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Rules and Regulations

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[Docket Number DA–05–04]

RIN 0581–AC55

Increase in Fees for Federal Dairy Grading and Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will increase, by approximately 10 percent, the hourly fees charged for Federal dairy grading and inspection services. Dairy grading and inspection services are voluntary and are financed through user-fees assessed to participants in the program. These revisions are necessary in order to recover, as nearly as practicable, the increase in salaries of Federal employees and increases in Agency costs, and to ensure that the Dairy Grading Branch operates on a financially self-supporting basis.

DATES: Effective October 18, 2006.

FOR FURTHER INFORMATION CONTACT: Dana H. Coale, Deputy Administrator, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0225, room 2968-South, 1400 Independence Avenue, SW., Washington, DC 20250–0225, or call (202) 720–4392.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988

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 (OMB).

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

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirement set forth in the Regulatory Flexibility Act, AMS has considered the economic impact of this action on small entities. It has been determined that its provisions would not have a significant economic effect on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. If a plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Under the Agricultural Marketing Act of 1946, the Dairy Grading Branch, AMS, provides voluntary Federal inspection and dairy product grading services to about 350 plants. About 210 of these users are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Manufacturing plants participating in the voluntary plant inspection program have their facility inspected against established USDA ''General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service'' construction and sanitation requirements. Dairy products manufactured in facilities complying with the USDA inspection requirements are eligible to have their output graded against official quality standards and specifications established by AMS and certain contract provisions between buyer and seller. Products tested and graded by the Dairy Grading Branch have certificates issued describing the product's quality and condition.

AMS continually reviews its cost structure to assure it is operating efficiently while maintaining the resources necessary to meet industry's demand for services. Periodically, fees must be adjusted to ensure that the program remains financially self-supporting. To reduce costs, the Dairy Grading Branch has continued to automate its business practices. Progress to date has been significant and has resulted in savings equal to two staff years to the program. Further enhancements in automated business practices will continue to improve the efficiency and timeliness of providing inspection and grading services and information to users of these services.

Employee salaries and benefits now account for nearly 73 percent of the operating costs of the Dairy Grading Branch. Grading fees were adjusted last in 2004 (69 FR 8797). Salary increases and locality adjustments, effective January 2005 and January 2006, have resulted in an increase in employee cost of 6.1 percent. As a result, annual salary and benefit costs to the program for Fiscal Year (FY) 2006 are approximately $240,000 more than for the same number of employees in FY 2004. Inflation raised non-salary costs approximately 6.8 percent for the two-year period ending December 2005. It is expected that non-salary operating expenses will continue to increase at a rate of 3.0 percent per year. Current revenue projections using Dairy Grading Branch's current fee schedule will not provide income sufficient to cover these escalating program operation costs and maintain reserves (4 months of costs) according to AMS policy (AMS Directive 408.1).

Since projected revenues will not cover program costs while maintaining an adequate reserve, the Dairy Grading Branch will be put in an unstable financial position that will adversely affect the ability to provide dairy inspection and grading services. Without a fee increase, total revenue projections for FY 2006 are $4.980 million. Total costs for the same period of time are projected to be $5.778 million. The shortfall will reduce the trust fund balance to $1.578 million or 3.3 months of operating reserve at the end of FY 2006 which is below Agency policy.

AMS estimates these fee increases will provide the Dairy Grading Branch an additional $504,000 annually to recover program costs and to provide for continued automation of business practices.

This rule will raise the fees charged to businesses for voluntary plant inspections, grading services for dairy and related products, and the evaluation of food processing equipment. However, the impact on all businesses, including small entities is very similar. Even though fees will be increased approximately 9.7% for non-resident services and 10.5% for continuous resident services, these fee increases should not significantly affect these entities. Adjusted for inflation, the new fee schedule is actually less than in 1998. These businesses are under no obligation to use these voluntary user-fee based services and any decision on their part to discontinue the use of the services would not prevent them from marketing their products.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that this rule would have no impact on reporting, recordkeeping, or other compliance requirements for entities currently using voluntary Federal dairy inspection and grading services because they would remain identical to the current requirements.

This action does not require additional information collection that requires clearance by OMB. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same information from all participating dairy plants does not significantly disadvantage any plant that is smaller than the industry average.

Action

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 dairy inspection and grading services to facilitate the orderly marketing of dairy products and to enable consumers to obtain the quality of dairy products they desire. The AMA also provides for the collection of reasonable fees from users of the Federal dairy inspection and grading services to cover the cost of providing these services. The hourly fees are established by distributing the program's projected operating costs over the estimated service-revenue hours provided to users. AMS continually reviews its cost structure to assure it is operating efficiently while maintaining the resources necessary to meet industry's demand for services. Periodically, fees must be adjusted to ensure that the program remains financially self-supporting.

To reduce costs, the Dairy Grading Branch has continued to automate its business practices. Progress to date has been significant and has resulted in savings equal to two staff years to the program. Further enhancements in automated business practices will continue to improve the efficiency and timeliness of providing inspection and grading services and information to users of these services.

Employee salaries and benefits now account for nearly 73 percent of the operating costs of the Dairy Grading Branch. Grading fees were last adjusted in 2004 (69 FR 8797). Salary increases and locality adjustments, effective January 2005 and January 2006, have resulted in an increase in employee cost of 6.1 percent. As a result, annual salary and benefit costs to the program for FY 2006 are approximately $240,000 more than for the same number of employees in FY 2004. Inflation raised non-salary costs approximately 6.8 percent for the two-year period ending December 2005. It is expected that non-salary operating expenses will continue to increase at an annual rate of 3.0 percent and that salary and benefits will increase by 2.1 percent in January 2007. Current revenue projections using Dairy Grading Branch's current fee schedule will not provide income sufficient to cover these escalating program operation costs and maintain reserves (4 months of costs) according to AMS policy (AMS Directive 408.1).

Since projected revenues will not cover program costs while maintaining an adequate reserve, the Dairy Grading Branch will be put in an unstable financial position that will adversely affect the ability to provide dairy inspection and grading services. Without a fee increase, total revenue projections for FY 2006 are $4.980 million. Total costs for the same period of time are projected to be $5.778 million. The shortfall, if allowed to continue, would have reduced the trust fund balance to $1.578 million or 3.3 months of operating reserve at the end of FY 2006 which is below Agency policy.

In view of the above considerations, AMS proposed to increase the hourly fees associated with Federal dairy grading and inspection services. Currently the fees are $57.00 per hour for continuous resident services and $62.00 per hour for non-resident services. The proposed increases result in fees of $63.00 per hour for continuous resident services and $68.00 per hour for non-resident services between the hours of 6 a.m. and 6 p.m. The proposed fees represent increases of $6.00 per hour (10.5 percent) for continuous resident and $6.00 per hour (9.7 percent) for non-resident services. The fee for non-resident services between the hours of 6 p.m. and 6 a.m. would be $74.80 per hour. For services performed in excess of 8 hours per day and for services performed on Saturday, Sunday, and legal holidays, 1½ times the base fees would apply and result in increases to $94.50 per hour for resident grading and to $102.00 per hour for non-resident grading services.

AMS estimates these fee increases will provide the Dairy Grading Branch an additional $504,000 annually to recover program costs including providing for continued automation of business practices.

A notice of proposed rulemaking was published in the **Federal Register** on April 20, 2006 (70 FR 20351). Dairy Programs received two comments during this period.

The first comment received was a public submission in opposition to the fee increase. The commenter expressed concern that these fee increases would increase dairy product prices, and suggested that other methods of increasing revenue, such as increased use of appropriated funds, be explored. Dairy inspection and grading services are voluntary, and while they are used extensively by manufacturers of certain dairy products, they are not used by all segments of the dairy industry. This modest increase in fees is not likely to generate substantial price increases. Further, dairy inspection and grading programs are supported entirely by these user fees, not through appropriated funds. This fee increase is necessary for the program to remain self-sufficient and maintain reasonable operating reserves.

The second comment was received from the American Butter Institute (ABI). ABI expressed concern that the rate of increase in grading and inspection fees exceeds the rate of inflation since 2004, and that when combined with the 2004 fee increase, constitutes fees that are 25 percent higher than they were 30 months ago. ABI also encourages that further automation of business practices be explored to offset a larger portion of the projected revenue shortfall, rather than a large increase in fees. By our calculation, this increase will result in grading fees that are about 21 (resident grader) to 24 percent (non-resident grader) higher than that in March 2004. Prior to the April 2004 increase, grading fees had remained unchanged for 75 months. Thus on average, grading fees will have increased only about 2.4 to 2.7 percent annually since 1998, when this increase becomes effective. This longer term rate of increase is lower than average rate of inflation since 1998. Adjusted for inflation, grading fees after this increase will be lower in real dollars than they were in 1998. Dairy Programs continues to evaluate the business practices of its grading and inspection programs, and will implement, as they are identified, measures that should result in increased program efficiency.

Each of the comments received was carefully considered. Nevertheless, Dairy Programs' current grading and inspection fees are not adequate, and this increase in fees is necessary. Dairy Programs has and continues to seek cost savings by reducing overhead and travel costs, and increasing program efficiency through enhanced automation of business practices.

Pursuant to the Administrative Procedures Act (5 U.S.C. 553), good cause is found to make this effective less than 30 days after publication in the **Federal Register**. This rule will take effect the next day following publication to minimize financial losses for dairy grading and inspection services. Revenues are not sufficient to cover program costs or allow the Dairy Grading Branch to maintain adequate operating reserves. The Branch is currently operating with a monthly revenue loss of $42,000, which will adversely affect its ability to provide inspection and grading services.

List of Subjects in 7 CFR Part 58

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

■ For the reason 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 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

§ 58.43 [Amended]

■ 2. In § 58.43, ''$62.00'' is removed and ''$68.00'' is added in its place, and ''$68.20'' is removed and ''$74.80'' is added in its place.

§ 58.45 [Amended]

■ 3. In § 58.45, ''$57.00'' is removed and ''$63.00'' is added in its place.

Dated: October 10, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–17191 Filed 10–16–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 924 and 944

[Docket No. FV06–924–1 FIR]

Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Suspension of Handling Regulations, Establishment of Reporting Requirements, and Suspension of the Fresh Prune Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending the handling regulations prescribed under the Washington-Oregon fresh prune marketing order for the 2006 and future seasons. The marketing order regulates the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, and is administered locally by the Washington-Oregon Prune Marketing Committee (Committee). This rule continues in effect the action that suspended the minimum grade, size, quality, maturity, and inspection requirements for fresh prune handlers under the marketing order. During the suspension of the handling regulations, reports from handlers will continue to be required to obtain information necessary to administer the marketing order. In addition, this rule continues in effect the suspension of fresh prune import inspection and minimum quality, grade, size, and maturity requirements.

DATES: *Effective Date:* November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 924, as amended (7 CFR 924), regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This rule is also issued under section 8e of the Act regarding the establishment of inspection and quality, grade, size, or maturity requirements on imports of commodities that are similarly regulated under Federal marketing orders.

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule continues in effect the action that suspended the handling regulations prescribed under the order for the 2006 and future seasons.