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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 54

[Docket Number LS-02-06]

RIN 0581-AC13

Changes in Fees for Federal Meat Grading and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

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

EFFECTIVE DATE: July 13, 2003.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, MGC Branch, telephone number (202) 720-1246 or e-mail Larry.Meadows@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal meat grading and certification services to facilitate the orderly marketing of meat and meat products and to enable consumers to obtain the quality of meat they desire. The AMA also provides for the collection of fees from users of the Federal meat grading and certification program that are approximately equal to the cost of providing service. The hourly fees are established by equitably

distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Nearly 80 percent of operating costs are derived from employee salaries and benefits. The remaining operating costs include travel, training, and administrative expenses. Revenue hours include commitment and noncommitment base hours, premium hours, and holiday hours. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

Despite cost reduction efforts and hourly fee increases in 1998 and 2000, the MGC Branch incurred a \$667,000 operating loss in fiscal year (FY) 2001. Furthermore, AMS projects that the MGC Branch will lose an additional \$8.6 million through FY 2004 and totally deplete program reserves to the point of deficit operations (*i.e.*, FY 2002, \$1.6 million; FY 2003, \$2.9 million; and FY 2004, \$4.1 million).

In view of these considerations, AMS will increase hourly fees charged to users of the service. The base hourly fee for commitment applicants will increase from \$45 to \$55. A commitment applicant is a user of meat grading and certification services who agrees to pay for five continuous 8 hour days, Monday through Friday between the hours of 6 a.m. and 6 p.m., excluding Federal legal holidays. The base hourly fee for noncommitment applicants will increase from \$52 to \$64. A noncommitment applicant is a user of meat grading and certification services, who agrees to pay an hourly fee without committing to a certain number of service hours. The premium hourly fee will increase from \$57 to \$70. The premium hourly fee is charged to applicants when meat grading and certification services: (1) Exceed 8 hours per day; (2) are performed before 6 a.m. and after 6 p.m. Monday through Friday; or (3) are performed any time on Saturday or Sunday, except on Federal legal holidays. The holiday fee will increase from \$90 to \$110 and is charged to applicants for meat grading and certification services provided on Federal legal holidays.

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866, and has not been reviewed

by the Office of Management and Budget.

Regulatory Flexibility Act

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

AMS, through its MGC Branch, provides voluntary Federal meat grading and certification services to 450 businesses, including 152 livestock slaughterers, 79 facilities that process federally donated products, 74 meat processors, 46 livestock producers and feeders, 28 brokers, 26 organic certifying companies, 25 trade associations, 17 State and Federal entities, and 3 distributors.

Seventy-two percent (*i.e.*, 324) of these businesses are small entities which generate approximately 17 percent of the MGC Branch's revenues. A small entity is defined for the meat packing and processing industry as a company that employs less than 500 employees. No entity, small or large, is obligated to use voluntary Federal meat grading and certification services provided under the authority of the AMA.

Voluntary Federal meat grading and certification services facilitate the orderly marketing of meat and meat products and enable consumers to obtain the quality of meat they desire. Grading services consist of the evaluation of beef, lamb, pork, veal, and calf carcasses for compliance with the grades of the appropriate official U.S. Standard. The MGC Branch grades approximately 22.1 billion pounds of meat each year. Certification services consist of the evaluation of meat and meat products for compliance with specification and contractual requirements. Certification services are regularly used by meat purchasers to ensure that the quality and yields of the products they purchase comply with their stated requirements. The MGC Branch certifies approximately 18.1 billion pounds of meat and meat products each year.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule for the MGC Branch would not

generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. In FY 2001, the MGC Branch incurred a \$657,000 operating loss; in FY 2002 operating losses were \$1.6 million and, without a fee increase, FY 2003 operating losses are projected to reach \$2.9 million. These combined losses will deplete MGC Branch's operating reserve and place the MGC Branch in an unstable financial position that will adversely affect its ability to provide the currently available meat grading and certification services.

Since 1993, the MGC Branch has controlled operating costs by closing three field offices, reducing mid-level supervisory staff by over 50 percent, and reducing the number of support staff by 38 percent. At the same time, the MGC Branch has utilized automated information management systems for data collection, retrieval, and dissemination, applicant billing, and disbursement of employee entitlements. The reduction in field offices, supervisory staff and support personnel and the increased use of automated systems has enabled the MGC Branch to absorb a substantial portion of the operating costs and minimize hourly fee increases over the past 9 years. However, the MGC Branch has continued to lose revenue due to the implementation of more cost-efficient audit-based and pilot certification programs. These programs, while providing an equal or higher level of assurance, require fewer personnel and generate fewer revenue hours when compared to traditional certification services. Accordingly, the overall cost of service to the industry is reduced. Consolidation within the livestock and meat industry has also contributed to a decline in MGC Branch revenue because there are fewer applicants and they are able to perform work more efficiently. Moreover, the MGC Branch operating costs increased due to expenses associated with: (1) Ongoing information system technology upgrades to remain compatible with customer and Agency systems; (2) congressionally mandated salary increases for all Federal Government employees in 2001, 2002, and 2003; (3) inflation of nonsalary operating expenses; and (4) accumulated increases in continental United States (CONUS) per diem rates, mileage rates, and office maintenance expenses.

This fee increase will raise the hourly fees charged to users of Federal meat grading and certification services. After implementation, AMS estimates that this action will provide the MGC Branch

an additional \$401,000 per month in FY 2003. Of this \$401,000, small businesses would pay an average of \$68,170 or an additional \$210 per month (\$2,520 per year) per applicant. This fee increase coupled with a projected increase in revenue hours will increase revenues by \$4.8 million per year and offset FY 2002 operating losses of \$1.6 million and projected FY 2003 losses of \$2.9 million. Even with this action, the unit cost for MGC Branch service (revenue/total pounds graded and certified) will remain unchanged at approximately \$0.0006 per pound.

AMS projects that, without an hourly fee increase, the MGC Branch will lose an additional \$8.6 million through FY 2004 and totally deplete program reserves to the point of deficit operations. Any further reduction in MGC Branch services has the potential to substantially harm small and limited resource firms that rely on grading and certification services to help distinguish and market their products in the global marketplace.

Civil Justice Reform

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

Paperwork Reduction Act

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

Comments and Responses

On November 1, 2002, AMS published a proposed rule in the **Federal Register** to increase the fees for Federal meat grading and certification services and requested comments by January 1, 2003. The Agency received three comments.

The first respondent understood that normal inflation and rising operating costs affect operating expenses. However, the respondent opposed the magnitude of the proposed fee increase and called the increase twice as large as needed; indicated that the new MGC Branch staffing guidelines coupled with the proposed fee increase would negatively impact virtually all sectors of the livestock and meat industry; and said the formula used to estimate the per pound cost of providing services was outdated. This respondent also urged the MGC Branch to further

streamline services by consolidating branch offices and reducing staff; explore alternative revenue sources; and focus on new technology that would decrease user costs to and improve the accuracy of the grading service.

(Note: In August 2002, the MGC Branch implemented recommended in-plant staffing guidelines for high volume, high speed beef grading operations. The recommended staffing guidelines were implemented to safeguard Federal meat graders from repetitive motion injuries.

The second respondent favored a standardized meat grading system with less staff and an automated grading system. The respondent felt that an automated grading system would result in higher grading accuracy and would provide more valuable information to cattle producers who make genetic selections based on yield and grade results.

The third respondent recognized the benefits of the recently implemented staffing guidelines, but failed to see how the proposed fee increase was justified and asked the MGC Branch to look for more ways to reduce costs rather than passing them on to customers.

The comments from all respondents can be summarized as follows: (1) Justify the necessity and magnitude of the fee increase; (2) consider the impact of total MGC Branch costs on the livestock and meat industry; (3) reevaluate the accuracy of the formula used to estimate the per pound cost of providing services; (4) streamline services through MGC Branch office consolidation and staff reduction; and (5) explore alternative revenue sources and new technology to decrease user costs and improve the accuracy and efficiency of meat grading and certification services. The Agency response to each comment is as follows:

(1) *Justify the necessity and magnitude of the fee increase:* The AMA provides for the collection of fees from users of the Federal meat grading and certification services that are approximately equal to the cost of providing service. The hourly fees are established by equitably distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. In FY 2001, the MGC Branch incurred a \$657,000 operating loss. Without an hourly fee increase, the MGC Branch is projected to lose an additional \$8.6 million through FY 2004 and totally deplete program reserves. By law, the program must recover the cost of providing grading and certification services. Since the Agency has implemented every reasonable measure to reduce expenses, a fee increase is the

only avenue available to ensure revenues equal expenses on a sustaining basis.

(2) *Consider the impact total MGC Branch costs on the livestock and meat industry:* The MGC Branch issued recommended staffing guidelines for applicants of beef carcass grading and/or live animal/carcass schedule certification services on August 22, 2002. The recommended staffing guidelines, while increasing the number of Federal meat graders in 4 percent of firms requesting services, were designed to reduce the number of cumulative trauma disorders (CTD) associated with repetitive motions, which is the leading cause of injuries to MGC Branch employees.

Voluntary Federal meat grading and certification services are provided to 450 businesses, including 152 livestock slaughterers, 79 facilities that process federal donated products, 74 meat processors, 46 livestock producers and feeders, 28 brokers, 26 organic certifying companies, 25 trade associations, 17 State and Federal entities, and 3 distributors. Seventy-two percent (*i.e.*, 324) of these businesses are small entities which generate approximately 17 percent of the MGC Branch's revenues. A small entity is defined for the meat packing and processing industry as a company that employs less than 500 employees. AMS estimates that the fee increase will cost small businesses an average of \$68,170 or an additional \$210 per month (\$2,520 per year) per applicant. AMS is very cognizant of the impact that fees charged for meat grading and certification services have over all firms.

(3) *Reevaluate the accuracy of the formula used to estimate the per pound cost of providing services:* In accordance with the AMA, meat grading and certification services are provided on a cost recovery basis. The cost per pound is derived by dividing the total revenue by the total pounds graded and certified within the same time frame. The formula provides an accurate and consistent comparison between the cost of providing service and the tonnage of graded and certified carcasses over time. Since 1993, the amount of product graded and certified per year has increased by 13 billion pounds. Over the same timeframe, the MGC Branch has doubled its revenue hour efficiency and maintained the overall cost per pound of service at \$0.0006. We believe this method of calculating the cost per pound for providing grading and certification services is accurate and provides a meaningful way to evaluate efficiency over time.

(4) *Streamline services through MGC Branch office consolidation and staff reduction:* In the past 10 years, the MGC Branch has closed three area offices, reduced mid-level supervisory staff by over 50 percent, and reduced the number of support staff by 38 percent. As part of the current MGC Branch reorganization, the Branch will close the remaining four area offices, eliminate two levels of supervision, and transfer area office functions to the Office of Field Operations (OFO) in Denver, Colorado, by the end of FY 2003. The MGC Branch reorganization also includes plans to restructure the internal operations to more effectively and efficiently service specific program areas. The MGC Branch will maintain two offices: the OFO in Denver, Colorado, and the Headquarter office in Washington, DC. The Agency has determined that, upon completion of the current reorganization, MGC Branch's operations will be streamlined to the maximum extent possible.

(5) *Explore alternative revenue sources and new technology to decrease user costs and improve the accuracy and efficiency of grading and certification services:* By law, the Agency is required to charge fees that equal the cost of providing services. Accordingly, any "alternative revenue source," if required as suggested by the respondent, would be conducted on a full cost recovery basis. AMS has actively participated with the National Cattlemen's Beef Association (NCBA), the beef packing industry, instrument manufacturers, and academia to develop performance standards that can potentially improve grading accuracy and repeatability through the use of an electronic instrument augmentation system that measures the ribeyes of beef carcasses. This same concept is also being researched for lamb grading augmentations. AMS is also involved with ongoing studies to develop technology that utilizes special equipment to apply environmentally safe yet durable carcass quality and yield grade labels. Additionally, the Agency is working with additional companies to incorporate voice recognition software into this new grade application as well as for general data collection and transmission.

Process Verified Programs such as the Non Hormone Treated Cattle Program and the Pork for the European Union Program provide complete traceability from farm to plate. Additional audit based programs such as the National School Lunch Programs' Canned Meats and Ham Programs are being implemented to improve the overall selection, quality, and cost of the

services provided to the industry. In addition, the MGC Branch has worked with members of the Federal purchase and further processing industry to develop several pilot programs that incorporate audit based principles. These programs, while providing the same or a higher level of assurance, require graders to monitor and verify an applicants' entire production process rather than performing an examination on the end product. These audit and audit based programs also allow greater scheduling flexibility, improve operational efficiencies, reduce costs, and provide value-adding services to applicants. The Agency believes that, to the maximum extent possible technology is being utilized to improve the accuracy and cost-effectiveness of meat grading and certification services.

List of Subjects in 7 CFR Part 54

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

■ For the reasons set forth in the preamble, 7 CFR part 54 is amended as follows:

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

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

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 54.27 is amended as follows:

■ a. In paragraph (a), remove "\$52" and add "\$64" in its place, remove "\$57" and add "\$70" in its place, remove "\$90" and add "\$110" in its place.

■ b. In paragraph (b), remove "\$45" and add "\$55" in its place, remove "\$57" and add "\$70" in its place, remove "\$90" and add "\$110" in its place.

Dated: June 27, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–16828 Filed 7–2–03; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1146]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System is adopting an