

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 54

[Docket Number LS-05-06]

RIN 0581-AC49

Changes in Fees for Voluntary Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the hourly fees charged for voluntary Federal meat grading and certification services performed by the Meat Grading and Certification (MGC) Branch. The hourly fees would be adjusted by this action to reflect the increased cost of providing service and to ensure that the MGC Branch operates on a financially self-supporting basis.

DATES: Comments must be received on or before May 30, 2006.

Additional Information or Comments: Interested persons are invited to submit written comments to Larry R. Meadows, Chief; USDA, AMS, LS, MGC Branch, STOP 0248, Room 2628-S, 1400 Independence Avenue, SW., Washington, DC 20250-0248; Telephone number (202) 720-1246. Comments may also be submitted electronically to Larry.Meadows@usda.gov; faxed to (202) 690-1062; or Internet: <http://www.regulations.gov>.

All comments should reference docket number LS-05-06 and note the date and page number of this issue of the **Federal Register**.

Comments received will be posted at <http://www.ams.usda.gov/lsg/mgc/rule.htm>, or may be inspected at the above address, between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of the Federal meat grading and certification services that are approximately equal to the cost of providing these services. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Program operating costs include employee salaries and benefits, which account for 80 percent of the operating costs, with travel, training, and administrative costs making up the remainder. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule for the MGC Branch would not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. The operating loss for fiscal year (FY) 2005 totaled \$1.8 million. Without a fee increase, the operating loss for FY 2006 is projected to be \$1.1 million. These combined losses will deplete MGC Branch's operating reserve and place the MGC Branch in an unstable financial position that will adversely affect its ability to provide meat grading and certification services.

This proposal is necessary to offset decreased revenue hours and increased program operating expenses incurred since the last fee increase. The MGC Branch has lost revenue due to the implementation of more efficient audit-based and pilot certification programs and the continued consolidation within the livestock and meat industry. Audit-based and pilot certification programs, while providing the same or a higher level of assurance, employ fewer personnel and, therefore, generate fewer revenue hours as compared to traditional certification services.

MGC Branch operating expenses have increased due to: (1) Cyber Security upgrades mandated by the Department and system technologies; (2) mandated salary increases for all Federal Government employees in 2004, 2005, and 2006; (3) inflation of nonsalary operating costs; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance costs.

Since the last fee increase in 2003, the MGC Branch has made efforts to control operating costs by closing 3 field offices and reducing the number of support staff by 33 percent. The MGC Branch has also increased the use of computer information systems for data collection, retrieval, and dissemination; applicant billing; and disbursement of employee entitlements. This reduction in field offices and support personnel, and the increased use of automated systems to process data has enabled the MGC Branch to absorb a substantial portion of the operating costs and minimize the need for hourly fee increases in past years. However, these management efforts have not negated the need to maintain trust fund balances to assure operating expenses are met in the future.

Despite the cost reduction efforts, the MGC Branch incurred a \$1.8 million operating loss in FY 2005. Furthermore, AMS projects that without an hourly fee increase, the MGC Branch will lose approximately \$6.5 million from FY 2006 through FY 2009, and totally deplete program reserves to the point of deficit operations (i.e. FY 2006, \$1.1 million; FY 2007, \$1.2 million; FY 2008, \$1.8 million; and FY 2009, \$2.4 million).

In view of the increased costs and decreased revenues, AMS proposes to increase the hourly fees to cover the operating deficits. The base hourly fee for commitment applicants would increase from \$55 to \$61. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly fee for noncommitment applicants would increase from \$64 to \$71. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain

number of service hours. The premium hourly fee would increase from \$70 to \$78. The premium hourly fee is charged to applicants when meat grading and certification services (1) exceed 8 hours per day, (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday, and (3) any time on Saturday or Sunday, except on legal holidays. The legal holiday fee would increase from \$110 to \$122 and is charged to applicants for meat grading and certification services provided on legal holidays.

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.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), AMS considered the economic impact of this proposed action on small entities and determined that it will not have a significant economic effect on a substantial number of small entities.

AMS, through its MGC Branch, provides voluntary Federal meat grading and certification services to 285 businesses, including 100 livestock slaughterers, 66 facilities that process federally donated products, 62 meat processors, 28 livestock producers and feeders, 9 brokers, 11 trade associations, and 9 State and Federal entities. Eighty seven percent of these businesses qualify as small entities; a company that employs less than 500 employees. Small entities generate approximately 33 percent of the MGC Branch's revenues and are under no obligation to use voluntary Federal meat grading and certification services provided under the authority of the AMA.

Federal meat grading and certification services facilitate the orderly marketing of meat and meat products and enable consumers to obtain the quality of meat they desire. Grading services consist of the evaluation of carcass beef, lamb, pork, veal, and calf in accordance with the appropriate official U.S. Standard. The MGC Branch grades approximately 20.0 billion pounds of meat each year. Certification services consist of the evaluation of meat and meat products for compliance with specification and contractual requirements. Certification services are regularly used by meat purchasers to ensure that the quality and yield of the products they purchase comply with the stated requirements. The MGC Branch certifies

approximately 22.4 billion pounds of meat and meat products each year.

This action would raise the hourly fees charged to users of Federal meat grading and certification services. AMS estimates that this action would provide the MGC Branch an additional \$210,210 in revenue per month in FY 2006. Since 245 small entities account for 33 percent of MGC Branch revenues, this action would result in an average increase of \$65 per week per applicant. This action would increase revenues by almost \$2.5 million per year and offset the projected losses of \$1.1 million in FY 2006 and \$1.2 million in FY 2007. Even with this action, the unit cost for MGC Branch service (revenue/total pounds graded and certified) would actually decrease from \$0.0006 to \$0.0005 per pound, due to increased projected grading and certification volumes.

This action is necessary to offset decreased revenue hours and increased program operating costs incurred since the last fee increase. The MGC Branch has lost revenue due to the implementation of more efficient audit-based and pilot certification programs and the continued consolidation within the livestock and meat industry. Audit-based and pilot certification programs employ fewer personnel, and, therefore, generate fewer revenue hours as compared to traditional certification services. The implementation of audit-based programs has decreased overall costs to smaller entities.

MGC Branch operating expenses have increased due to (1) Cyber Security upgrades mandated by the Department and system technologies; (2) congressionally mandated salary increases for all Federal Government employees in 2004, 2005, and 2006; (3) inflation of nonsalary operating costs; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance costs.

Since 2003, the MGC Branch has made efforts to control operating costs by closing 3 field offices and reducing the number of support staff by 33 percent. At the same time, the MGC Branch has utilized automated information management systems for data collection, retrieval, and dissemination; applicant billing; and disbursement of employee entitlements. The reduction in field offices and support personnel and the increased use of automated systems has enabled the MGC Branch to absorb a substantial portion of the operating costs and delay hourly fee increases.

Despite these cost reduction efforts and previous hourly fee increases, the MGC Branch incurred a \$1.8 million

operating loss in FY 2005. Furthermore, AMS projects that without an hourly fee increase; the MGC Branch would lose approximately \$6.5 million from FY 2006 through FY 2009 and totally deplete program reserves to the point of deficit operations.

In view of these increased costs, AMS proposes to increase the hourly fees for Federal meat grading and certification services. The base hourly fee for commitment applicants would increase from \$55 to \$61. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding legal holidays. The base hourly fee for noncommitment applicants would increase from \$64 to \$71. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain number of service hours. The premium hourly fee would increase from \$70 to \$78. The premium hourly fee is charged to applicants when meat grading and certification services (1) exceed 8 hours per day, (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday, and (3) any time on Saturday or Sunday, except on legal holidays. The legal holiday fee would increase from \$110 to \$122 and is charged to applicants for meat grading and certification services provided on legal holidays.

Civil Justice Reform

This action has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect and would not pre-empt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This action would not impose any additional reporting or recordkeeping requirements on users of Federal meat grading and certification services.

List of Subjects in 7 CFR Part 54

Food grades and standards, Food labeling, Meat and meat products.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 54 be amended as follows:

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

1. The authority citation for 7 CFR part 54 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 54.27 is amended by:

A. Removing in paragraph (a), “\$64” and adding “\$71” in its place, removing “\$70” and adding “\$78” in its place, and removing “\$110” and adding “\$122” in its place.

B. Removing in paragraph (b), “\$55” and adding “\$61” in its place, removing “\$70” and adding “\$78” in its place, and removing “\$110” and adding “\$122” in its place.

Dated: March 23, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–4519 Filed 3–28–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

RIN 0580–AA91

United States Standards for Sorghum

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to revise the United States Standards for Sorghum to amend the definitions of the classes Sorghum, White sorghum, and Tannin sorghum, and to amend the definition of nongrain sorghum. The proposal also recommends amendments to the grade limits for broken kernels and foreign material (BNFM), and the subfactor foreign material (FM). Additionally, GIPSA proposes to insert a total count limit for other material into the standards and will revise the method of certifying test weight (TW). GIPSA further proposes to change the inspection plan tolerances for BNFM and FM. These proposed changes will help to facilitate the marketing of sorghum.

DATES: Comments must be received on or before May 30, 2006.

ADDRESSES: We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- E-Mail: Send comments via electronic mail to comments.gipsa@usda.gov.
- Mail: Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- Fax: Send comments by facsimile transmission to: (202) 690–2755.
- Hand Delivery or Courier: Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647, Washington, DC 20250–3604.
- Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**.

Read Comments: All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Patrick McCluskey, telephone (202) 720–4684 at GIPSA, USDA, Room 2429 North/South Building, 1400 Independence Avenue, SW., Washington, DC, 20250–3630; Fax Number (202) 720–1015.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act (USGSA) provides in section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present any irreconcilable conflict with this rule. There are no administrative procedures, which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly

burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA and delegated states at 54 export elevators (including four floating elevators). All of these facilities are owned by multi-national corporations, large cooperatives, or public entities that do not meet the requirements for small entities established by the Small Business Administration. Most users of the official inspection and weighing services, and these entities that perform these services, do not meet the regulations for small entities. Further, the regulations are applied equally to all entities. In addition to GIPSA, there are 58 official agencies that perform official services under the United States Grain Standards Act, and most of these entities do not meet the requirements for small entities. GIPSA is proposing to amend the sorghum standards to amend the definitions of the classes Sorghum, White sorghum, and Tannin sorghum, and to amend the definition of nongrain sorghum. The proposal also recommends amendments to the grade limits of BNFM, to the grade limits of FM, and the associated inspection plan tolerances. GIPSA further proposes to insert a total count limit for other material into the sorghum standards and will revise the method of certifying TW. These proposed changes will help to facilitate the marketing of sorghum.

The U.S. sorghum industry, including producers (approximately 40,000 (USDA–2002 Census of Agriculture)), handlers, processors, and merchandisers are the primary users of the U.S. Standards for Sorghum and utilize the official standards as a common trading language to market grain sorghum. We assume that some of the entities may be small. Further, the United States Grain Standards Act (USGSA) (7 U.S.C. 87f–1) requires the registration of all persons engaged in the business of buying grain for sale in foreign commerce. In addition, those individuals who handle, weigh, or transport grain for sale in foreign commerce must also register. The USGSA regulations (7 CFR 800.30) define a foreign commerce grain business as persons who regularly engage in buying for sale, handling,