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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-97-13]

RIN 0581-AB50

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products: Revision of User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees charged for services provided under the dairy inspection and grading program. This rule will yield an estimated \$343,000 during 1998. The program is a voluntary, user fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. This action increases the hourly rate to \$51.00 per hour for continuous resident services and \$56.00 per hour for nonresident services between the hours of 6:00 a.m. and 6:00 p.m. The fee for nonresident services between the hours of 6:00 p.m. and 6:00 a.m. would be \$61.60 per hour. These fees represent an increase of four dollars per hour.

The fees are being increased to cover the costs of recent salary increases and locality adjustments, the costs necessary to maintain adequate levels of service during changing production and purchasing patterns within the dairy industry, the continued full funding for standardization activities, and other nonpay operating costs.

EFFECTIVE DATE: January 4, 1998.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Programs, Dairy Grading Branch, Room 2750—South Building, P.O. Box 96456,

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SUPPLEMENTARY INFORMATION: This rule has been determined to be not significant for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the AMS has considered the economic impact of this action on small entities.

There are more than 600 users of Dairy Grading Branch's inspection and grading services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This rule will raise the fee charged to businesses for voluntary inspection services and grading services for dairy and related products. Even though the fees will be raised, the increase is approximately 8 percent and will not significantly affect these entities. These businesses are under no obligation to use these services, and any decision on their part to discontinue the use of the services should not prevent them from marketing their products. The AMS estimates that overall this rule will yield an additional \$343,000 during 1998. The rule reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act of 1946.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Without a fee increase, revenue projections for FY 1998 would remain constant at \$4.695 million. Costs are projected to increase to \$5.628 million. The shortfall, if allowed to continue,

would translate into an approximate 1.6 month operating reserve at the end of FY 1998, which is less than Agency policy requires.

The AMS has determined that this action will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601).

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of maintaining the program.

FY 1997 revenue was projected to be \$4.733 million and costs to be \$5.240 million. The shortfall during the year reduced the operating reserve from 5.6 months at the beginning of the year to 3.8 months at the end of August, and is projected to further reduce the operating reserve to approximately 1.6 months at the end of FY 1998. With this proposed increase, assuming a slightly increased workload, revenue for FY 1998 is projected to be \$5.540 million with costs totaling \$5.628 million. Of these costs, the general salary increase represents \$110,000 per year and is scheduled to be effective in January 1998. Employee salaries and benefits are major program costs and account for approximately 70 percent of the total operating budget. Program travel costs (of which approximately 80 percent are reimbursed by the industry), general contract obligations and Agency overhead account for another 24 percent of the budget. Changing workloads are analyzed on a regular basis in order to maximize grading assignment efficiency and to minimize grader and supervisory costs. Future increases would be proposed as necessary in following years to cover any annual increases in program costs and to maintain the capital reserve at four months.

Since the costs of the grading program are covered entirely by user fees, it is essential that fees be increased when necessary to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on January 5, 1997. On the same effective date, the salaries of

Federal employees increased by 3 percent, which included locality pay. Also, there have been normal increases in other nonpay operating costs that include utilities, office space, and reimbursable travel. In addition, recent congressional action will result in additional salary increases of 3 percent in 1998. Although the program's operating reserves were adequate to cover the January 5, 1997, salary increase, this will not be the case for 1998 salary increases, and a fee increase is needed.

The grading program fees need to be increased to cover the costs associated with maintaining adequate levels of service during shifting production patterns within the dairy industry. The industry changes include plant consolidations, geographical shifts of dairy production areas, and changes in the types of dairy products being manufactured and offered for inspection and grading services. To minimize the necessary fee increase, the Department has initiated cost-reduction efforts which include the reduction of staff and program overhead.

On October 16, 1997, the AMS published in the **Federal Register** (62 FR 53760), a proposed rule for public comment. Only one comment was received. A U.S. Senator forwarded a constituent comment from a dairy product manufacturer to the Department for its review. That commenter opposed the proposed fee increase as harmful to the dairy industry.

The commenter was of the view that the proposed fee increase coupled with the most recent increase made effective on January 5, 1997 (61 FR 68997), is far out of line with the general economic conditions in the United States. The commenter went on to conclude that manufacturers who must have USDA inspection to sell their products domestically or internationally would bear the brunt of the fee increase. The commenter discussed passing the fee increase on to customers but stated that it would be unable to pass though the increases to its customers. The commenter further stated that it would not accept price increases from its suppliers unless it was an absolute last resort. As stated previously, the Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the service to cover, as nearly as practicable, the cost of maintaining the program. The fees, as proposed in this

rulemaking, are consistent with the provisions of the 1946 Act. The Agency conducts continuing fee analyses and has instituted annual fee increases, when necessary, to recover salary and other routine costs. The programs' financial situation described herein requires implementation of the fee increase. Even so, every effort has been and will continue to be made to operate the program as efficiently as possible and to seek cost-cutting measures that are consistent with the Agency's mission under this program.

With regard to the commenters passing increases forward or backward, such actions are subject to agreement between buyers and sellers as is any provision between the parties to require inspection. This program is a voluntary program under the 1946 Act. Even though the fees will be revised, the increase is approximately 8 percent and will not significantly affect the industry. Accordingly, consistent with the provisions of the Agricultural Marketing Act of 1946, the fees as proposed are made final in this rule.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the **Federal Register**. A revenue shortfall warrants putting the higher rates into effect as quickly as possible. The increase in fees is essential for effective management and operation of the program and to satisfy the intent of the Agricultural Marketing Act of 1946. A proposed rule setting forth proposed fee increases was published in the **Federal Register** on October 16, 1997 (62 FR 53760).

Accordingly, the program fees are being increased as set forth below.

Program Changes Adopted in the Final Rule

This rule document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from \$52.00 to \$56.00 for services performed between 6:00 a.m. and 6:00 p.m. The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel plus travel costs.

2. Increases the hourly fee for continuous resident services from \$47.00 to \$51.00. The resident hourly rate is charged to those who are using

grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round resident basis.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

1. The authority citation for part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

2. In subpart A, § 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of \$56.00 for service performed between 6:00 a.m. and 6:00 p.m. and \$61.60 for service performed between 6:00 p.m. and 6:00 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of \$51.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: December 12, 1997.

Enrique E. Figueroa,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 97–33005 Filed 12–17–97; 8:45 am]

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