

# Rules and Regulations

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## 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:** Final rule.

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

**EFFECTIVE DATE:** April 15, 2002.

**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](mailto:Richard.Payne2@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### A. Executive Order 12866

This rule has been received by the Office of Management and Budget and has been 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 has determined that its provisions will 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 \$137,000, costs are projected at \$172,000, and the trust fund balance is projected to be \$47,000 or 3.28 months of operating reserve. With a fee increase, FY 2002 revenues are projected at \$160,000, costs are projected at \$174,000, and the trust fund balance is projected to be \$68,000 or 4.69 months of operating reserve.

This action will raise the hourly rate charged to users of the seed testing and certification services. This fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees in 2001 and 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 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 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 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 Changes

The USDA 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 \$137,000, costs are projected at \$172,000, and the trust fund balance is projected to be \$47,000 or 3.28 months of operating reserve. With a fee increase, FY 2002 revenues are projected at \$160,000, costs are projected at \$174,000, and the trust fund balance is projected to be \$68,000 or 4.69 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 2001 and 4.77 percent for 2002 for Federal employees involved in the seed testing and certification service became effective in January 2002 and will affect program costs.

This fee increase is necessary to offset increased program operating costs resulting from: (1) Salary increases for all Federal employees for 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 increasing 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 is increasing from \$11.10 to \$13.00 and a fee of \$13.00 is established for issuing preliminary reports.

This action will recover the costs associated with providing the voluntary testing service to the seed and grain industry. Although the 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.

#### Summary of Public Comment

A notice of proposed rulemaking was published in the **Federal Register** (66 FR 53550) on October 23, 2001. No comments were received.

#### 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 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: March 11, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-6142 Filed 3-13-02; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 81

[Docket No. FV01-81-01 FR]

**RIN 0581-AC03**

#### Regulations Governing the California Prune/Plum (Tree Removal) Diversion Program

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes procedures for a California Prune/Plum Diversion Program. The program is voluntary and consists wholly of tree removal. The program is being implemented under clause (3) of Section 32 of the Act of August 24, 1935, as amended. The program will help the California dried plum industry address its severe oversupply problems. The tree removal is expected to bring supplies into closer balance with market needs, and provide some relief to growers faced with excess supplies and acreage, and low prices.

**EFFECTIVE DATE:** January 2, 2002.

#### **FOR FURTHER INFORMATION CONTACT:**

Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, D.C. 20250-0237; Telephone: 202-720-2491; Fax: 202-720-8938; or E-mail: [Ronald.Cioffi@usda.gov](mailto:Ronald.Cioffi@usda.gov).

Small businesses may request information on the diversion program by contacting Jay Guerber at the above address, telephone, fax, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Order 12866**

This final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB).

This final rule is effective January 2, 2002, to reflect the beginning of the application period specified in the proposed rule. Prompt notification of growers concerning their participation in the program and prompt tree removal are needed for the industry to achieve the expected program goals.

##### **Public Law 104-4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State and local governments and the private sector. Under section 202 of the UMRA, the Agricultural Marketing Service (AMS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures by State and local governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the AMS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-