

# Rules and Regulations

Federal Register

Vol. 65, No. 103

Friday, May 26, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 29

[Docket No. TB-00-10]

RIN 0581-AB87

#### Tobacco Fees and Charges for Mandatory Inspection; Fee Increase

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Tobacco Inspection Act requires the Secretary to fix and collect fees and charges for inspection and certification, 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 program financial liabilities. This interim final rule will increase the fee from \$.0083 to \$.0100 per pound to cover the increased cost of operating the tobacco inspection program and maintain the operating reserve. The last increase in the fee was in 1995. This increase does not affect the fees for import, export, or permissive tobacco inspection.

**DATES:** Effective May 30, 2000; comments received by June 26, 2000, will be considered prior to issuance of a final rule.

**ADDRESSES:** Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), AG 0280, Room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456. Comments will be made available

for public inspection at this location during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, AG 0280, Room 502 Annex Building, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 205-0567; Fax: (202) 205-0235.

#### SUPPLEMENTARY INFORMATION:

##### A. Executive Order 12866

This 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.

##### B. Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$500,000 and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. There are approximately 360 tobacco warehouses and approximately 170,000 producers and most warehouses and producers may be classified as small entities. The AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The Tobacco Inspection Act of 1935, as amended, (7 U.S.C. 511-511q), requires the Secretary to fix and collect fees and charges for inspection and certification of quota tobacco, 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.

The AMS annually reviews its user fee programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule would result in significant losses in crop years 2000 and 2001 and leave the program with inadequate reserve balances. Due to reductions in tobacco quotas and increases in the sale

of tobacco through contract sales, obligations for the 2000 crop-year are estimated at \$11,607,000 and revenues are expected to reach only \$6,843,000, for a loss of \$4,764,000 and a reduction in the operating reserve to \$4,738,000. If the same level of service and fee structure continues for the 2001 crop-year the estimated loss would exceed \$6,154,000 and the operating reserve would drop to a *negative* \$1,416,000.

The major items affecting obligations are Federally mandated increases in salaries and benefits, travel costs, and other administrative costs. Revenue depends on the amount of tobacco sold on the designated auction markets. Production quotas for tobacco were reduced by 228.6 million pounds in 1998, 330.7 million pounds in 1999, and 318.7 million pounds in 2000. This is a total decrease of 878 million pounds in production quotas since 1997. The amount of tobacco graded in 1998 was 1.56 billion pounds, 1.31 billion pounds in 1999, and 938 million pounds is estimated in 2000. Contract sales of tobacco will further reduce the amount graded by about 235 million pounds in 2000. Based on these figures, the current fee level will not generate the amount of revenue sufficient to maintain the level of inspection services requested and maintain funds in the program's reserve account. An analysis of available data indicates that a fee of \$.0100 per pound effective for the 2000 crop-year would increase revenue by \$1,277,000 and bring the operating reserve up to \$6,014,000. The requested fee increase was recommended by the National Advisory Committee for Tobacco Inspection Services at its meeting on April 20, 2000. This committee is made up of representatives of producer interest groups, appointed by the Secretary of Agriculture, to advise on the level of services and user fee rate. This fee increase represents the minimum level needed to cover costs for the 2000 crop-year. In the future, AMS will continue to review the program to ensure that fees are adequate. Accordingly, we believe that the impact of the fee increase would not be significant on users of the inspection and certification services.

##### C. Civil Justice Reform

This rule 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, 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.

#### Background

The Secretary of Agriculture is authorized by the Tobacco Inspection Act of 1935, as amended, 7 U.S.C. 511–511q *et seq.*, to fix and collect fees and charges for inspection and certification of quota tobacco, 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.

The AMS regularly reviews programs to determine if fees are adequate and if costs are reasonable. This interim final rule will increase the fees and charges assessed by the AMS for the mandatory inspection and certification of producer tobacco sold at designated auction markets throughout the tobacco producing areas.

The AMS conducted a recent review of the financial status of this program to determine whether the fee is sufficient. Revenue for the 1999 crop-year was approximately \$11,419,000. Obligations for the period are approximately \$11,508,000. At the current fee level, insufficient revenue would be generated to meet the costs of the inspection program and to replace funds that had to be used from the program's reserve account. The major factors affecting obligations are mandatory increases in Federal salaries and benefits, travel allowances, and other administrative costs since 1995. An analysis of data available to the AMS indicates that a fee of \$.0100 per pound would cover expenses and maintain a reserve that would meet any reasonable contingency.

Due to an estimated 43 percent reduction in tobacco to be inspected and 20–30 percent of tobacco being sold through contract sales, obligations for the 2000 crop-year are estimated at \$11,607,000 and revenues are expected to reach only \$6,843,000, for a loss of \$4,764,000 and a reduction in the operating reserve to \$4,738,000. If the same level of service and fee structure continues for the 2001 crop-year the estimated loss would exceed \$6,154,000 and the operating reserve would drop to a *negative* \$1,416,000.

Revenue depends on the amount of tobacco sold on the designated auction

markets. Production quotas for tobacco were reduced by 228.6 million pounds in 1998, 330.7 million pounds in 1999, and 318.7 million pounds in 2000. This is a total decrease of 878 million pounds of tobacco since 1997. Also, contract sales of tobacco will further reduce the amount graded by about 235 million pounds in 2000. Based on these figures, the current fee level will not generate the amount of revenue sufficient to maintain the level of inspection services requested and maintain funds in the program's reserve account. An analysis of available data indicates that a fee of \$.0100 per pound effective for the 2000 crop-year would increase revenue by \$1,277,000 and bring the operating reserve up to \$6,014,000.

Information on program income and expenses was presented to the National Advisory Committee for Tobacco Inspection Services at its meeting on February 17, 2000, in Raleigh, North Carolina, and again on April 20, 2000, in Washington, D.C. The National Advisory Committee, which is made up of 14 representatives from tobacco producer interest groups 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. By a majority vote, the Committee adopted a motion to recommend to the Secretary an increase in the fee to \$.0100 per pound.

It is hereby found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2000 flue-cured marketing season will begin about July 17 and this action is needed, as soon as possible, so as to treat all types of tobacco on an equal basis for the 2000 crop-year; (2) the National Advisory Committee recommended the fee increase by a majority vote; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### 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 reasons set forth in the preamble, 7 CFR part 29 is 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 “\$.0083 per pound” and adding the words “\$.0100 per pound” in their place.

Dated: May 22, 2000.

**Kathleen A. Merrigan,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 00–13290 Filed 5–25–00; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 54

[Docket No. LS–98–12]

RIN 0581–AB83

#### 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 fee rates for voluntary Federal meat grading and certification services. The hourly fees will be adjusted by this final rule to reflect the increased cost of providing service, and ensure that the Federal meat grading and certification program is operated on a financially self-supporting basis as required by law.

**EFFECTIVE DATE:** June 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Larry R. Meadows, Chief, Meat Grading and Certification (MGC) Branch (202) 720–1246.

#### SUPPLEMENTARY INFORMATION:

##### A. 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 (OMB).

##### B. Regulatory Flexibility

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of AMS has considered the economic impact of this proposed action on small entities.

AMS, through its MGC Branch, provides voluntary Federal meat grading