

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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; Proposed Increase in Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service proposes to increase the fees charged for services provided under the dairy inspection and grading program. The program is a voluntary, user-fee program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. The proposed increases would result in a fee of \$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 proposed fees represent an increase of four dollars per hour. The fees are being increased to cover the costs of anticipated 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 operating costs.

DATES: Comments should be mailed by November 17, 1997.

ADDRESSES: Comments should be mailed to: Richard McKee, Office of the Director, USDA/AMS/Dairy Division, Room 2968-S, P.O. Box 96456, Washington, DC 20090-6456. Comments received will be available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Branch, Room 2750-South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-9381.

SUPPLEMENTARY INFORMATION: This proposed 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 proposed 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), the Agricultural Marketing Service (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 fee will be raised, the increase is approximately 8.0 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 would not prevent them from marketing their products. The Agricultural Marketing Service (AMS) estimates that overall this rule will yield an additional \$343,000 during 1998. The proposed rule reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946.

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 programs 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 Agricultural Marketing Service (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 4 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, Congress increased the salaries of Federal employees by 3.0 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 approximately 3.0 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.

Proposed Changes

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

1. Increase 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. Increase 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.

Timing of Fee Increase

It is contemplated that the proposed fee increases would be implemented on an expedited basis in order to minimize the period of revenue shortfall.

Accordingly, it is anticipated that the fee increases, if adopted, would become effective upon publication, or very soon after publication, of the final rule in the **Federal Register**. An approximate effective date would be January 4, 1998.

Also, a thirty day comment period is deemed appropriate in view of the need to implement any fee increases as early as possible in FY 1998.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours.

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, it is proposed that 7 CFR Part 58 be 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 6 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: October 8, 1997.

Lon Hatamiya,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 97–016–1]

Importation of Tomatoes From France, Morocco and Western Sahara, Chile, and Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations governing fruits and vegetables to allow tomatoes from France, Morocco and Western Sahara, and Chile to be imported into the United States subject to certain conditions. The proposed action would provide importers and consumers in the United States with additional sources of tomatoes, while continuing to provide protection against the introduction and dissemination of injurious plant pests. We are also proposing to amend the regulations pertaining to importation of tomatoes from Spain by requiring containers of pink or red tomatoes to be sealed before shipment if the containers will transit any other fruit fly supporting areas while en route to the United States, and by requiring records to be kept by Spain's plant protection service regarding trapping practices and fruit fly captures. These actions appear necessary to prevent the introduction of exotic fruit flies into the United States.

DATES: Consideration will be given only to comments received on or before December 15, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–016–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–016–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to