

# Rules and Regulations

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## 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:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is revising the hourly fees charged for Federal dairy grading and inspection services performed by the Dairy Grading Branch. Dairy grading and inspection services are voluntary and are financed through user-fees assessed to participants in the program. The hourly fees will be adjusted by this action to reflect the increased costs of providing service and to ensure that the Dairy Grading Branch operates on a financially self-supporting basis.

**EFFECTIVE DATE:** April 4, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Duane R. Spomer, Associate Deputy Administrator for Standards and Grading, USDA, AMS, Dairy Programs, telephone (202) 720-3171 or e-mail [Duane.Spomer@usda.gov](mailto:Duane.Spomer@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 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 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. 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% of the non-travel related operating budget. The majority of 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% 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 that will minimize the extent of future fee increases. 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 considerations, AMS will increase the hourly fees associated with Federal dairy grading and inspection services. The hourly fee for resident services provided between the hours of 6:00 a.m. and 6:00 p.m. will increase from \$51.00 to \$57.00 per hour. The hourly fee for nonresident services between the hours of 6 a.m. and 6 p.m. will increase from \$56.00 to \$62.00 per hour. The hourly fee for resident services provided between 6 p.m. and 6 a.m. will be \$61.60 and for nonresident services the fee will be \$68.20. 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 will increase from \$84.00 per hour to \$93.00 per hour.

#### Executive Order 12866

This action 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 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 by the Dairy Grading Branch have certificates issued concerning 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 approximately 10.7% for nonresident service and 11.8% 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. This action reflects certain fee increases needed to recover the cost of inspection and grading services rendered in accordance with the Agricultural Marketing Act.

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. 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, which is below the Agency policy requirement.

This action raises the hourly fees charged to users of Federal dairy inspection and grading services. AMS estimates this action will provide the Dairy Grading Branch an additional \$522 thousand annually. This will 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.

#### Comments and Responses

AMS published a proposed rule in the **Federal Register** on October 3, 2003 (68 FR 57882) to increase the fees for Federal dairy grading and inspection services and requested comments by November 3, 2003. The Agency did not receive comments on this proposal.

#### 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, 7 CFR part 58 is 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: February 20, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–4222 Filed 2–25–04; 8:45 am]

BILLING CODE 3410–02–P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 745

#### Share Insurance; Living Trust Accounts

**AGENCY:** National Credit Union Administration (NCUA).

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

**SUMMARY:** NCUA is amending its share insurance rules to simplify them and maintain parity with the deposit insurance rules of the Federal Deposit Insurance Corporation (FDIC). Specifically, the amendment changes the existing rules concerning coverage for beneficial interests in living trust accounts. The rules are amended by eliminating the provisions that would limit insurance coverage where the interest of the beneficiary is subject to a defeating contingency in a living trust agreement. With the amendment, share insurance coverage of up to \$100,000 is provided per qualifying beneficiary who, as of the date of an insured credit union's failure, would become the owner of assets in the living trust upon the account owner's death. The FDIC recently amended its deposit insurance rules by making a similar change. This amendment is adopted as an interim rule to provide parity between NCUA and FDIC insurance regulations and aid the public and prevent confusion over the amount of Federal account insurance available on those accounts.

**DATES:** This final rule is effective on April 1, 2004. Comments must be received on or before April 26, 2004.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. You are encouraged to fax comments to (703) 518–6319 or e-mail comments to [regcomments@ncua.gov](mailto:regcomments@ncua.gov) instead of mailing or hand-delivering them. Whatever method you choose, *please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Ross Kendall, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6562.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Living trusts have become an increasingly popular way for individuals to transfer assets outside of probate while retaining control of the funds during their lifetime. Where a grantor establishes a share account with funds that are subject to a separate living trust agreement, share insurance coverage is provided in accordance with NCUA's rules that govern revocable trust accounts. 12 CFR 745.4. The NCUA believes, based on its experience and upon the experience of the FDIC, that many persons who have established living trust accounts do not understand the impact under the current rules of a defeating contingency on the availability of separate insurance