

# Proposed Rules

Federal Register

Vol. 68, No. 192

Friday, October 3, 2003

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 Part 58

[Docket Number DA-03-03]

RIN 0581-AC32

#### Increase in Fees for Federal Dairy Grading and Inspection Services

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) proposes to increase the hourly fees charged under the Federal dairy grading and inspection program. Dairy grading and inspection services are voluntary and are financed through user-fees assessed to participants in the program. The hourly fees would be adjusted by 10.7 to 11.8 percent to reflect the increased costs of providing service and to ensure that the program operates on a financially self-supporting basis.

**DATES:** Comments must be received on or before November 3, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments to Duane R. Spomer, Associate Deputy Administrator for Standards and Grading, USDA, AMS, Dairy Programs, STOP 0230, 1400 Independence Avenue, SW., Washington, DC 20250-0230. Comments may also be submitted electronically to [Duane.Spomer@usda.gov](mailto:Duane.Spomer@usda.gov) or faxed to (202) 720-2643.

All comments should reference docket number DA-03-03 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above address between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Duane R. Spomer, Dairy Programs, (202) 720-3171.

#### 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 dairy grading and inspection services to facilitate the orderly marketing of dairy products and to enable consumers to obtain the quality of dairy products they desire. The AMA also provides for the collection of reasonable fees from users of the Federal dairy grading and inspection services that cover the cost of providing these services. The hourly fees are established by distributing the program's projected operating costs over the estimated hours of service—revenue hours—provided to users of the service on a yearly basis. Program operating costs include employee salaries and benefits—which account for nearly 80 percent of the non-travel related operating costs—training, and administrative costs. Periodically, the fees must be adjusted to ensure that the program remains financially self-supporting.

AMS regularly reviews its user-fee-financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule, effective January 4, 1998, would not generate sufficient revenues to recover operating costs for current and near-term periods while maintaining an adequate reserve balance. Costs in FY 2004 are projected at \$5.95 million. Without a fee increase, FY 2004 revenues are projected at \$5.71, and the trust fund balance would be \$2.09 million. With a fee increase, FY 2004 revenues are projected at \$6.14 million, and the trust fund balance would be \$2.52 million.

Employee salaries and benefits account for approximately 80.0 percent of the non-travel related operating budget. Travel costs are billed directly to the users of services provided by the Dairy Grading Branch on a cost-recovery basis. Since the January 4, 1998, fee increase, Federal salaries and location adjustments have increased annually. The average salary has increased approximately 17.4 percent during this 6-year period. As a result of these increases, annual salary and benefit costs to the program are approximately \$556 thousand more today than in 1998. Inflation has also increased the operational and administrative costs

associated with this program, and a fee increase is necessary to sustain the program. If the short fall is allowed to continue, it will place the Dairy Grading Branch in an unstable financial position that will adversely affect its ability to provide dairy grading and inspection services.

This proposal will also generate funds to automate current business practices of the Dairy Grading Branch. Automated business practices will also enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection services and information to users of dairy grading and inspection services.

In view of these increased costs, AMS proposes to increase the hourly fees associated with Federal dairy grading and inspection services. Currently the fees are \$51.00 per hour for continuous resident services and \$56.00 per hour for non-resident services. The proposed increases would result in a fee of \$57.00 per hour for continuous resident services and \$62.00 per hour for nonresident services between the hours of 6 a.m. and 6 p.m. The fee for nonresident service between the hours of 6 p.m. and 6 a.m. would be \$68.20 per hour. The proposed fees represent increases of \$6.00 (11.8 percent) per hour for continuous resident and \$6.00 (10.7 percent) per hour for nonresident services. For services performed in excess of 8 hours per day and for services performed on Saturday, Sunday, and legal holidays, 1½ times the base fee would apply and as a result, the fee would increase from \$84.00 per hour to \$93.00 per hour.

#### Executive Order 12866

This proposed rule has been determined to be “not significant” for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

#### Regulatory Flexibility Act

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

AMS provides voluntary Federal dairy product grading and inspection services to about 350 users of services provided by the Dairy Grading Branch. Manufacturing operations participating in the voluntary plant inspection program have their facility inspected against established construction and sanitation requirements. Dairy products manufactured in facilities complying with the USDA requirements are eligible to be inspected and graded against official quality standards and specifications established by AMS and certain contract provisions between buyer and seller. Products inspected or graded under the program have certificates issued attesting to the product's quality and condition. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). This rule will raise the fee charged to businesses for voluntary inspection and grading services for dairy and related products and the evaluation of food processing equipment. Even though the fee will be raised, the increase is 10.7 percent for nonresident service and 11.8 percent for resident service and will not significantly affect these entities. These businesses are under no obligation to use these voluntary user-fee based services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products. The AMS estimates that overall this rule would yield an additional \$522,000 annually. The proposed rule reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act of 1946, as amended.

The AMS regularly reviews its user-fee financed programs to determine if fees are adequate and if costs are reasonable. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Without a fee increase, total revenue projections—including travel revenue—for Fiscal Year 2004 would be \$5.71 million. Total costs—including travel costs—for the same period of time are projected to increase to \$5.95 million. The shortfall, if allowed to continue, would translate into a trust fund balance of \$431 thousand or 0.8 months of operating reserve at the end of FY 2007.

This action would raise the hourly fees charged to users of Federal dairy inspection and grading services. AMS estimates this action would provide the

Dairy Grading Branch an additional \$522 thousand annually. This would generate revenue to recover program costs, automate business practices to minimize the extent of future fee increases, and enhance customer services through improvements in office efficiency and timeliness of providing grading and inspection information to users of these services.

#### Civil Justice Reform

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

#### Paperwork Reduction Act

This action would not impose any additional reporting or recordkeeping requirements on users of Federal dairy grading and inspection services.

A thirty-day comment period is provided for interested persons to comment on this proposed rule. This period is appropriate in order to implement, as early as possible in FY 2004, any fee changes adopted as a result of this rulemaking action.

#### List of Subjects in 7 CFR Part 58

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

For the reason set forth in the preamble, it is proposed that 7 CFR part 58 be amended as follows:

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

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

**Authority:** 7 U.S.C. 1621–1627.

#### **Subpart A—[Amended]**

##### **§ 58.43 [Amended]**

2. In § 58.43, “\$56.00” is removed and “\$62.00” is added in its place, and “\$61.60” is removed and “\$68.20” is added in its place.

##### **§ 58.45 [Amended]**

3. In § 58.45, “\$51.00” is removed and “\$57.00” is added in its place.

Dated: September 30, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–25112 Filed 10–2–03; 8:45 am]

**BILLING CODE 3410–02–P**

## **NUCLEAR REGULATORY COMMISSION**

### **10 CFR Part 52**

**[Docket No. PRM 52–1]**

#### **Nuclear Energy Institute; Denial of Petition for Rulemaking**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM 52–1) submitted by the Nuclear Energy Institute (NEI or the petitioner). The petitioner requested that the NRC amend its regulations to allow applicants seeking an early site permit (ESP) and a combined license (COL) to use existing information from prior licensing actions as resolved information that has been approved by the NRC and has been subject to a public hearing. The Commission is denying the petition because most of the efficiencies, regulatory stability and predictability which are the object of the petitioner's proposal can be achieved under existing regulations and the guidance that the Commission has directed the NRC staff to prepare. In addition, several key aspects of the petition are based on a misapplication of the “current licensing basis” concept and the Backfit Rule, and the petition does not represent a viable approach for achieving the desired efficiencies.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter of denial to the petitioner are available for public inspection, or copying for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also available on the NRC's rulemaking web site at <http://ruleforum.llnl.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen S. Koenick, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1239, e-mail: [ssk2@nrc.gov](mailto:ssk2@nrc.gov).

**SUPPLEMENTARY INFORMATION:**