

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 Part 75

[Docket Number LS-01-07]

Increase in Fees for Voluntary Federal Seed Testing and Certification Services and Establishment of a Fee for Preliminary Test Reports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the hourly fee rate charged for voluntary Federal seed testing and certification services and establish a fee for issuing preliminary test reports. The fee rate needs to be increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs. A new fee needs to be established to recover the cost of providing preliminary test reports.

DATES: Comments must be received on or before December 24, 2001.

ADDRESSES: Send written comments to Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, MD 20705-2325. Comments may be faxed to (301) 504-8098.

State that your comments refer to Docket No. LS-01-07 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, USDA, Room 209, Building 306, BARC-East, Beltsville, Maryland 20725-2325; telephone: (301) 504-9430, Fax: (301)

504-8098; E-mail: Richard.Payne2@usda.gov.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

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

B. Regulatory Flexibility Act

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

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Over ninety-five percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the USDA's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The 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 will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at \$138,000, costs are projected at \$149,000, and the trust fund balance is projected to be \$92,000 or 7.4 months of operating reserve. With a fee increase, FY 2002 revenues are projected at \$160,000, costs are projected at \$151,000, and the trust fund balance is

projected to be \$113,000 or 9.0 months of operating reserve.

This action will raise the hourly rate charged to users of the seed testing and certification services. This proposed fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2001 and projected increases in 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

The AMS estimates that this proposed rule will yield an additional \$22,000 during FY 2002. The hourly rate for seed testing and certification services will increase by approximately 17 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms will be, on average, approximately \$13.00 per Federal Seed Analysis Certificate issued. There will also be an increase of \$1.90 for each duplicate certificate issued. In addition, this action will establish a fee of \$13.00 to recover the cost of issuing preliminary test reports.

C. 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 would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

D. Paperwork Reduction Act

The information collection requirements that appear in Part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581-0140 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Background and Proposed Changes

The Secretary of Agriculture is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire.

The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This action will increase the hourly fee rate and charges for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective March 1, 2001, revealed that anticipated revenue will not cover increased program costs. Without a fee increase, FY 2002 revenues for seed testing and certification services are projected at \$138,000, costs are projected at \$149,000, and the trust fund balance is projected to be \$92,000 or 7.4 months of operating reserve. With a fee increase, FY 2002 revenues are projected at \$160,000, costs are projected at \$151,000, and the trust fund balance is projected to be \$113,000 or 9.0 months of operating reserve.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated revenue hours of service provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include the salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 75 percent of the total budget. A general and locality salary increase of 3.81 percent for Federal employees involved in the seed testing and certification service became effective in January 2001 and has materially affected program costs. Another general and locality salary increase is expected in January 2002.

This proposed fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 2001 and projected increases in 2002, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is proposing to increase the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from \$44.40 to \$52.00. The fee for issuing additional duplicate certificates will increase from \$11.10 to \$13.00 and a fee of \$13.00 will be established for issuing preliminary reports.

The proposed action will recover the costs associated with providing the voluntary testing service to the seed and grain industry. Although the proposed user-fee increase will increase costs to individual firms, the cost for providing the seed testing and certification services will increase by an average of only \$13.00 per Federal Seed Analysis Certificate and \$1.90 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately \$22,000 annually.

List of Subjects in 7 CFR Part 75

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

For the reasons set forth in the preamble, 7 CFR Part 75 is proposed to be amended as follows:

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

1. The authority citation for Part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 75.41 [Amended]

2. In § 75.41, “\$44.40” is removed and “\$52.00” is added in its place.

3. In § 75.43, a new paragraph (c) is added to read as follows:

§ 75.43 Laboratory testing.

* * * * *

(c) The charge for a preliminary report issued prior to completion of testing shall be \$13.00 and billed in accordance with paragraph (a) of this section.

§ 75.47 [Amended]

4. In § 75.47, “\$11.10” is removed and “\$13.00” is added in its place.

Dated: October 17, 2001.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 01-26592 Filed 10-22-01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO-313-A44; DA-01-07]

Milk in the Central Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals that would amend certain pooling and related provisions of the Central order. Proposals include amending the pool supply plant and pool supply plant system provisions of the order, eliminating the provision for a cooperative supply plant and amending the portion of the producer milk definition that specifies the percentage of a handler's milk that may be diverted to nonpool plants. Another proposed amendment to the order's pooling provisions would allow milk diverted to a nonpool plant before the producer's milk is delivered to a pool plant to be considered producer milk and allow the producer's milk to retain its association with the market for any months during which the handler fails to pool the producer's milk under any order. Other proposals would provide for establishing separate pooling provisions by state of origin for milk from areas outside the Central order marketing area, preventing the pooling of milk that is already pooled on a State marketwide order and increasing minimum partial payments to producers and cooperative associations. Proponents have requested that these issues be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on Wednesday, November 14, 2001.

ADDRESSES: The hearing will be held at the Hilton Hotel-Kansas City Airport, 8801 N.W. 112th Street, Kansas City, Missouri 64153; (816) 891-8900.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202)720-2357, e-mail address connie.brenner@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact Bob