

Rules and Regulations

Federal Register

Vol. 60, No. 188

Thursday, September 28, 1995

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-95-17]

RIN 0581-AB40

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products: Revision of User Fees

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is increasing the fees charged for services provided under the dairy grading program. This rule will yield an estimated \$87,000 of additional user fee revenue in FY 1996. The program is a voluntary, user-fee funded program conducted under the authority of the Agricultural Marketing Act of 1946, as amended. This action increases the hourly rate to \$43.00 per hour for continuous resident services and \$48.00 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. These fees represent a \$0.80 per hour increase for both resident and nonresident services. The fee for nonresident services between the hours of 6 p.m. and 6 a.m. is \$52.80 per hour, which represents an increase of \$0.80 per hour.

The fees need to be increased to cover the costs of recent salary increases and locality adjustments, the full funding of standardization activities, and normal inflationary pressures.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Lynn G. Boerger, USDA/AMS/Dairy Division, Dairy Grading Branch, Room 2750-South Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 720-9381.

SUPPLEMENTARY INFORMATION: This rule has been determined not significant for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies. This rule is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to this rule or the application of its provisions.

This final rule has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and the Administrator, Agricultural Marketing Service, has determined that the rule will not have a significant economic impact on a substantial number of small entities. The changes will not significantly affect the cost per unit for grading and inspection services. The Agricultural Marketing Service estimates that this rule will yield an additional \$87,000 in user fee revenue during FY 1996. The Agency does not believe the increases will affect competition. Furthermore, the dairy grading program is a voluntary program.

The Agricultural Marketing Act of 1946, as amended, authorizes the Secretary of Agriculture to provide Federal dairy grading and inspection services that facilitate marketing and help consumers obtain the quality of dairy products they desire. The Act provides that reasonable fees be collected from the users of the services to cover the cost of maintaining the program.

Since the costs of the grading program are covered by user fees, it is essential that fees be increased to cover the cost of maintaining a financially self-supporting program. The last fee increase under this program became effective on February 9, 1994. Since that time, the salaries of Federal employees increased by 2.6 percent as of January 8, 1995. Also, there have been normal increases in other operating costs. In addition, recent congressional action may result in additional salary increases of varying amounts in 1996. Although the program's operating reserves were adequate to cover the January 8, 1995, salary increase, this will not be the case

for 1996 salary increases, and a fee increase is needed.

The grading program fees also need to be increased to cover the remaining costs related to the development of dairy product standards and other activities now performed by the Dairy Division's Standardization Branch. In FY 1994, Congress appropriated money for the development of standards by the Agricultural Marketing Service but at the same time stipulated that the program costs be recovered through user fees, with the fees being turned over to the U.S. Treasury. The fee increase which took effect on February 9, 1994, provided for 2/3 of the cost of the program. Since the dairy standardization program is an essential part of the dairy grading program, it is appropriate that the standardization program costs be recovered through the fees charged the users of the grading program. The projected cost of the dairy standardization program for FY 1996 is \$440,000.

On August 7, 1995, the Agricultural Marketing Service published in the Federal Register (60 FR 40115) for public comment a document proposing an \$0.80 increase in the hourly fees for both the resident and nonresident programs. No comments were received.

Pursuant to 5 U.S.C. 553, it is hereby found that good cause exists for not delaying the effective date of this action until 30 days after publication of this final rule in the Federal Register. A revenue shortfall warrants putting the higher rates into effect as quickly as possible. The increase in fees is essential for effective management and operation of the program and to satisfy the intent of the Agricultural Marketing Act of 1946. A proposed rule setting forth proposed fee increases was published in the Federal Register on August 7, 1995 (60 FR 40115). Therefore, the provisions of this final rule are known to interested parties.

The supplemental information section of the proposed rule inadvertently misstated, by one year, the approximate effective date of the fee increase. The approximate date read October 1, 1996, instead of October 1, 1995. We believe the effective date was understood by readers to be October 1, 1995 because the supplemental information referred to the implementation of the fee increase to be on an expedited basis,

and, in addition, the proposed rule allowed only a 30-day comment period.

Accordingly, the program fees are being increased as set forth below.

Program Changes Adopted in the Final Rule

This document makes the following changes in the regulations implementing the dairy inspection and grading program:

1. Increases the hourly fee for nonresident services from \$47.20 to \$48.00 for services performed between 6 a.m. and 6 p.m. and from \$52.00 to \$52.80 for services performed between 6 p.m. and 6 a.m.

The nonresident hourly rate is charged to users who request an inspector or grader for particular dates and amounts of time to perform specific grading and inspection activities. These users of nonresident services are charged for the amount of time required to perform the task and undertake related travel, plus travel costs.

2. Increases the hourly fee for continuous resident services from \$42.20 to \$43.00.

The resident hourly rate is charged to those who are using grading and inspection services performed by an inspector or grader assigned to a plant on a continuous, year-round, resident basis.

List of Subjects in 7 CFR Part 58

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

For the reasons set forth in the preamble, 7 CFR Part 58 is amended as follows:

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

1. The authority citation for Part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In Part 58, subpart A, § 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in sections 58.38 through 58.46, charges shall be made for inspection, grading, and sampling service at the hourly rate of \$48.00 for service performed between 6 a.m. and 6 p.m., and \$52.80 for service performed between 6 p.m. and 6 a.m., for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates

and reports and the travel time of the inspector and grader in connection with the performance of the service. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued.

3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident service.

Irrespective of the fees and charges provided in sections 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of \$43.00 per hour for services performed during the assigned tour of duty. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: September 25, 1995.
M. Michael Holbrook,
Acting Administrator.
[FR Doc. 95–24122 Filed 9–27–95; 8:45 am]
BILLING CODE 3410–02–P

7 CFR Part 928

[Docket No. FV95–928–1FIR]

Papayas Grown in Hawaii; Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Papaya Administrative Committee (Committee) under M.O. No. 928 for the 1995–96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.
EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone: (202) 720–5127; or Martin Engler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 928 [7 CFR Part 928], regulating the handling of papayas grown in Hawaii. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable papayas handled during the 1995–96 fiscal year, beginning July 1, 1995, through June 30, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.