

# 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 Parts 27, 28, 29, 51, 52, 54, 56, 58, 62, 70, 75, and 91**

[Document Number AMS-LPS-13-0050]

RIN 0581-AD36

### Process for Establishing Rates Charged for AMS Services

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is proposing to amend its regulations to provide for a set of standardized formulas by which fees are calculated. The methodology used to calculate and implement the fees charged by AMS user-funded programs would be specified in the regulations. Currently, AMS publishes separate rules for each of the service fees it collects. The fees are calculated using formulas to account for all costs incurred by AMS in providing these services. Each year, fees would be announced in a notice in the **Federal Register** by June 1 and take effect at the start of the fiscal year, crop year, or as required by specific laws. This would provide greater transparency to the customers we serve as to how the fees are derived.

The standardized formulas would be used to calculate fees that AMS charges for providing voluntary grading, inspection, certification, auditing and laboratory services for a variety of agricultural commodities including meat and poultry, fruits and vegetables, eggs, dairy products, and cotton and tobacco. The fees would also apply to those persons requesting such services including producers, handlers, processors, importers and exporters. Fees charged for inspection of fruits, vegetables, and specialty crops subject to the Agricultural Marketing Agreement Act of 1937 also would be affected by this rule.

Provisions of this proposed rule would not supersede rates established by Memorandum of Understanding, Marketing Orders, or by cooperative agreements already in place. Furthermore, the cotton program would continue to consult with its industry before rates are established.

**DATES:** Comments must be received by October 10, 2014.

**ADDRESSES:** AMS invites interested persons to submit comments on this proposed rule. Comments may be submitted through the Federal eRulemaking portal. This Web site provides the ability to type short comments directly into the comment field on the Web page or attach a file containing lengthier comments. Go to <http://www.regulations.gov> and follow the online instructions at that site for submitting comments. All comments submitted by mail or electronic mail must include the Agency name and docket number AMS-LPS-13-0050. Comments received in response to this

docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** For further information concerning policy issues contact, Melissa R. Bailey, Ph.D., AMS, U.S. Department of Agriculture, Room 3069-S, 1400 Independence Ave. SW., Washington, DC 20250; telephone (202) 720-5115, fax (202) 720-8477.

### SUPPLEMENTARY INFORMATION:

#### Background

The Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1621-1627), provides for the collection of fees to cover costs of various inspection, grading, certification or auditing services covering many agricultural commodities and products. The AMA also provides for the recovery of costs incurred in providing laboratory services. The Cotton Statistics and Estimates Act (7 U.S.C. 471-476) and the U.S. Cotton Standards Act (7 U.S.C. 51-65) provide for classification of cotton and development of cotton standards materials necessary for cotton classification. The Cotton Futures Act (7 U.S.C. 15b) provides for futures certification services and the Tobacco Inspection Act (7 U.S.C. 511-511s) provides for tobacco inspection and grading. These Acts also provide for the recovery of costs associated with these services. This proposal would set formulas to calculate these fees and any other fee currently being charged under these statutes. The table below shows the program regulations and types of fees charged for AMS services.

### Cotton Fees

Cotton Statistics and Estimates Act (7 U.S.C. 471-476).

U.S. Cotton Standards Act (7 U.S.C. 51-65).

Cotton Futures Act (7 U.S.C. 15b).

7 CFR Part 27—Cotton Classification Under Cotton Futures Legislation.

Subpart A—Regulations; §§ 27.80–27.90; Costs of Classifications and Micronaire.

7 CFR Part 28—Cotton Classing, Testing, and Standards.

Subpart A—Regulations Under the United States Cotton Standards Act; §§ 28.115–28.126; Fees and Costs.

Subpart D—Cotton Classification and Market News Service for Producers:

§§ 28.909; Costs.

§§ 28.910; Classification of samples and issuance of classification data.

§§ 28.911; Review classification.

### Dairy Fees

The Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1621-1627).

7 CFR Part 58—Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products.

Subpart A—Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products; §§ 58.38–58.46; Fees and Charges.

### **Fruit and Vegetable Fees**

The Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1621–1627).

7 CFR Part 51—Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards).

Subpart A—Regulations:

    §§ 51.37–51.44; Schedule of Fees and Charges at Destination Markets.

    §§ 51.45; Schedule of Fees and Charges at Shipping Point Areas.

7 CFR Part 52—Processed Fruits and Vegetables, Processed Products Thereof, and Other Processed Food Products.

Subpart—Regulations Governing Inspection and Certification; §§ 52.41–52.51; Fees and Charges.

### **Meat and Livestock Fees**

The Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1621–1627).

7 CFR Part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).

Subpart A—Regulations; §§ 54.27–54.28; Charges for Service.

7 CFR Part 54—Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards).

Subpart C—Regulations Governing the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing and Packaging of Livestock and Poultry Products; §§ 54.1028; Charges for Service.

7 CFR Part 62—Livestock, Meat and Other Agricultural Commodities (Quality Systems Verification Programs).

Subpart A—Quality Systems Verification Definitions §§ 62.300; Fees and Other Costs for Service.

7 CFR Part 75—Regulations for Inspection and Certification of Quality of Agricultural and Vegetable Seeds; §§ 75.41; General.

### **Poultry Fees**

The Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1621–1627).

7 CFR Part 56—Voluntary Grading of Shell Eggs.

Subpart A—Grading of Shell Eggs; §§ 56.45–56.54; Fees and Charges.

7 CFR Part 70—Voluntary Grading of Poultry and Rabbit Products.

Subpart A—Grading of Poultry and Rabbit Products; §§ 70.70–70.78; Fees and Charges.

### **Science and Technology Fees**

The Agricultural Marketing Act of 1946, as amended, (AMA) (7 U.S.C. 1621–1627).

7 CFR Part 91—Services and General Information (Science and Technology).

Subpart I—Fees and Charges; §§ 91.37–91.45.

### **Tobacco Fees**

Tobacco Inspection Act (7 U.S.C. 511–511s).

7 CFR Part 29—Tobacco Inspection.

Subpart B—Regulations; §§ 29.123–29.129; Fees and Charges.

Subpart F—Policy Statement and Regulations Governing the Identification and Certification of Non-quota Tobacco Produced and Marketed in Quota Area; §§ 29.9251; Fees and Charges.

Grading, inspection and verification programs facilitate the movement of agricultural products through marketing channels—from growers to wholesalers, retailers and consumers—in a quick, efficient, and equitable manner. These services include the grading, inspection or certification of quality factors in accordance with established U.S. Grade Standards; audits or accreditation according to International Organization for Standardization (ISO) standards and/or Hazard Analysis and Critical Control Point (HACCP) principles; and other marketing claims. The quality grades serve as a basis to reflect the value of agricultural commodities to both producers and consumers. AMS' grading and quality verification and certification, audit and accreditation, plant process and equipment verification, and laboratory approval services are voluntary tools paid for by the users on a fee-for-service basis. The agriculture industry can use these tools to promote and communicate the quality of agricultural commodities to consumers. Laboratory services are provided for analytic testing, including but not limited to chemical, microbiological, biomolecular, and physical analyses.

Approximately 70 percent of AMS' operational budget is derived from fees

assessed for services provided to agricultural industries. Changes in fee-for-service rates may result from fluctuating customer needs, increases in employee salary and benefit expenses, inflationary impact on non-labor operating expenses and fixed costs, and/or uncollected revenue (bad debt). Currently, each AMS program individually proposes a fee change when a revenue shortfall is anticipated for a specific program or activity. As a result, these changes do not appear in a single unified fee schedule. Lack of certainty as to when annual fees will be announced may affect fiscal planning for the users of the services, especially if fees are changed in the middle of a contract or harvest season. In addition, because of the separate and repetitive use of the agency rulemaking process, programs can experience delays in recovering the full cost of the services they provide.

As a result, a number of AMS programs amended their regulations to provide for multi-year annual fee changes that were established by a single rulemaking action. While this enabled the Agency to collect revenue based on a revised fee each year, estimates used to set the projected annual rates did not always result in the Agency collecting revenues sufficient to

cover its costs. Instead, in some instances, the Agency recovered partial costs.

In order to provide both transparency and predictability to the industries served and to allow the Agency to effectively plan for staffing, investments in infrastructure, and other resources, AMS is proposing to amend its regulations to provide for a set of standardized formulas by which fees are calculated. This process would use formulas established to determine fees for AMS's grading, inspection, certification, auditing, and laboratory services that would cover expected costs while maintaining a reasonable reserve. AMS Programs are required to sustain a certain minimum level of reserve funds in order to maintain fiscal responsibility should the program area undergo closure. Each Program reserve level is affected by factors such as number of employees, salaries, benefits, contracted obligations, and other items.

This rulemaking is similar to one conducted by the USDA Food Safety and Inspection Service (FSIS) and published in the **Federal Register** on April 12, 2011 (76 FR 20220). FSIS established formulas for calculating basetime, overtime, holiday, and laboratory services user fee rates in its final rule.

Currently, AMS performs financial analyses on an annual basis to determine whether the current fees are adequate to recover the costs incurred for providing these services. Historical or prior year cost and workload data, along with applicable projections are used to generate estimates of future obligations and revenues. This proposal

would specify that the rates be based on the actual cost and workload data of the previous fiscal year(s) or accounting period(s) (e.g. crop year) used by respective programs. On the basis of these analyses and using the proposed formulas, AMS would determine the fees necessary to sustain program services. This would increase

predictability and provide information for planning purposes for the industries utilizing AMS user fee services.

The components (costs) that AMS will use to calculate the rates for services are the same costs used in calculating past rates.

#### COMPARISON OF CURRENT VERSUS PROPOSED SERVICE CHARGES (COSTS)

Current charges	Proposed charges
Direct pay .....	Direct pay.
Cost of living .....	Cost of living.
Benefits .....	Benefits.
Indirect costs (AMS support—“overhead”, bad debt) .....	Operating costs (training, equipment, reserve fund, AMS support—“overhead”, and other related expenses). Bad debt.
See indirect costs .....	See operating costs.
Reserve .....	See operating costs.
Training, equipment and other related expenses .....	Travel (if applicable).
Travel (if applicable) .....	Overtime, holiday, Saturday, Sunday, and night differential as per OPM guidelines.
Overtime, holiday, Saturday, Sunday, and night differential as per OPM guidelines.	Overtime, holiday, Saturday, Sunday, and night differential as per OPM guidelines.

As required by the Cotton Statistics and Estimates Act (7 U.S.C. 471–476), consultations regarding the establishment of the fee for cotton classification with U.S. cotton industry representatives will continue. Representatives of all segments of the cotton industry, including producers, ginners, bale storage facility operators, merchants, cooperatives, and textile manufacturers would continue to be addressed in various industry-sponsored forums.

Provisions of this proposed rule would not supersede rates established by Memoranda of Understanding, Marketing Orders, cooperative agreements or other similar instruments. Under MOU, cooperative agreements, and similar instruments, fees are established based on specific agreements specified with an individual entity such as a State or university.

The outcome of this proposal would be a transparent system for establishing fee rates for all AMS user fee programs, whereby financial and resource needs for continued operation are reviewed on a pre-determined cycle, using established formulas. This would avoid financial crises that may occur when reserve funds are rapidly depleted due to unanticipated business events, and would allow the Agency to more quickly adjust the cost of the services it provides. The information would also greatly benefit AMS customers by allowing them to better plan for the cost of AMS services.

Currently, AMS publishes a rule for each of the service fees it collects. This rulemaking action supports the government's initiative to streamline

processes (Streamlining Government Report GAO 11-908, September 2011) and reduces the number of regulations that are published by issuing one regulation containing the formulas and one notice a year to announce all user fees. This action also supports the Department's goal of formalizing processes to integrate openness, transparency, participation and collaboration (USDA Open Government Plan, April 7, 2010) into AMS's every day operations.

With this action, AMS is proposing to amend its regulations in 7 CFR parts 27, 28, 29, 51, 52, 54, 56, 58, 62, 70, 75, and 91 by making public the formulas it uses to calculate user-fee rates. Making the standardized formulas a part of the regulations would allow AMS to announce annual fees in a yearly **Federal Register** notice, starting with the effective date of this rule and for subsequent years, by June 1 each year or as required by specific laws. The fee rates would be effective at the beginning of the following fiscal year, crop year, or as required by specific laws and identified in the yearly notice. The yearly notice will include all rates charged by AMS including some that are not currently part of regulations. The yearly notice would include a per-hour rate and, in some instances, the equivalent per-unit cost. The per-unit cost will be provided to facilitate understanding of the costs associated with the services to the industries that historically use a unit-cost basis for payment. In those cases where per-unit cost is necessary, the formulas would have an additional step to convert per

hour costs to per unit costs. This process is currently followed for cotton and some fruit and vegetable user fee services.

Travel costs are also part of the costs that are charged for user fee services. Currently, in some instances, travel costs are already included in the fee charged for service. In other instances, travel costs are added to the fee. In both instances, travel costs are charged to the recipient of the service. The annual notice would maintain the same procedure currently used for recovering travel costs.

AMS is also making several administrative changes and corrections to language in the regulations that is obsolete, such as changing “diskette” to “electronic means”.

#### Definitions

In order to provide additional clarity, AMS defines the following terms used throughout this document as follows:

**Bad Debt**—Accounts receivable that will likely remain uncollectable and will be written off.

**Benefits**—various non-wage compensation provided to employees in addition to their normal wages or salaries. Examples of items included in this category are health and unemployment insurance, retirement, workers compensation, Thrift Savings Plan contributions, and other similar compensation.

**Cost of Living Adjustment**—the cost of maintaining a certain standard of living based on the economic assumptions in the Office of Management and Budget (OMB), “Update to Civilian Position Full Fringe Benefit Cost Factor, Federal

Pay Raise Assumptions, and Inflation Factors used in OMB Circular A-76, Performance of Commercial Activities”.

*Direct Hours*—the regular hours worked by employees of the Agency. This does not include overtime or holiday hours.

*Direct Pay*—monetary compensation paid to employees of AMS for work performed. Pay is based on the U.S. Office of Personnel Management pay rate tables. It may include night and Sunday differential costs.

*Holiday*—the official days of the calendar year established by law (5 U.S.C. 6103) or identified by Executive Order as Federal holidays.

*Hour*—measure by which grading, certification, inspection, classification, laboratory or other services cost is based and expenses are charged.

*Indirect Cost*—this cost includes program and AMS activities that support the services provided to the industry. Another common term for this cost category is “overhead”.

*Operating Reserve*—funds above expected obligations required to effectively manage uncertainties in demand and cash flow timing.

*Operating Cost*—costs attributed to performing grading, inspection, certification, or laboratory services duties (i.e. training, equipment, and other such costs), plus operating reserve, plus indirect costs.

*Overtime*—hours worked in excess of the approved schedule. Work performed after the first 8 hours per day or 40 hours per week is considered overtime.

*Regular Rate*—the cost per hour for work provided in accordance with an applicant contract. Under Federal labor laws, this rate applies to the first 8 hours per day, or first 40 hours worked per week by AMS employees.

*Unit*—any measurement that there is one of. For example, one bale of cotton or one truck load of vegetables.

### Proposed Formulas for Regular, Overtime, and Holiday Rates

With this rulemaking, AMS proposes to amend its regulations to provide a set of standardized formulas by which fees are calculated. The methodology used to calculate and implement the fees charged by AMS user-funded programs would be specified in 7 CFR parts 27, 28, 29, 51, 52, 54, 56, 58, 62, 70, 75, and 91.

AMS would use these formulas to calculate annual fee rates starting with the effective date of this rule and for subsequent years. AMS will publish the specific formulas used to calculate service fees. AMS intends to announce the actual annual fee rates in a **Federal Register** notice by June 1 each year or

as required by specific laws. These fees would be effective at the beginning of the following fiscal year, crop year, or as required by specific laws.

Salary, hours, and most rates used in the formulas would be based on the prior fiscal year’s (or applicable accounting period or historical data) actual costs and hours. AMS would round the final rates up to make the amounts divisible by the quarter hour (15 minutes). Fifteen minutes would be the minimum charge for services covered by these rates.<sup>1</sup> Travel costs may be part of a fee or may be added to the calculated fee.

Currently, some fees are charged on a per unit basis and others are charged on a per hour basis. AMS would continue to provide costs based on a per hour and per unit basis to maintain consistency. For cotton and some fruit and vegetable programs, per unit costs are determined after converting the hourly costs to units.

AMS is proposing the following formulas:

*Regular Rate*—The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours for the previous year, which is then multiplied by the next year’s percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

An example of the calculation would look like this: [FY 2013 Direct Pay divided by Total Direct Hours (\$2,663,407/82,985) = \$32.10, plus (\$32.10 \* 1.7% (2014 cost of living increase)) = \$32.64 + \$10.04 (benefits rate) + \$28.90 (operating rate) + \$.01 (bad debt allowance rate) = \$71.59 (rounded to \$71.60); rounding is done to reflect billable quarter hour increments of 15 minutes. If applicable, travel expenses may also be added.

*Overtime Rate*—The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours, which is then multiplied by the next year’s percentage of cost of living increase and then multiplied by 1.5, plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

An example of the calculation will look like this: [FY 2013 Direct Pay divided by Total Direct Hours

$(\$2,663,407/82,985) = \$32.10$ , plus  $(\$32.10 * 1.7\% \text{ (2014 cost of living increase)}) = \$32.64$ , multiplied by 1.5  $(\$32.64 * 1.5 \text{ (overtime rate)}) = \$48.96$   $+ \$10.04 \text{ (benefits rate)} + \$28.90 \text{ (operating rate)} + \$0.01 \text{ (bad debt allowance rate)} = \$87.91$  (rounded to \$87.92); rounding is done to reflect billable quarter hour of 15 minutes. If applicable, travel expenses may also be added.

*Holiday Rate*—The total AMS grading, inspection, certification, classification, audit, or laboratory service program personnel direct pay divided by direct hours, which is then multiplied by the next year’s percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

An example of the calculation will look like this: [FY 2013 Direct Pay divided by Total Direct Hours (\$2,663,407/82,985) = \$32.10, plus (\$32.10 \* 1.7% (2014 cost of living increase)) = \$32.64, multiplied by 2 (\$32.64 \* 2 (double time or Holiday rate)) = \$65.28 + \$10.04 (benefits rate) + \$28.90 (operating rate) + \$.01 (bad debt allowance rate) = \$104.23 (rounded to \$104.24); rounding is done to reflect billable quarter hour increments of 15 minutes. If applicable, travel expenses may also be added.

Formula calculations are based on prior fiscal year’s actual costs or historical costs, workload data, projection of expenses impacting program costs, cost of living increase and inflation. Cost of living increases and inflation factors are based on the economic assumptions from 2013–2023 which have been updated in the Office of Management and Budget’s (OMB) FY 2014 Mid-Session Review. Rather than codify a reference to this OMB budget document in the proposed rule, each year AMS intends to use the most recent economic factors released by OMB for budget development purposes to determine cost impacts for these user fee activities.

### Proposed Formulas for the Benefits, Operating, and Allowance for Bad Debt Rates

As proposed, AMS intends to derive the components of proposed formulas above, using previous fiscal year’s actual costs/historical costs, as follows:

*Benefits Rate*—The total AMS grading, inspection, classification, certification, audit, or laboratory service program direct benefits costs divided by the total hours worked (regular, overtime, and holiday), which is then

<sup>1</sup> The current minimum charge for some services covered by these rates is 30 minutes.

multiplied by the next calendar year's percentage cost of living increase.

An example of the calculation will look like this: [2013 Direct Benefits cost/(Total hours + Total Overtime hours + Total Holiday hours) (\$819,207/82,985)] = \$9.87, plus (\$9.87 \* 1.7% (2014 Cost of Living)) = \$10.04.

**Operating Rate**—The total AMS grading, inspection, classification, certification, audit, or laboratory service program operating costs divided by total hours worked (regular, overtime, and holiday), which is then multiplied by the percentage of inflation.

An example of the calculation will look like this: [2013 Total Operating Costs/(Total hours + Total Overtime hours + Total Holiday hours) (\$2,351,857/82,985)] = \$28.34, plus (\$28.34 \* 2% (2014 Inflation)) = \$28.90.

**Allowance for Bad Debt Rate**—Total AMS grading, inspection, classification, certification, audit, or laboratory service program allowance for bad debt divided by total hours worked (regular, overtime, and holiday).

An example of the calculation will look like this: [2013 Total Bad Debt cost/(Total hours + Total Overtime hours + Total Holiday hours) (\$1,000/82,985)] = \$ 0.01.

As noted above, the proposed formulas reflect that the cost of providing services include both direct and indirect costs. Direct costs include the cost of salaries, employee benefits, and if applicable, travel and some operating costs. Indirect or overhead costs include the cost of program and Agency activities supporting the services provided to the industry. Indirect cost expenditures are allocated across the Agency for each direct hour of grading, inspection, classification, certification, auditing, or laboratory service provided. For purposes of these formulas, indirect costs have been included as part of operating costs.

#### **Executive Order 12866 and Executive Order 13563**

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory

Planning and Review, as supplemented by Executive Order 13563. The Office of Management and Budget has not reviewed this proposal under these Orders.

#### **Executive Order 13175**

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effect on Tribal governments and would not have significant Tribal implications.

#### **Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule: (1) Has no retroactive effect; and (2) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) 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. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Most small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000. For certain types of businesses (e.g., dairy, egg, and meat processing; handlers of produce), the SBA considers a small entity as those that employ less than 500 employees.

The grading, inspection, certification and auditing services provided under these regulations are voluntary.<sup>2</sup> <sup>3</sup> The benefits of using grading, inspection, certification, auditing, and laboratory services outpace the costs of obtaining these services. These services are used by meat and poultry establishments,

<sup>2</sup>Currently, there is no mandatory inspection and grading of tobacco under the Tobacco Inspection Act (7 U.S.C. 511–511s).

<sup>3</sup>Fees charged for inspection of fruits, vegetables, and specialty crops subject to the Agricultural Marketing Agreement Act of 1937 also would be affected by this rule.

fruit and vegetable handlers and processors, egg processing plants, dairy processors, users of cotton and tobacco program services, importers and exporters of the above commodities, and other interested persons to determine quality and prices of their products.

AMS estimates that approximately 849 entities use voluntary meat grading and certification services. This estimate includes 413 egg, poultry, and rabbit packing plants that use the USDA grade shield. Of these 413 plants, approximately fifteen percent would be considered a small business under the SBA criteria. The remaining 436 entities includes livestock slaughterers, brokers, meat and other processors, distributors, organic certification companies, trade associations, State and Federal entities, and livestock producers and feeders. Of these 436 entities, approximately 70 percent would be considered a small business under the SBA criteria.

AMS estimates that 60 cotton merchants use AMS services for cotton futures classification, 20,000 cotton producers and 637 cotton gins use AMS services for normal cotton classification, and 125 tobacco customers use AMS services. Of these entities, approximately 80 percent would be considered a small business under the SBA criteria.

AMS estimates that, over the last two fiscal years, we provided user fee services to an average of 2,308 fruit and vegetable companies for fresh products. AMS estimates that, over the last two fiscal years, we provided user fee services to an average of 1,087 fruit and vegetable companies for processed products. We estimate that approximately 98 percent of these 3,395 companies would be considered a small business under the SBA criteria. The number of entities referenced above includes those subject to the provisions of the Agricultural Marketing Agreement Act of 1937.

AMS estimates that 360 dairy plants use AMS' dairy grading and inspection services. We believe that approximately 96 percent of these plants would be considered a small business under the SBA criteria.

AMS considered the economic impact of this action on these small entities. The proposed formulas would have a minimal impact on entities that request these services. The difference in fee rates would be negligible since the costs used in the formulas to calculate the current and future fees would remain the same. For example, it is expected that the Dairy user fee would change from \$76 per hour to \$78 per hour under the proposed formulas. AMS has not updated several of its programs' user

fees for a number of years. For those fees that have not been updated recently, there may be a change in fees. These possible changes would be the result of using current economic data and cost estimates to calculate the fee rates. AMS would take into consideration, when appropriate, economic and industry conditions before adjusting fees. The process would maintain up-to-date fees.

By including the formulas used to calculate annual user fee rates in the regulations, the Agency would streamline the rulemaking process to help ensure that fees are effective at the beginning of each fiscal year or other period as required by law. Fees would cover inflation and national and locality pay raises but would not support any new budgetary initiative. Any cost changes are similar to other changes that the industry would experience because of inflation and wage increases.

The outcome of this proposal would be a transparent system for establishing fee rates for all AMS user fee programs, whereby financial and resource needs for continued operation are reviewed on a pre-determined cycle, using established formulas. This would avoid financial crises that occur when reserve funds are rapidly depleted due to unanticipated business events, and would allow the Agency to more quickly adjust the cost of the services it provides. The information would also greatly benefit AMS customers by allowing them to better plan for the cost of AMS services.

The total volume of commodities graded, inspected and certified under the associated regulations in 2012 was approximately 91 billion pounds. An overall increase in cost per pound of product associated with the new fees is estimated at \$.0002. Even in competitive industries such as fruit and vegetables, meat, poultry, dairy and eggs, this amount of increase in costs would have an insignificant impact on profits and processes. Accordingly, AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This rule does not contain any new information collection or recordkeeping requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

#### E-Government Act

AMS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, et seq.) by, among other things, promoting the use of the Internet and other

information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that all interested parties, including minorities, women, and persons with disabilities are aware of this notice, AMS will announce it online and make copies of this **Federal Register** publication available through the AMS Web page located at <http://www.ams.usda.gov/AMSV1.0/>. In addition, AMS offers a subscription service which provides automatic and customized access to selected agricultural commodity news and information. Further, each program will make a concerted effort to inform their respective industries while performing inspections and providing services.

Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this action needs to be in place no later than March 2015 to allow sufficient time for fees to be published and the industry to be notified. Further, this action does not change the services for which fees are charged. All written comments received in response to this rule by the date specified will be considered prior to finalizing this action.

#### List of Subjects

##### 7 CFR Part 27

Commodity futures, Cotton.

##### 7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses.

##### 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticide and pests, Reporting and recordkeeping requirements, Tobacco.

##### 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

##### 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruits, Reporting and recordkeeping requirements, Vegetables

#### 7 CFR Part 54

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

#### 7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

#### 7 CFR Part 58

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

#### 7 CFR Part 62

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

#### 7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

#### 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements, Seeds, Vegetables.

#### 7 CFR Part 91

Administrative practice and procedure, Agricultural commodities, Laboratories, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR chapter I is proposed to be amended as follows:

#### PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION

■ 1. The authority citation for 7 CFR part 27 continues to read as follows:

**Authority:** 7 U.S.C. 15b, 7 U.S.C. 473a–b, 7 U.S.C. 1622(g).

■ 2. Revise § 27.80 by adding paragraphs (a) and (b) and removing paragraphs (c) and (d).

The additions read as follows:

#### § 27.80 Fees; review classification, futures classification and supervision.

\* \* \* \* \*

(a) For each calendar year, AMS will calculate the rate for services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading or classification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading or classification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading or classification program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b) For each calendar year, based on historical costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(1) *Benefits rate.* The total AMS grading or classification program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(2) *Operating rate.* The total AMS grading or classification program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(3) *Allowance for bad debt rate.* Total AMS grading or classification program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(c) *Basis.* The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most current Office of Management and Budget's Presidential Economic Assumptions.

■ 3. Revise § 27.81 to read as follows:

#### **§ 27.81 Fees; certificates**

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purpose of business convenience, or when made necessary by the transfer of cotton under the supervision of any exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee determined as described in § 27.80 of this part.

## **PART 28—COTTON CLASSING, TESTING, AND STANDARDS**

■ 4. The authority citation for 7 CFR part 28, Subpart A, continues to read as follows:

**Authority:** 7 U.S.C. 55 and 61.

■ 5. Revise § 28.116 to read as follows:

#### **§ 28.116 Amounts of fees for classification; exemption.**

(a) For the classification of any cotton or samples, the person requesting the services shall pay a fee, based on the description that follows, subject to the additional fee provided by paragraph (c) of this section.

(1) For each calendar year, AMS will calculate the rate for services per hour per program employee using the following formulas:

(i) *Regular rate.* The total AMS grading or classification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(ii) *Overtime rate.* The total AMS grading or classification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(iii) *Holiday rate.* The total AMS grading or classification program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(2) For each calendar year, based on historical costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS grading or classification program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The total AMS grading or classification program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading or classification program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(3) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most current Office of Management and Budget's Presidential Economic Assumptions.

(b) When a comparison is requested of any samples with a type or with other samples, the fees prescribed in paragraph (a) of this section shall apply to every sample involved, including each of the samples of which the type is composed.

(c) An additional fee based on current shipping rates shall be assessed for returning samples unless the request for service is so worded that the samples become government property immediately after classification.

(d) For any review of classification or comparison of any cotton, the fees prescribed in paragraph (a) of this section shall apply. The additional fee prescribed in paragraph (c) of this section is not applicable to review of classification if made on the same sample as the original class or comparison.

■ 6. Revise § 28.117 to read as follows:

#### **§ 28.117 Fee for new memorandum or certificate.**

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereon, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee determined as described in § 28.116 of this part. If the memorandum is provided by electronic means, the fee shall be determined using the same provisions.

■ 7. Revise § 28.122 to read as follows:

#### **§ 28.122 Fee for practical classing examination.**

The fee for the practical classing examination for cotton shall be determined as described in § 28.116 of this part. Any applicant who passes the examination may be issued a certificate indicating this accomplishment. Any person who fails to pass the examination may be reexamined. The fee for this practical reexamination will

be determined as described in section 28.116.

- 8. The authority citation for 7 CFR part 28, Subpart D, continues to read as follows:

**Authority:** 7 U.S.C. 51–65; 7 U.S.C. 471–476.

- 9. Amend § 28.909 by revising paragraph (b) to read as follows:

#### **§ 28.909 Costs.**

\* \* \* \* \*

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers will be based on formulas set forth in § 28.116 of this part. The proceeds of the sale of cotton samples shall be used to defray the costs of providing the service under this subpart.

\* \* \* \* \*

- 10. Revise § 28.910 to read as follows:

#### **§ 28.910 Classification of samples and issuances of classification data.**

(a)(1) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

- (i) Electronic means, or
- (ii) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

(2) When an additional copy of the classification memorandum is issued by any method listed in paragraph (a)(1) of this section, there will be a charge determined as described in § 28.116. If provided as an additional method of data transfer, the minimum fee for each method issued shall also be determined as described in § 28.116.

(b) Owners of cotton, other than producers, may receive classification data showing the official quality determination of each sample by means of telecommunications from a central database to be maintained by the Division. The fee for this service shall be determined as described in § 28.116, with all communication charges paid by the receiver of data.

(c) Upon request of an owner of cotton for which classification memoranda have been issued under the subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The per-hour fee for a new memorandum shall be

determined according to § 28.116, with a minimum per-sheet fee determined under the same provisions.

- 11. Amend § 28.911 by revising paragraph (a) and the last sentence in paragraph (b) to read as follows:

#### **§ 28.911 Review classification.**

(a) A producer may request one review classification for each bale of eligible cotton. The fee for review classification shall be determined based on the formulas in § 28.116.

(b) \* \* \* Producers who request return of their samples after classing will pay a fee determined based on the formulas in § 28.116.

### **PART 29—TOBACCO INSPECTION**

- 12. The authority citation for part 29 is revised to read as follows:

**Authority:** 7 U.S.C. 511–511s.

- 13. Amend § 29.123 by:
  - a. Revising the first sentence of paragraph (a);
  - b. Revising paragraph (b);
  - c. Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e), and (f) respectively;
  - d. Adding new paragraph (c); and
  - e. Revising newly redesignated paragraph (d).

The revisions and addition read as follows:

#### **§ 29.123 Fees and charges.**

\* \* \* \* \*

(a) *Mandatory inspection.* For each year, AMS will calculate the rate for services, per hour per program employee as described in § 29.123(b) and (c). \* \* \*

(b) *Domestic permissive inspection and certification—(1) Regular rate.* The total AMS grading, inspection, or sampling program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading, inspection, or sampling program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading, inspection, or sampling program personnel direct pay divided

by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(4) *Applicability.* The fees in paragraphs (b)(1) through (3) of this section shall be applicable for hogshead, bale cases, or sample inspections.

(c)(1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS grading, inspection, or sampling program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The total AMS grading, inspection, or sampling program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading, inspection, or sampling program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

(d) *Export permissive inspection and certification.* The inspection and certification fee for export tobacco will be determined as described in § 29.123(b) and (c).

\* \* \* \* \*

- 14. Amend § 29.500 by revising the first sentence of paragraph (a) and revising paragraphs (b) and (c) to read as follows:

#### **§ 29.500 Fees and charges for inspection and acceptance of imported tobacco.**

(a) The fee for inspection of imported tobacco will be determined as described in § 29.123 and shall be paid by the importer. \* \* \*

(b) The fee for sampling, accepting, and certification of imported flue-cured and burley tobacco for prohibited pesticide residues will be determined as

described in § 29.123 and shall be paid by the importer.

(c) The fee for accepting imported flue-cured and burley tobacco not accompanied by a certification that it is free of prohibited pesticide residues will be determined as described in § 29.123. Fees for services rendered shall be remitted by check or draft in accordance with a statement issued by the Director, and shall be made payable to "Agricultural Marketing Service."

## PART 51—FRESH FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

- 15. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

- 16. Revise § 51.38 to read as follows:

### § 51.38 Basis for fees and rates.

(a) For each calendar year, AMS will calculate the rate for services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS inspection program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS inspection program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS inspection program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS inspection program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar

year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The total AMS inspection program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

(c) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be determined using the formulas in this section.

## PART 52—PROCESSED FRUITS AND VEGETABLES, PROCESSED PRODUCTS THEREOF, AND OTHER PROCESSED FOOD PRODUCTS

- 17. The authority citation for part 52 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

### § 52.2 [Amended]

- 18. Amend § 52.2 by removing the definition of "In-plant sampler".
- 19. Revise § 52.42 to read as follows:

### § 52.42 Schedule of fees.

(a) For each calendar year, AMS will calculate the rate for services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS inspection program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS inspection program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS inspection program personnel direct pay

divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(1) *Benefits rate.* The total AMS inspection program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(2) *Operating rate.* The total AMS inspection program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(3) *Allowance for bad debt rate.* Total AMS inspection program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(c) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

- 20. Revise § 52.50 to read as follows:

### § 52.50 Travel and other expenses.

Charges may be assessed to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, as described in § 52.42 of this part. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day. And provided further, that if travel is by common carrier, no hourly charge may be made for travel time outside the employee's official work hours.

- 21. Amend § 52.51 by revising paragraphs (a), (b), (c), and (d) to read as follows:

### § 52.51 Charges for inspection services on a contract basis.

(a) The Administrator may enter into contracts with applicants to perform continuous inspection services or other types of inspection services pursuant to the regulations in this part and other

requirements as prescribed by the Administrator in such contract, and the charges for such inspection service provided in such contracts shall be based on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such inspection service as described in § 52.42 of this subpart.

(b) The Administrator may enter into a written memorandum of understanding or contract, whichever may be appropriate, with any administrative agency charged with the administration of a marketing agreement or a marketing order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) for the making of inspections pursuant to said agreement or order on such basis as will reimburse the Agricultural Marketing Service of the Department for the full cost of rendering such inspection service based on the formulas in § 52.42 of this subpart. Likewise, the Administrator may enter into a written memorandum of understanding or contract, whichever may be appropriate, with an administrative agency charged with an administration of a similar program operated pursuant to the laws of any State.

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services. Charges for work performed in excess of an employee's regular work schedule will be calculated as described in § 52.42(a)(2) of this subpart.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspector assigned to perform the inspection services and will be calculated based on the formulas in § 52.42 of this subpart.

\* \* \* \* \*

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

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

**Authority:** 7 U.S.C. 1621–1627.

### § 54.6 [Amended]

■ 23. Amend § 54.6 in paragraph (c)(2), in the first sentence, by removing the phrase “as provided in § 54.27(b)” and adding “as provided in § 54.27” in its place.

■ 24. Revise § 54.27 to read as follows:

#### § 54.27 Fees and other charges for service.

(a) Fees and other charges equal as nearly as may be to the cost of the services rendered shall be assessed and collected from applicants in accordance with the following provisions unless otherwise provided in the cooperative agreement under which the services are furnished, or as provided in § 54.6 of this subpart. For each calendar year, AMS will calculate the rate for inspection, grading, or certification services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading, inspection, or certification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading, inspection, or certification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading, inspection, or certification program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS grading, inspection, or certification program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The total AMS grading, inspection, or certification program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading, inspection, or certification program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

(c) *Fees for service on commitment basis.* Minimum fees for service performed under a commitment agreement or an agreement by memorandum shall be on the basis of 8 hours per day, Monday through Friday, excluding Federal legal holidays occurring Monday through Friday on which no grading and certification services are performed. Fees will be based on the formulas in this section. The Agency reserves the right under such a commitment agreement or agreement by memorandum to use any grader assigned to the plant on a commitment basis to perform service for other applicants, as provided in § 54.6(c), crediting the commitment applicant with the number of hours charged to the other applicant, provided the allowable credit hours plus hours actually worked for the applicants do not exceed 8 hours on any day, Monday through Friday, excluding legal holidays.

(d) *Fees for appeal service.* Fees for appeal service shall be determined on the basis of the time, of two official graders, required to render the service, including the time required for the preparation of certificates and travel of such graders in connection with the performance of the service. *Provided,* That when on appeal it is found that there was error in the original determination equal to or exceeding ten percent of the total number of similar units of the products involved, no charge will be made for the appeal service unless a special agreement therefor was made with the applicant in advance.

(e) *Fees for extra copies of certificates.* In addition to copies of certificates furnished under § 54.14, any financially interested person may obtain not to exceed three copies of any such certificate within one year from its date of issuance upon payment of a fee, and not to exceed three copies of any such certificate at any time thereafter, while a copy of such certificate is on file in the

Department. The fee for copies of certificates will be determined using the formulas in this section.

## PART 56—VOLUNTARY GRADING OF SHELL EGGS

- 25. The authority citation for part 56 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

- 26. Revise § 56.46 to read as follows:

### § 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable formulas specified in this section. For each calendar year or crop year, AMS will calculate the rate for grading or audit services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading or audit program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading or audit program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading or audit program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS grading or audit program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life

insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The total AMS grading or audit program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading or audit program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

(c) Fees for grading services will be based on the time required to perform the services. The hourly charges shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(d) Fees for audit services will be based on the time and expenses required to perform the audit. The hourly charge shall include the time actually required to perform the audit, waiting time, travel time, and any clerical costs involved in issuing an audit report.

- 27. Amend § 56.52 by:
- a. Revising the introductory text;
- b. Revising the second sentence of paragraph (a)(1); and
- c. Revising the first sentence of paragraph (a)(2) introductory text.

The revisions read as follows:

### § 56.52 Charges for continuous grading performed on a resident basis.

Fees to be charged and collected for any grading service, other than for an appeal grading, on a resident grading basis, shall be calculated as described in this part. The fees to be charged for any appeal grading shall be as provided in § 56.47.

(a) \* \* \*

(1) \* \* \* The costs for completing the plant survey shall be borne by the applicant on a fee basis as described in § 56.46. \* \* \*

(2) Charges for the cost of each grader assigned to a plant will be calculated as described in section 56.46 of this part, except that no charge will be assessed when the assigned grader is temporarily reassigned by AMS to perform grading service for other than the applicant.

\* \* \*

\* \* \* \* \*

- 28. Amend § 56.54 by revising the introductory text and paragraph (a)(1) introductory text to read as follows:

### § 56.54 Charges for continuous grading performed on a nonresident basis.

Fees to be charged and collected for grading service on a nonresident grading basis, shall be calculated as described in this part. The fees to be charged for any appeal grading shall be calculated as provided in § 56.47.

(a) \* \* \*

(1) A charge for the salary and other costs, calculated as described in § 56.46 of this part, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform grading service for other than the applicant. Charges to plants are as follows:

\* \* \* \* \*

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

- 29. The authority citation for 7 CFR part 58 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

- 30. Revise § 58.39 to read as follows:

### § 58.39 Fees for holiday or other nonworktime.

If an applicant requests that inspection or grading service be performed on a holiday, Saturday, or Sunday or in excess of each 8-hour shift Monday through Friday, the applicant shall be charged for such service at a rate determined using the formulas in § 58.43.

- 31. Revise § 58.43 to read as follows:

### § 58.43 Fees for inspection, grading, sampling, and certification.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable formulas specified in this section. For each calendar year, AMS will calculate the rate for grading, certification, or inspection services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading, certification, or inspection program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading, certification, or inspection

program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading, certification, or inspection program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(1) *Benefits rate.* The total AMS grading, certification, or inspection program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(2) *Operating rate.* The total AMS grading, certification, or inspection program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(3) *Allowance for bad debt rate.* Total AMS grading, certification, or inspection program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(c) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

■ 32. Revise § 58.45 to read as follows:

#### **§ 58.45 Fees for continuous resident services.**

Charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be calculated using the formulas in § 58.43 of this part.

## **PART 62—LIVESTOCK, MEAT AND OTHER AGRICULTURAL COMMODITIES (QUALITY SYSTEMS VERIFICATION PROGRAMS)**

■ 33. The authority citation for part 62 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

■ 34. Revise § 62.300 to read as follows:

### **§ 62.300 Fees and other costs of service.**

(a) For each calendar year, AMS will calculate the rate for quality systems verification services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS quality systems verification program (QSVP) personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS QSVP personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS QSVP personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS QSVP direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The total AMS QSVP operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS QSVP allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

(c) *Transportation costs.* Applicants are responsible for paying actual travel costs incurred to provide QSVP services including but not limited to: Mileage charges for use of privately owned vehicles, rental vehicles and gas, parking, tolls, and public transportation costs such as airfare, train, and taxi service.

(d) *Per diem costs.* The applicant is responsible for paying per diem costs incurred to provide QSVP services away from the auditor's or USDA officials' official duty station(s). Per diem costs shall be calculated in accordance with existing travel regulations (41 CFR, subtitle F—Federal Travel Regulation System, chapter 301).

(e) *Other costs.* When costs, other than those costs specified in paragraphs (a), through (c) of this section, are involved in providing the QSVP services, the applicant shall be responsible for these costs. The amount of these costs shall be determined administratively by the Chief. However, the applicant will be notified of these costs before the service is rendered.

## **PART 70—VOLUNTARY GRADING OF POULTRY AND RABBIT PRODUCTS**

■ 35. The authority citation for part 70 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

■ 36. Revise § 70.71 to read as follows:

### **§ 70.71 On a fee basis.**

Unless otherwise provided in this part, the fees to be charged and collected for any grading or audit service performed in accordance with this part, on a fee basis shall be based on the applicable formulas specified in this section.

(a) For each calendar year, AMS will calculate the rate for grading and audit services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS grading or audit program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS grading or audit program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS grading or audit program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS grading or audit program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The AMS grading or audit program total operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS grading or audit program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

(c) Fees for grading services will be based on the time required to perform the services. The hourly charges shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(d) Fees for audit services will be based on the time and expenses required to perform the audit. The hourly charge shall include the time actually required to perform the audit, waiting time, travel time, and any

clerical costs involved in issuing an audit report.

- 37. Revise § 70.72 to read as follows:

**§ 70.72 Fees for appeal grading or review of a grader's decision.**

The costs of an appeal grading, or review of a grader's decision, shall be borne by the appellant on a fee basis at rates determined based on the formulas in § 70.71 of this part. If the appeal grading, or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

- 38. Amend § 70.76 by revising the introductory text and the first sentence of paragraph (a)(1) introductory text to read as follows:

**§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.**

Fees to be charged and collected for grading service on a nonresident grading basis shall be based on the formulas provided in this part. The fees to be charged for any appeal grading shall be as provided in § 70.72.

(a) \* \* \*

(1) A charge for the salary and other costs, based on § 70.71 of this part, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform grading service for other than the applicant. \* \* \*

\* \* \* \* \*

- 39. Amend § 70.77 by revising the introductory text and paragraphs (a)(1) and (2) to read as follows:

**§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.**

Fees to be charged and collected for any grading service on a resident grading basis and for an appeal grading shall be determined based on the formulas in section 70.71.

(a) \* \* \*

(1) When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to § 70.34. The costs for completing the plant survey shall be borne by the applicant on a fee basis based on the formulas in § 70.71. No charges will be assessed when the application is required because of a change in name or ownership. If service is not installed within 6 months from the date the application is filed, or if service is inactive due to an approved request for removal of a grader(s) for a period of 6 months, the application will be considered terminated, but a new application may be filed at any time. In

addition, there will be a charge of \$300 if the application is terminated at the request of the applicant for reasons other than for a change in location within 12 months from the date of the inauguration of service.

(2) A charge for the salary and other costs, as specified in this part, for each grader while assigned to a plant, except that no charge will be made when the assigned grader is temporarily reassigned by AMS to perform grading service for other than the applicant.

\* \* \* \* \*

**PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS**

- 40. The authority citation for part 75 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624.

- 41. Revise § 75.41 to read as follows:

**§ 75.41 General.**

Fees and charges for inspection or certification services performed by Federal employees shall cover the cost of performing the service. Fees shall be for actual time required to render the service. For each calendar year, AMS will calculate the rate for inspection or certification services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS inspection or certification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS inspection or certification program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS inspection or certification program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(1) *Benefits rate.* The total AMS inspection or certification program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(2) *Operating rate.* The total AMS inspection or certification program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(3) *Allowance for bad debt rate.* Total AMS inspection or certification program allowance for bad debt divided by total hours (regular, overtime, and holiday) worked.

(c) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

■ 42. Amend § 75.42 by revising paragraph (b) to read as follows:

#### **§ 75.42 Sampling and sealing.**

\* \* \* \* \*

(b) When onsite inspection services are performed by Federal employees at the request of the applicant charges will be based on the formulas in § 75.41 of this part.

■ 43. Amend § 75.43 by revising paragraphs (a) and (c) to read as follows:

#### **§ 75.43 Laboratory testing.**

\* \* \* \* \*

(a) Fees assessed based on the formulas in section 75.41 of this part.

\* \* \* \* \*

(c) The fee for a preliminary report issued prior to completion of testing shall be assessed in accordance with paragraph (a) of this section.

### **PART 91—SERVICES AND GENERAL INFORMATION (SCIENCE AND TECHNOLOGY)**

■ 44. The authority citation for part 91 continues to read as follows:

**Authority:** 7 U.S.C. 1622, 1624.

■ 45. Amend § 91.37 by:

- a. Revising paragraphs (a) and (b);
- b. Removing paragraph (c); and
- c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

The revisions read as follows:

#### **§ 91.37 Standard hourly fee rate for laboratory testing, analysis, and other services.**

(a) For each fiscal year, AMS will calculate the rate for laboratory testing, analysis, and other services, per hour per program employee using the following formulas:

(1) *Regular rate.* The total AMS laboratory service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase, plus the benefits rate, plus the operating rate, plus the allowance for bad debt rate. If applicable, travel expenses may also be added to the cost of providing the service.

(2) *Overtime rate.* The total AMS laboratory service program personnel direct pay divided by direct hours, which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 1.5 plus the benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(3) *Holiday rate.* The total AMS laboratory service program personnel direct pay divided by direct hours which is then multiplied by the next year's percentage of cost of living increase and then multiplied by 2, plus benefits rate, plus the operating rate, plus an allowance for bad debt. If applicable, travel expenses may also be added to the cost of providing the service.

(b)(1) For each calendar year, based on previous fiscal year/historical actual costs, AMS will calculate the benefits, operating, and allowance for bad debt components of the regular, overtime and holiday rates as follows:

(i) *Benefits rate.* The total AMS laboratory service program direct benefits costs divided by the total hours (regular, overtime, and holiday) worked, which is then multiplied by the next calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan (TSP) retirement basic and matching contributions.

(ii) *Operating rate.* The total AMS laboratory service program operating costs divided by total hours (regular, overtime, and holiday) worked, which is then multiplied by the percentage of inflation.

(iii) *Allowance for bad debt rate.* Total AMS laboratory service program allowance for bad debt divided by total

hours (regular, overtime, and holiday) worked.

(2) The calendar year cost of living expenses and percentage of inflation factors used in the formulas in this section are based on the most recent Office of Management and Budget's Presidential Economic Assumptions.

\* \* \* \* \*

■ 46. Amend § 91.38 by revising paragraph (a) to read as follows:

#### **§ 91.38 Additional fees for appeal of analysis.**

(a) The applicant for appeal sample testing will be charged a fee based on the formulas in § 91.37 of this part.

\* \* \* \* \*

■ 47. Amend § 91.39 by revising paragraph (a) to read as follows:

#### **§ 91.39 Hourly fee rates for overtime and legal holiday service.**

(a) When analytical testing in a Science and Technology facility requires the services of laboratory personnel beyond their regularly assigned tour of duty on any day or on a day outside the established schedule, such services are considered as overtime work. When analytical testing in a Science and Technology facility requires the services of laboratory personnel on a Federal holiday or a day designated in lieu of such a holiday, such services are considered holiday work. Laboratory analyses initiated at the request of the applicant to be rendered on Federal holidays, and on an overtime basis will be charged fees based on the formulas in § 91.37 of this part.

\* \* \* \* \*

Dated: August 29, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

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### **SMALL BUSINESS ADMINISTRATION**

#### **13 CFR Part 121**

**RIN 3245-AG51**

#### **Small Business Size Standards: Industries With Employee Based Size Standards Not Part of Manufacturing, Wholesale Trade, or Retail Trade**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Small Business Administration (SBA) proposes to increase employee based small business