

# Rules and Regulations

Federal Register

Vol. 71, No. 187

Wednesday, September 27, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## 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:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is revising the hourly fees charged for voluntary Federal meat grading and certification services performed by the Meat Grading and Certification (MGC) Branch. The hourly fees will 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:** *Effective Date:* October 1, 2006.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Meadows, Chief, MGC Branch, telephone number (720) 497-2550 or e-mail [Larry.Meadows@usda.gov](mailto:Larry.Meadows@usda.gov).

#### 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 rule 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 will increase the hourly fees to cover the operating deficits. The base hourly fee for commitment applicants will 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 will 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 will 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 will 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 will raise the hourly fees charged to users of Federal meat grading and certification services. AMS estimates that this action will 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 will result in an average increase of \$65 per week per applicant. This action will 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) will 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 three 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 will increase the hourly fees for Federal meat grading and certification services. The base hourly fee for commitment applicants will 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 will 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 will 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 will 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 will not impose any additional reporting or recordkeeping requirements on users of Federal meat grading and certification services.

**Comments and Responses**

On March 29, 2006, AMS published a proposed rule in the **Federal Register** to increase the fees for Federal meat grading and certification services and requested comments by May 30, 2006. The Agency received two comments.

The first respondent understood the value of grading and certification services that are provided to meat packers. The respondent expanded upon the dire straits of the beef industry since the closing of export markets in December 2003. The respondent expressed that larger packers, through their size and efficiencies are able to absorb costs more easily than small packers and indicated that the new MGC Branch fee increase would negatively impact small entities. Finally, the respondent requested that AMS postpone their request for a fee increase until the beef industry shows a solid recovery and stated that this would be beneficial to all parties involved.

The Agency response to the comment is as follows:

(1) *Postpone the fee increase:* The Agricultural Marketing Act of 1946 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 service. 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. In FY 2005, the MGC Branch incurred a \$1.8 million operating loss. Without an hourly fee increase, the MGC Branch is projected to lose an additional \$6.5 million through FY 2009 and totally deplete program reserves. By law, the program must recover the cost of providing grading and certification services. Since the Agency has implemented every reasonable measure to reduce expenses, a fee increase is the only avenue available to ensure revenues equal expenses on a sustaining basis.

(2) *Consider the impact of MGC Branch costs on small meat packers:* Voluntary Federal meat grading and certification services are provided 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.

AMS is very aware of the impact that fees charged for meat grading and certification services have on all firms. In this regard, AMS attempts to provide cost-effective grading and certification services to small entities through methods which include, but are not limited to, cooperative agreements with States and cross utilization of other Federal employees in the local area. AMS will continue to explore these and other alternatives for providing cost-effective grading and certification services to small entities.

The second respondent addressed fees charged by the Food Safety and Inspection Service (FSIS) for voluntary slaughter inspection services. Accordingly, AMS will not address the comment in this final rule. The comment was forwarded to FSIS for their consideration.

#### 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:

##### § 54.27 [Amended]

■ 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: September 21, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–15853 Filed 9–26–06; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 7 CFR Part 301

[Docket No. APHIS–2006–0081]

#### Japanese Beetle; Addition of Iowa to the List of Quarantined States

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Japanese beetle quarantine and regulations by adding the State of Iowa to the list of quarantined States. That action was necessary to prevent the artificial spread of Japanese beetle into noninfested areas of the United States.

**DATES:** Effective on September 27, 2006, we are adopting as a final rule the interim rule that became effective on June 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Dr. S. Anwar Rizvi, Program Manager, Invasive Species and Pest Management,

PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4313.

#### SUPPLEMENTARY INFORMATION:

#### Background

The Japanese beetle (*Popillia japonica*) feeds on fruits, vegetables, and ornamental plants and is capable of causing damage to over 300 potential hosts. The Japanese beetle quarantine and regulations, contained in 7 CFR 301.48 through 301.48–8 (referred to below as the regulations), quarantine the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia and restrict the interstate movement of aircraft from regulated airports in these States in order to prevent the artificial spread of the Japanese beetle to noninfested States where the Japanese beetle could become established (referred to as protected States). The list of quarantined States, as well as the list of protected States, can be found in § 301.48.

In an interim rule<sup>1</sup> effective and published in the **Federal Register** on June 21, 2006 (71 FR 35491–35493, Docket No. APHIS–2006–0081), we amended the regulations by adding Iowa to the list of quarantined States in § 301.48.

Comments on the interim rule were required to be received on or before August 21, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

<sup>1</sup> To view the interim rule, go to <http://www.regulations.gov>, click on the “Advanced Search” tab, and select “Docket Search.” In the Docket ID field, enter APHIS–2006–0081, then click “Submit.” Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.