Exchange is not open for Transactions in futures contracts, the~~

~~basis of settlement shall be the value of basis Strict Low Middling Cotton 1 1/16 inch staple in deliverable form on the first (1st) day thereafter on which the Exchange is open for such Transactions. A copy of the determination of the Cotton Warehouse and Delivery Committee under this Rule shall be mailed to each Clearing Member affected.~~

~~(j)(i) An appeal may be taken to the Cotton Committee by any Clearing Members affected by a decision or determination of the Cotton Warehouse and Delivery Committee under this Rule, by mailing to the Secretary of the Exchange, within seven (7) days from the mailing of a copy of said decision or determination, a notice that such Clearing Member desires to appeal therefrom. The Secretary of the Exchange shall thereupon give notice to each affected Clearing Member to submit its argument on said appeal to the Cotton Committee within fifteen (15) days from the mailing of the Secretary's notice and said arguments shall be submitted in writing within the time so prescribed. No member of the Cotton Warehouse and Delivery Committee who participated in the consideration of a Claim before that Committee shall participate in the Cotton Committee's review on appeal of the decision issued with respect to such Claim. The Cotton Committee shall, after due consideration, render its decision on the appeal, which decision shall be final.~~

~~(ii) Settlements of amounts payable under this Rule shall be collected and distributed by the Clearing Organization. In the event that the decision or determination of the Cotton Warehouse and Delivery Committee is not appealed from, the Clearing Organization shall, after the time to appeal has expired, collect and distribute the amount determined to be payable by the Cotton Warehouse and Delivery Committee without further action.]~~

(a) For the purposes of this Rule, the term "Default" shall mean any non-performance as specified in this Chapter and Chapter 7 of the Rules with respect to the terms of payment and delivery including the delivery of cotton which is cannot be retendered. Defaults include, but are not limited to, the following:

(i) the failure to issue a Delivery Notice by Last Notice Day and/or a failure to make delivery against a Delivery Notice as required in the Rules, in fulfillment of any sales contracts outstanding in its name after trading in the current month has ceased;

(ii) the failure to tender to the Clearing Organization, before 4:30 P.M. as in the case of Late Delivery authorized under Rule 10.24 (d)(i) or 12:00 P.M. in all other cases on the Business Day prior to the Date of Delivery, EWRs with the appropriate classing memorandum representing the minimum net weight of forty-nine thousand five hundred (49,500) pounds of cotton;

(iii) the failure to pay in full the amount of the invoice in accordance with Rule 10.25;

(iv) delivery of cotton which:

(A) includes bales with a color grade, leaf grade, staple length, micronaire, or strength not permitted under the United States Cotton Futures Act;

(B) includes bales with a further classification of "remarks";

(C) contains bales that have been reginned or subjected to fire;

(D) contains bales with a net weight of less than four hundred (400) pounds or more than six hundred fifty (650) pounds;

(E) is a growth other than Far Western upland growth or Eastern/Memphis/Orleans/Texas (EMOT) upland growth;

(v) the tendering of a Delivery Notice which commingles Far Western upland growth with Eastern/Memphis/Orleans/Texas (EMOT) upland growth; and/or

(vi) the tendering of a Delivery Notice or an invoice for less than ninety-two (92) bales or more than one hundred eight (108) bales.

(b) Default Penalty – If any of the conditions described in paragraph (a) of this Rule occur and apply to a Delivery Notice or invoice that has been tendered for delivery against the Cotton No. 2 Futures Contract, the Receiver shall have the following options:

(i) accept the contract with a mutually agreed settlement without applying penalties;

(ii) accept the contract with a penalty of four cents (4¢) per pound applied on the unadjusted net invoice weight;

(iii) invoice the contract back to the Deliverer in accordance with paragraph (e) if this Rule with the four cents (4¢) per pound penalty added to the invoice; or

(iv) claim the actual amount of any additional losses that the Receiver sustained as a result of the Deliverer's Default and is able to document; the amount of the award shall be determined by the Cotton Warehouse and Delivery Committee and, if the Cotton Warehouse and Delivery Committee determines that an actual loss was sustained, the Receiver shall be entitled to reimbursement for the actual losses incurred and a penalty of four cents (4¢) per pound.

(c) For the purposes of this Rule, the term "Delivery of Nonconforming Cotton" shall mean the tender of EWRs, invoice, or tag lists which do not conform to the cotton set forth in the Delivery Notice. The error(s) must be easily correctable, and the tender must otherwise meet all of the requirements for a good delivery pursuant to the Rules. Once the error(s) has been corrected, the Receiver must be able to retender said cotton without penalty. The Delivery of Nonconforming Cotton includes, but is not limited to, the following:

(i) tendering of EWRs which do not conform to the cotton set forth in the Delivery Notice with respect to color grade, leaf grade, staple, micronaire, or strength ("Nonconforming Description");

(ii) tendering of EWRs which do not conform to the cotton set forth in the Delivery Notice with respect to growth ("Nonconforming Growth");

(iii) tendering of EWRs for cotton warehoused at a Delivery Point other than the Delivery Point set forth in the Delivery Notice, provided that all cotton tendered is stored in one warehouse ("Nonconforming Delivery Point"); and/or

(iv) tendering of EWRs for a greater or lesser number of bales than the number set forth in the Delivery Notice ("Bale Variance").

(d) Delivery of Nonconforming Cotton Penalty - If any of the conditions described in paragraph (c) of this Rule occur with respect to a Delivery Notice, the Deliverer shall pay the following penalties to the Receiver:

(i) for any Nonconforming Description - five dollars (\$5.00) per bale;

(ii) for any Nonconforming Delivery Point - five hundred dollars (\$500) per contract; and

(iii) for any Bale Variance - five dollars (\$5.00) for each bale which constitutes the Bale Variance.

The Receiver also may claim the actual amount of any additional losses that the Receiver sustained as a result of the Delivery of Nonconforming Cotton and is able to document. The amount of the losses shall be determined by the Cotton Warehouse and Delivery Committee.

(e) Settlement

(i) The basis of settlement and invoicing back for Defaults shall be the value of the basis for color grade Strict Low Middling White (41), leaf grade 4, staple length 1-1/16 Inch (34), micronaire 3.5 to 4.7, and Gram Per Text of twenty-five (25.0) minimum in deliverable form in the delivery market and at the closing Settlement Price on the first (1st) Business Day following notification to the Deliverer by the Receiver that a Default has occurred.

(ii) When a Default arises from the failure to properly deliver a Delivery Notice, the basis for settlement shall be an average of the value of the basis for color grade Strict Low Middling White (41), leaf grade 4, staple length 1-1/16 Inch, micronaire 3.5 to 4.7, and Gram Per Text of twenty-five (25.0) minimum in deliverable form in the delivery market as determined by the Cotton Warehouse and Delivery Committee. If the Deliverer disputes a Claim of Default by a Receiver, the Cotton Warehouse and Delivery Committee shall make a determination with regard to the disputed Claim. If the Cotton Warehouse and Delivery Committee makes the determination that the Receiver filed a Claim for Default in error, the basis for settlement and invoicing back for the redelivery of the cotton, the refund of the four cents (4¢) per pound penalty and the compensation for any interest expense or any other additional expense that has been incurred by the Deliverer shall be determined by the Cotton Warehouse and Delivery Committee.

(f) The determinations made by the Cotton Warehouse and Delivery Committee in accordance with this Rule shall be made in writing and served on each Deliverer, Receiver and each Clearing Member involved in the Default or Nonconforming Delivery.