

accrual rates of the affected employees ensures equitable treatment.

In the interim regulations, section 630.210(a) states that "[o]ne hour (or appropriate fraction thereof) of leave shall be charged for each hour (or appropriate fraction thereof) of absence from the uncommon tour of duty." Since the leave accrual rates for firefighters on uncommon tours of duty have been adjusted to fully reflect their longer work schedule, an hour-for-hour charging methodology is necessary to maintain an equitable relationship with other employees. When an employee with 15 or more years of service who works 80 hours per day period takes 1 week of annual leave, the employee is charged 40 hours, or about 19 percent of the leave accrued in 1 year. Similarly, when a firefighter with 15 or more years of service who works 144 hours per pay period takes 1 week of annual leave, the employee is charged 72 hours, or about 19 percent of the leave accrued in 1 year. OPM believes the manner in which leave must be charged for employees on uncommon tours of duty was clearly stated in the interim regulation. Therefore, no change has been made in this provision of the final regulations.

**Miscellaneous Amendments**

The authority cited in 5 CFR 531.401(c) for within-grade increase purposes is being revised to give the correct citation. (The Executive order previously cited has been revoked.) The definition of *acceptable level of competence* in 5 CFR 531.403, for within-grade increase purposes, is being revised to refer to the next higher rate within the grade, as well as the next higher step of the grade, in order to address the situation of GM employees, whose rates of basic pay are between General Schedule step rates.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

**List of Subjects in 5 CFR Parts 451, 531, 550, 551 and 630**

Administrative practice and procedure, Claims, Decorations, medals, awards, Government employees, Law enforcement officers, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

**James B. King,**

*Director.*

Accordingly, the interim rule amending parts 451, 531, 550, 551, 591,

and 630 of title 5 of the Code of Federal Regulations, which was published at 59 FR 66629 on December 28, 1994, is adopted as final with the following changes:

**PART 451—INCENTIVE AWARDS**

1. The authority citation for part 451 continues to read as follows:

**Authority:** 5 U.S.C. 4501–4507.

2. In § 451.104, paragraph (f) is revised to read as follows:

**§ 451.104 Policy.**

\* \* \* \* \*

(f) An award under this subpart may be granted to a separated employee or the legal heir(s) or estate of a deceased employee.

\* \* \* \* \*

**PART 531—PAY UNDER THE GENERAL SCHEDULE**

3. The authority citation for part 531 is revised to read as follows:

**Authority:** 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, 3 CFR 1993 Comp., p. 682.

**Subpart D—Within-Grade Increases**

4. In § 531.401, paragraph (c) is revised to read as follows:

**§ 531.401 Principal authorities.**

\* \* \* \* \*

(c) Section 5338 of title 5, United States Code, provides that "The Office of Personnel Management may prescribe regulations necessary for the administration" of General Schedule pay rates, including within-grade increases.

\* \* \* \* \*

5. In § 531.403, the definition of *acceptable level of competence* is revised to read as follows:

**§ 531.403 Definitions.**

\* \* \* \* \*

*Acceptable level of competence* means fully successful performance by an employee of the duties and responsibilities of his or her assigned position that warrants advancement of the employee's rate of basic pay to the next higher step of the grade or the next higher rate within the grade (as defined in this section) of his or her position, subject to the requirements of § 531.404 of this subpart.

\* \* \* \* \*

**PART 550—PAY ADMINISTRATION (GENERAL)**

**Subpart A—Premium Pay**

6. The authority citation for part 550, subpart A, is revised to read as follows:

**Authority:** 5 U.S.C. 5304 note, 5305 note, 5541(2)(iv), 5548, and 6101(c); E.O. 12748, 3 CFR 1991 Comp., p. 316.

7. In § 550.103, paragraph (o) is revised to read as follows:

**§ 550.103 Definitions.**

\* \* \* \* \*

(o) *Sunday work* means nonovertime work performed by a full-time employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday. For any such tour of duty, not more than 8 hours of work are Sunday work, unless the employee is on a compressed work schedule, in which case the entire regularly scheduled daily tour of duty constitutes Sunday work.

\* \* \* \* \*

8. Section 550.171 is revised to read as follows:

**§ 550.171 Authorization of pay for Sunday work.**

A full-time employee is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to 25 percent of his or her rate of basic pay for each hour of Sunday work (as defined in § 550.103(o)) and each hour that would be Sunday work but for the placement of the employee in paid leave or excused absence status.

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 29**

[Docket No. TB-95-08]

**Tobacco Fees and Charges for Mandatory Inspection****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, the establishment of standards, and other services, including administrative and supervisory costs, at designated tobacco auction markets in all tobacco producing areas. The fees collected must, as nearly as possible, cover the Department's costs of performing these services and also maintain a reserve sufficient to cover at least 4 months of operation. The present fee of \$.0070 per pound has been in effect since July 11, 1991, and is no longer sufficient to recover the costs of operating this activity. This final rule increases the fee to \$.0083 per pound to reflect increased program costs and replenish the operating reserve. This increase does not affect the fees for import, export, or permissive inspection.

**EFFECTIVE DATE:** June 27, 1995.

**FOR FURTHER INFORMATION CONTACT:** John P. Duncan III, Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 205-0567.

**SUPPLEMENTARY INFORMATION:** Notice was given (60 FR 25624-25625, Friday, May 12, 1995) that the Department proposed to amend the regulations governing the fee charged for mandatory inspection and certification of producer tobacco sold at designated auction markets throughout the tobacco producing areas. The proposed amendment would increase the fees and charges assessed by the Department for providing inspection and certification of tobacco at designated auction markets, establishment of standards, and other services. The new fee would cover the increased cost of operating the program, including administrative and supervisory cost, and replenish the operating reserve which has been drawn down for several years to cover the difference between revenue and obligations and is now below the required level of 4 months. Authority for these regulations is contained in the

Tobacco Inspection Act (7 U.S.C. 511-511q). Interested parties were given an opportunity to comment on the proposed rule.

A total of 21 comments was received; 17 comments—the majority of which came from individual producers supported the increase; 2 comments from organizations representing producers opposed the increase, and 2 comments—1 from an organization representing producers and 1 from an individual who expressed concern over increasing costs to producers and recommended the Department look for ways to operate more efficiently.

The Department conducts a yearly review of the financial status of this program to determine whether the fee is sufficient. At the end of the 1994-95 marketing season, obligations are estimated at \$12,969,000 but revenues are expected to reach only \$11,647,000 resulting in a loss of \$1,322,000 and reducing the operating reserve to 3.8 months. At the current level of service and fee structure, obligations for the 1995-96 marketing season are estimated at \$13,754,000 with revenue of \$12,155,000 for a loss of \$1,599,000 and a further reduction in the operating reserve to 2.2 months. If the same level of service and fee structure continues for the 1996-97 season, the estimated loss would exceed \$2,000,000 and the operating reserve would fall below 1 month.

The major items affecting obligations are increases in salaries, benefits, travel cost and overall administrative costs in each year since 1991. Revenue depends on the amount of tobacco sold on the designated auction markets. Production quotas for flue-cured and burley were relatively stable for the 1992 and 1993 crops; fell sharply in 1994 and were unchanged for burley for 1995 but increased 16 percent for flue-cured. However, the cost of providing the service has continued to rise.

An analysis of available data indicated that a fee of \$.0083 per pound effective for the 1995 crop would provide sufficient revenue to exceed obligations by \$560,000 for the 1995-96 marketing season and bring the operating reserve up to 4 months.

Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at a meeting on January 19, 1995, in Lexington, Kentucky, and again on April 6, 1995, in Raleigh, North Carolina. The National Advisory Committee, consisting of 14 members representing tobacco producers, and appointed by the Secretary of Agriculture, was established by law in 1981 to advise the

Secretary on the level of services needed and the fees necessary to cover those services. The Committee recommended that the level of services remain unchanged and that the fee be increased to \$.0075 per pound.

In considering the Committee's recommendation and the comments opposing the increase, the Department notes that while a fee of \$.0075 per pound will result in smaller losses for the 1995 and 1996 marketing years, the operating reserve will continue to fall and would be below 2 months at the end of the 1996 season.

In view of the comments received, and since neither the current fee of \$.0070 or the recommended fee of \$.0075 per pound will cover the cost of providing the requested service and provide an adequate reserve, the Department is implementing a fee of \$.0083 per pound beginning with the 1995 marketing season.

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

This rule has been reviewed under Executive Order 12778, 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.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) full consideration has been given to the potential economic impact upon small business. Most of the firms which would be affected by the rule are small businesses. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having gross annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The Administrator, Agricultural Marketing Service, has determined that this action would not have a significant economic impact on a substantial number of small entities. This rule would not substantially affect the normal movement of the commodity in the marketplace. Compliance with this rule would not impose substantial direct economic costs, recordkeeping, or personnel workload changes on small entities, and would not alter the market share or competitive positions of small entities relative to the large entities and would in no way affect normal

competition in the marketplace. Furthermore, the Department is required by law to fix and collect fees and charges to cover the Department's cost in operating the tobacco inspection program.

In addition, good cause has been found to make this rule effective less than 30 days after publication because it is necessary that the new fee be effective at the beginning of the marketing season which begins in mid-July. Therefore, in order to treat all types of tobacco on an equal basis, this final rule is made effective upon publication in the **Federal Register**.

#### List of Subjects in 7 CFR Part 29

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

For the reasons set forth in the preamble, the regulations at 7 CFR part 29 are amended as follows:

#### Part 29—Tobacco Inspection

1. The authority citation for part 29, subpart B continues to read as follows:

**Authority:** 7 U.S.C. 511m and 511r.

#### § 29.123 [Amended]

2. In § 29.123 paragraph (a) is amended by removing the words "\$.0070 per pound" and adding in its place "\$.0083 per pound."

Dated: June 21, 1995.

**Lon Hatamiya,**  
*Administrator.*

[FR Doc. 95-15625 Filed 6-26-95; 8:45 am]

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#### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 93-058-1]

#### Tuberculosis in Cattle and Bison; State Designation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis by raising the designation of Kansas from a modified accredited State to an accredited-free State. We have determined that Kansas meets the criteria for designation as an accredited-free State.

**DATES:** Interim rule effective June 27, 1995. Consideration will be given only to comments received on or before August 28, 1995.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 93-058-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 93-058-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. **FOR FURTHER INFORMATION CONTACT:** Dr. Mitchell A. Essey, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, 4700 River Road Unit 36, Riverdale, MD 20737-1231, (301) 734-7727.

#### SUPPLEMENTARY INFORMATION:

##### Background

The "Tuberculosis" regulations, contained in 9 CFR part 77 (referred to below as "the regulations"), regulate the interstate movement of cattle and bison because of tuberculosis. Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The requirements of the regulations concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free States, modified accredited States, or nonmodified accredited States.

The criteria for determining the status of States (the term "State" is defined to mean any State, territory, the District of Columbia, or Puerto Rico) are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference. The status of States is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis eradication program. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years to be designated as an accredited-free State.

Before publication of this interim rule, Kansas was designated in § 77.1 of the regulations as a modified accredited State. However, Kansas now meets the

requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing Kansas from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

#### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to change the regulations so that they accurately reflect the current tuberculosis status of Kansas as an accredited-free State. This will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

Cattle and bison are moved interstate for slaughter, for use as breeding stock, or for feeding. There are 40,100 herds in Kansas with approximately 5,950,000 cattle and bison. Approximately 90 percent of the herd owners would be considered small businesses. Changing the status of Kansas may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant