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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2430

Amendment of Equal Access to Justice Act Attorney Fees Regulations

AGENCY: Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The Federal Labor Relations Authority (FLRA) amends its regulations implementing the Equal Access to Justice Act (EAJA) to conform to and carry out the intent of the March 29, 1996 amendments to the EAJA. Specifically, as provided in the EAJA's amendments, the amended regulation will permit recovery, in conjunction with adversary adjudications commenced on or after March 29, 1996, of attorney fees not to exceed $125.00 per hour.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Office of Case Control, Federal Labor Relations Authority, 607 14th Street, NW, Room 415, Washington, DC 20424–0001, or by telephone at (202) 482–6540.

SUPPLEMENTARY INFORMATION: The FLRA amends its regulation pertaining to the maximum per hour rate for attorney fees under the EAJA, 5 U.S.C. 504(b)(1)(A) (1994 & Supp. III 1997), in conformance with the amendments to the EAJA adopted as part of the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847.

In conjunction with adversary adjudications commenced on or after March 29, 1996, the EAJA's amendments permit recovery of attorney fees not to exceed $125.00 per hour. The FLRA's revised regulation, as set forth below, simply incorporates this change to the EAJA and makes the change applicable to FLRA proceedings. Because this amendment to the FLRA's regulation merely reiterates the specific terms of the EAJA's amendment in this regard, this regulatory action comes within the "good cause" exemptions of the Administrative Procedure Act, 5 U.S.C. 553(b)(B) and 553(d). As a result, the notice and comment and effective date provisions of the Administrative Procedure Act are inapplicable.

This action was announced by the FLRA in 55 FLRA No. 72 (Apr. 30, 1999). That decision also noted that the FLRA would engage in rulemaking to consider appropriate criteria for increasing the maximum rate based on cost of living and other special factors. The Authority will subsequently promulgate the proposed rule and provide an opportunity for comment.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FLRA has determined that this regulation, as amended, will not have a significant economic impact on a substantial number of small entities. The amendment is procedural in nature and is required to implement amendments to the EAJA.

Unfunded Mandates Reform Act of 1995

This rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This action is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The amended regulation contains no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq.

List of Subjects in 5 CFR Part 2430

Administrative practice and procedure, Government employees, Labor-management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2430 as follows:

PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES

1. The authority citation for part 2430 is revised to read as follows:

Authority: 5 U.S.C. 504(c)(1).

2. Amend § 2430.4(a) by revising the first sentence to read as follows:

§ 2430.4 Allowable Fees and Expenses.

(a) No award for the fee of an attorney or agent under these rules may exceed $125.00 per hour, or for adversary adjudications commenced prior to March 29, 1996, $75.00 per hour. * * *

Dated: June 4, 1999.

Solly Thomas,

Executive Director.

[FR Doc. 99–14598 Filed 6–8–99; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 37

[Docket Number LS–99–04]

RIN 0581–AB58

Program to Assess Organic Certifying Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes a voluntary, fee-for-service program, under the Agricultural Marketing Agreement Act of 1946, to verify that State and private organic certifying agencies comply with the requirements prescribed under the International Organization for Standardization/

International Electrotechnical Commission Guide 65 "General Requirements for Agencies Operating Product Certification Systems" (ISO Guide 65). Assessments are to be conducted by the Livestock and Seed Program of the Agricultural Marketing Service (AMS).

This assessment program is established to enable organic certifying agencies to comply with European Union (EU) requirements beginning on June 30, 1999. This assessment program will verify that State and private organic certifying agencies are operating third-party certification systems in a consistent and reliable manner thereby, facilitating uninterrupted exports of U.S. organic agricultural commodities to the EU. This action also establishes fees for the services provided and announces that AMS has obtained, on an emergency basis, approval from the Office of Management and Budget (OMB) of the information collection requirements contained in this rule.

DATES: This rule is effective June 10, 1999. Comments must be received by August 9, 1999. The incorporation by reference of the International Organization for Standardization/ International Electrotechnical Commission Guide 65, "General Requirements for Agencies Operating Product Certification Systems", Ref. No. ISO/IEC Guide 65:1996, listed in this rule is approved by the Director of the Federal Register as of June 10, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to Larry R. Meadows, Chief, Meat Grading and Certification Branch, Livestock and Seed Program, AMS, USDA, STOP 0248, 1400 Independence Avenue, SW.; Washington, D.C. 20250–0248. Comments also may be sent by fax to (202) 690–4119. Additionally, comments may be sent via E-mail to larry.meadows@usda.gov. Comments should make reference to the date and page number of this issue of the **Federal Register** and they will be made available for public inspection in the above office during regular business hours.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the merits of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection and recordkeeping under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

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

SUPPLEMENTARY INFORMATION:

Background and Discussion

This action establishes a voluntary, user-fee funded program under which AMS would assess State and private agencies in the United States that meet the requirements of ISO Guide 65, which has been incorporated in this rule by reference. This assessment will facilitate uninterrupted imports of U.S. organic products to countries in the EU by enabling organic certifying agencies to comply with EU requirements beginning on June 30, 1999.

This program does not provide for national standards governing the marketing of agricultural commodities or products as organically produced and therefore differs substantially from the proposed National Organic Program (NOP) under the Organic Foods Production Act of 1990. The 1990 Act requires the establishment of national standards governing the marketing of certain agricultural products as organically produced. A proposed rule concerning the NOP was published in the **Federal Register** at 63 FR 65850 on December 16, 1997. The Department is currently drafting a revised proposed rule for publication in the **Federal Register**.

This program is established under the Agricultural Marketing Act of 1946 and provides only for the voluntary assessment of State and private certifying agencies to verify compliance with the requirements of ISO Guide 65. To be assessed under this program, an organic certifying agency would submit an application requesting such assessment from AMS and also submit to AMS for review and evaluation, a manual documenting the organic certifying agency's quality system and associated quality certification procedures used to certify organic producers and handlers of organically produced agricultural commodities (including those involved with wild crop harvesting) in accordance with applicable industry standards.

According to the most complete data available to AMS, there are 11 State and 33 private organic certifying agencies currently providing organic certification for agricultural commodities in the United States. These certifying agencies provide service to approximately 4,000 organic producers and 600 handlers of agricultural commodities in the United States. ISO Guide 65 assessment will ensure that State and private organic certifying agencies operating third-party certification systems are doing so in a consistent and reliable manner; thereby, facilitating their acceptance on an international basis. Assessing organic certifying agencies under ISO Guide 65 would enable U.S. organic producers and handlers of U.S. organically produced agriculture commodities to continue to export to the EU.

In crafting the provisions of a service program to assess State and private organic certifying agencies, we have turned to the comprehensive scheme that appears in ISO Guide 65 and incorporated by reference its provisions in this rule. The ISO, itself, is based in Geneva, Switzerland, and coordinates development and maintenance of numerous international consensus standards and guidelines frequently referenced in trade and international agreements.

As noted in ISO Guide 65, the guide provides for the general requirements that a certifying agency would be required to meet so that the certifying agency is recognized as competent and reliable. ISO Guide 65 includes provisions that address a certification agency's organization and structure; operations; subcontracting; quality system and documentation of that system; conditions and requirements regarding certification; internal audits and management reviews; documentation and records; and confidentiality. Provisions of ISO Guide 65 also include requirements for personnel and their qualifications; the procedures to be followed by a certification agency in providing certifications, including evaluations; and decisions on certification and surveillance.

Because this action establishes a voluntary, user-fee service based upon and similar to the Quality Systems Certification Program (QSCP) established pursuant to 7 CFR Part 54, this program would be administered by the AMS, Livestock and Seed (LS) Program, Meat Grading and Certification (MGC) Branch. The QSCP is an audit-based program administered by AMS which provides meatpackers, processors, producers, and other businesses in the livestock and meat trade with the opportunity to have special processes or documented quality management systems verified. The services provided for in this rule would utilize experienced QSCP auditors to assess organic certifying agencies to ISO Guide 65. AMS has developed, tested,

and implemented QSCP procedures to verify quality systems and this knowledge and experience is readily adaptable to reviewing and assessing quality systems of organic certifying agencies pursuant to the requirements of ISO Guide 65.

Interested State or private organic certifying agencies can apply to be assessed under ISO Guide 65 by completing Form LS–314, Application for Service and submitting the completed and signed Form LS–314 to the address listed on the form. Upon approval of a request for service, an applicant would be required to submit a copy of its quality manual used for conducting certification.

AMS auditors would review the quality manual for conformance with requirements set forth in ISO Guide 65. Upon AMS approval of the quality manual, AMS auditors would schedule and conduct an onsite audit of the certifying agency's operation which would include confirmation that the provisions of the quality manual have been implemented and that the applicant complies with the requirements of ISO Guide 65. Upon verification by AMS of the organic certifying agency's compliance with ISO Guide 65 requirements, AMS would issue a certificate of compliance.

Those organic certifying agencies determined to not meet applicable assessment program requirements would be provided with a written summary of observed program deficiencies. These organic certifying agencies would have the opportunity to implement the required corrective actions needed to receive a certificate of compliance or appeal the determination to the LS Program Deputy Administrator. Once corrective action has been taken, the organic certifying agency may contact the MGC Branch to schedule another audit for assessment.

Each assessed organic certifying agency would be provided official documentation of their compliance with ISO Guide 65 in the form of a certificate of compliance. The names of assessed certifying agencies would be posted for public reference on the LS Program's website at: http://www.ams.usda.gov/lsg/. AMS would conduct periodic reassessment audits to ensure continued compliance with all applicable program requirements.

This section establishes and adds a new Part 37 to Title 7 of the Code of Federal Regulations. In addition to fees, those provisions and procedures that would be the same or similar to the provisions of Part 54 are included in this rule in order to provide a complete voluntary service program under the Agricultural Marketing Act of 1946. Accordingly, the regulations include provisions for appropriate definitions; description of services; the incorporation by reference of the requirements of ISO Guide 65; how to apply for service; when an application may be withdrawn; access to establishments and records; reassessment of approved certification programs; suspension or denial of program assessment; appeals and termination.

Under the Agricultural Marketing Act of 1946, AMS is required to collect hourly fees for providing official services under 7 CFR Part 54, including services provided under the QSCP, to cover as nearly as practicable AMS costs for performing the service including related administrative and supervisory costs. Since the procedures used for assessing State and private organic certifying agencies are similar as those used to certify other types of product or system certification programs under the QSCP, AMS has decided to charge the same hourly fees for assessing organic certifying agencies as are charged for services currently provided under QSCP. QSCP services are based on the hourly rate for applicants who request services on an hourly or daily basis and appear at 7 CFR Part 54 as published in the **Federal Register** at 63 FR 32965 on July 17, 1998. The current base hourly rate for such service is $42.20 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays. The premium hourly rate for all applicants is $47.80 per hour charged to users of the service for the hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m.; for the hours worked between 6 p.m. and 6 a.m., Monday through Friday; and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants is $79.60 per hour charged to users of the service for all hours worked on legal holidays. Travel costs, per diem costs, and other administrative costs are in addition to the hourly charges. The estimated average total cost for assessment would be approximately $2,000 plus associated travel expenses. These fees are currently under review and any changes deemed necessary will be subject to a separate rulemaking action.

Executive Order 12866

This rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. The EU regulatory framework permits assessment to ISO Guide 65 by competent government authorities or by internationally recognized private accreditation agencies such as European Accreditation or the American National Standards Institute. National governments are recognized as competent authorities and in matters pertaining to agriculture USDA is the competent authority for the United States. At this time, USDA believes there are no domestic private official accreditation agencies which perform ISO Guide 65 assessments for agriculture-related third party certification programs. Thus, pending implementation of this rule there is no domestic supply of ISO Guide 65 assessments for organic certifiers.

A U.S. certification agency may obtain assessment to ISO Guide 65 from a private entity sanctioned by a government agency within a individual EU member state. This approach allows products to be imported only into the EU Member State that provides oversight to the private entity. This approach would potentially require each certifier to negotiate 15 separate agreements, one for each member state. Therefore, country-by-country recognition is inefficient. ISO Guide 65 assessments conferred by the competent authority of a third country, USDA for the United States, would be more efficient because under the EU regulatory framework such assessments would be recognized by all EU Member States, enabling direct trade with all 15 Member States.

Alternatively, USDA could establish through rulemaking a process to approve private parties who could then perform ISO Guide 65 assessments acceptable to the EU at large. However, given the small universe of potential clients—11 State programs and 33 private certifying agencies—it is unlikely that economic returns would be sufficient for a competitive system to develop. Also, establishing a program to approve a private party to perform conformity assessments to ISO Guide 65, would take more time than is available before the announced EU deadline for such assessments, and does not ensure these services are available.

This regulatory action directly affects organic certifying agencies and indirectly affects producers and handlers of organic goods. The rule provides a mechanism for certifying agencies to be assessed for conformance to ISO Guide 65 guidelines. The benefit of the assessment to the certifiers is their clients will satisfy the EU requirement that producers and handlers of organic goods exported to

the EU must be operating under a certifying agency that conforms to ISO Guide 65. Certifying agencies will choose to be assessed against ISO Guide 65 if they perceive that it will benefit their clients and if the certifying agency expects to be able to recover the costs of an ISO Guide 65 assessment. This is the case where their clients are or may anticipate exporting to the EU, or the certifier hopes to attract new clients that wish to export to the EU.

Organic producers and handlers in the United States will demand that their certifying agency undertake an ISO Guide 65 assessment if it benefits them. The benefit to organic producers and handlers derives from access to the EU market for organic goods. It is difficult to quantify the value of access to the European market because suitable statistics on organic goods exported to Europe are not available. U.S. exports of organic goods are estimated at a retail value of $300 million. It is not known what share of these exports go to the EU.

The immediate benefit of this rule is that it maintains the access that the U.S. organic industry has to the European market. Without the rule, U.S. producers and handlers would incur economic loses resulting from the sale of their organic goods in less remunerative markets.

If EU markets were no longer available, organic goods would be marketed in the domestic organic market or in other foreign organic markets. This would preserve part of the price premium for organic goods. Returns would fall as product is shifted into other markets, first because producers were presumably selling into their most profitable markets and secondly because increased supplies to other markets will depress prices. Another marketing alternative is to sell organic goods in the conventional market. Unlike organic markets which are relatively thin, little price impact would be expected from shifts to conventional markets. In the longer run, U.S. organic production could decline if producers perceived that the European market were lost.

The difference in net returns between sales to the EU organic market and sales to the conventional market is the maximum loss to the organic industry. There is insufficient data to estimate this difference. Data on the volumes of particular organic goods exported, their value as organic goods in Europe, and their value if sold into conventional markets would be needed. However, it is possible to illustrate the difference in net returns.

Retail price premiums for organic products vary by commodity, region, and season. Case studies suggest a range of premiums from 5 percent to over 200 percent.[1] In the following illustration, a 100 percent premium is assumed. The impact on organic products from shifting sales to the conventional market cannot be directly computed by applying the lost premium to the retail value. The aggregate loss to producers is much smaller because the farm share of value of retail sales is only a fraction of the retail value. In aggregate, the farm share of retail value is about 22 percent, but this could be different for organic goods.[2] The farm share is slightly smaller—18 to 20 percent—for fresh fruits and vegetables which are important organic commodities and much smaller, around 5 percent for highly processed goods like breads and cereals. The highest farm shares are for eggs and meats which can run from 30 to almost 60 percent. Thus, shifting the sales of organic goods from markets where they are valued at $1 million retail to conventional markets would involve a decrease in revenues to organic producers of about $110,000 (a decrease from $220,000 to $110,000). This assumes the average 22 percent farm share of value and an organic price premium of 100 percent that carries through from retail to farm.

Handlers and processors between the producer and retailer would also see lower revenues from shifting sales to conventional markets. However, it is difficult to describe quantitative relationships for intermediary handlers because they engage in a wide range of activities including substantial processing of some commodities.

Certifying agencies that choose to be assessed with regard to ISO Guide 65 will face the direct cost of fees for the assessment service and any ancillary costs to bring their business practices into conformity. Ancillary costs might include costs to create or modify business records and policy documents so that they meet ISO Guide 65 standards. AMS has already provided training regarding ISO Guide 65 to interested organic certifiers and believes industry participants are already in or very nearly in conformity with ISO Guide 65. Thus, ancillary costs are expected to be minor. The cost of providing and obtaining information for AMS review is $590 per certifying agency and discussed in detail under the Paperwork Reduction Act.

Some State organic certifying agencies which subsidize activities associated with providing organic certification services may not pass assessment costs on to users of their organic certification. Likewise, some of the larger organic certifying agencies may absorb the assessment costs because they are able to spread their fixed costs over a larger number of clients. However, given that there are approximately 4,000 organic farmers and 600 handlers in the United States, the Agency anticipates that any increase in fee rates based solely on recovering assessment costs would be minimal.

This rule is not intended to have any effect on consumers. The costs to certifying agencies for ISO Guide 65 assessment would be passed on to their clients. Organic producers and handlers could pass some of these costs on to consumers depending on the elasticity of demand and supply.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionally burdened. Accordingly, we also have prepared an initial regulatory flexibility analysis.

This action establishes, under the authority of the Agricultural Marketing Act of 1946, a voluntary, user-fee funded program under which the AMS would accredit State and private organic certifying agencies in the United States that meet the requirements of ISO Guide 65, which has been incorporated in this rule by reference. This assessment will facilitate uninterrupted imports of U.S. organic products to countries in the EU by enabling organic certifying agencies to comply with EU requirements beginning on June 30, 1999.

To be assessed, an organic certifying agency would submit an application requesting such assessment from AMS and also submit to AMS for review and evaluation, a manual documenting the organic certifying agency's quality system and associated quality certification procedures used to certify organic farms and handlers of organically produced agricultural commodities (including those involved in wild crop harvesting).

[1] Harris J. Michael, "Consumers Pay a Premium for Organic Baby Foods," Food Review, USDA, Economic Research Service, May–August 1997.

Glazer, Lewrene, et al, "Demand for Frozen Vegetables: A Comparison of Organic and Conventional Products," Vegetables and Specialities, VGS–276, USDA, Economic Research Service, Nov. 1998.

Dobbs, Thomas L. "Price Premiums for Organic Crops," Choices, American Agricultural Economics Association, Second Quarter, 1998.

[2] U.S. Department of Agriculture. Agricultural Outlook, Economic Research Service. Table 8, page 37, May 1998.

According to the Standard Industrial Classifications (SIC) (13 CRF Part 121) which are used by the Small Business Administration (SBA) to identify small businesses, nearly all of the entities affected by this proposed regulation would be considered small businesses. According to the SIC, a small business in the agricultural services sector, such as organic certifying agencies, includes firms with revenues of less than $3.5 million (SIC Division A Major Group 07).

According to the most complete data available to AMS, there are 11 State and 33 private organic certifying agencies currently providing organic certification services in the United States. While they vary in size, they all have fewer than 499 employees and earn annual revenues of less than $3.5 million. These agencies certify approximately 4,000 farmers and 600 handlers in the United States. In crop production, the SIC definition of a small business includes all farms with annual crop sales of under $500,000 (SIC 0111–0191). Most of the farms currently certified have less than $25,000 in gross sales of organic production. However, many farms combine organic and conventional production on the same operation, some with total sales that may exceed $500,000. In handling operations, the SIC defines a small business as having fewer than 500 employees (SIC Division D. Mayor Group 20). In the absence of definitive data on organic handling operations, AMS believes that no handling operation employs more than 499 employees.

Except for an application form, no new forms will be required in connection with requests for assessment service or the assessment audit, review and approval process. Although, ISO Guide 65 requires that certifiers maintain a variety of records and documents, AMS believes many of these records and documents are already being prepared and maintained as a standard operating practice necessary for organic certifying agencies to support certification of organic farms and handling operations. However, it is possible that organic certifiers may need to refine their recordkeeping process and improve their documentation. We estimate that the cost of providing and obtaining the information required in this rule to assess State and private organic certifying agencies is $590 per certifying agency. The paperwork burden that may be imposed on organic certifying agencies is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Interested State or private organic certifying agencies would be able to apply for assessment under ISO Guide 65 in accordance with the provisions of this rule. Accordingly, this rulemaking action establishes and adds a new Part 37 to Title 7 of the Code of Federal Regulations. In addition to fees, those provisions and procedures that are the same or similar to the provisions of Part 54 are included in this rule in order to provide a complete voluntary service program under the Agricultural Marketing Act of 1946. The regulations include provisions for appropriate definitions; description of services; the incorporation by reference of the requirements of ISO Guide 65; how to apply for service; when an application may be withdrawn; access to establishments and records; reassessment of approved certification programs; suspension or denial of program assessment; appeals and termination.

Under the Agricultural Marketing Act of 1946, AMS is required to collect hourly fees for providing official services under 7 CFR Part 54, including services provided under the QSCP, to cover as nearly as practicable AMS costs for performing the service including related administrative and supervisory costs. Since the procedures used for assessing State and private organic certifying agencies are similar as those used to certify other types of product or system certification programs under the QSCP, AMS has decided to charge the same hourly fees for assessing organic certifying agencies as are charged for services currently provided under QSCP. QSCP services are based on the hourly rate for applicants who request services on an hourly or daily basis and appear at 7 CFR Part 54 as published in the **Federal Register** at 63 FR 32965 on July 17, 1998. The current base hourly rate for such service is $42.20 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays. The premium hourly rate for all applicants is $47.80 per hour charged to users of the service for the hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m.; for the hours worked between 6 p.m. and 6 a.m., Monday through Friday; and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants is $79.60 per hour charged to users of the service for all hours worked on legal holidays. Travel costs, per diem costs, and other administrative costs are in addition to the hourly charges.

AMS estimates that the average assessment service would cost $2,000 plus travel costs for the required documentation review and onsite audit required for verifying compliance with ISO Guide 65. These fees are currently under review and any charges deemed necessary will be subject to a separate rulemaking action.

Further, in assessing alternatives to the scheme provided for in Part 37, we believe that the provisions contained in the rule would best accomplish its purpose of this rule and at the same time minimize any burden that might be placed upon affected parties. Nonetheless, we invite comments concerning the potential effects of this rule on affected parties, including more information on the benefits or burdens that small entities may incur as a result of implementation of this rule.

Executive Order 12988 and 12898

This rule has been reviewed under Executive Order 12988, Civil Justice Reform and 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.

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations," AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familia status. This included those persons who are employees, program beneficiaries, or applicants for employment or program benefits in this voluntary program to assess organic certifying agencies. This rule does not require certifying agencies to relocate or alter their operations in ways that could adversely affect such persons or groups. Nor would it exclude any persons or groups from participation in the voluntary assessment program, deny any persons or groups the benefits of the assessment program, or subject any persons or groups to discrimination.

Paperwork Reduction Act

This interim final rule contains recordkeeping and submission

requirements that are subject to public comment and to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). In accordance with 5 CFR Part 1320, we included the description of the reporting and recordkeeping requirements and an estimate of the annual burden on organic certifying agencies. Because there is insufficient time for a normal clearance procedure, AMS has received temporary approval from OMB for the use of the information collection and recordkeeping requirements that we used to implement the assessment program for organic certifying agencies on an expedited basis.

Title: Program to Assess Organic Certifying Agencies.

OMB Number: New collection.

Expiration Date of Assessment: Three years from date of assessment.

Type of Request: New.

Abstract: The information collection and recordkeeping requirements in this regulation are essential to establishing and implementing a voluntary program which verifies State and private organic certifying agencies compliance with the requirements of the International Organization for Standardization (ISO) Guide 65.

Based on information available, the Agency has determined that there are currently 11 State and 33 private organic certifying agencies. These certifying agencies conduct their certification of organic farms and handling operations in a similar manner and have similar recordkeeping systems and business operation practices. The agency also determined that most of the information required under this rule to conduct the assessment process could be collected from certifying agencies' existing materials without creating new forms, and that the information currently used by certifying agencies to certify organic producers and handlers could be adapted to comply with this rule. The PRA also requires the agency to measure the recordkeeping burden. These organic certifying agencies have documented review and auditing procedures and maintain appropriate records and documents for up to 5 years on each certified organic farm or handler of organic products. The recordkeeping burden is the amount of time needed to store and maintain records. The agency estimated the number of program participants who would be required to either create, submit, or store documents as a result of this rule. The estimated annual cost of providing and obtaining the information needed is estimated to be $25,980 or $590 per each certifying agency. Records are required to be retained for 5 years.

The information collection requirements in this interim final rule include: (1) Submission of an application requesting to be assessed to ISO Guide 65, (2) the preparation and submission of a quality manual documenting the procedures that certifying agencies use to provide certification services, and (3) an on-site audit of certifying agencies certification operation programs to determine whether the certifying agencies have implemented the provisions of the quality manual and are in compliance with the requirements of ISO Guide 65. These information collection requirements have been designed to minimize disruption to the normal business practices of organic certifying agencies.

The application form requires the minimal amount of information necessary including: (1) Firm name, address, telephone number, and other information necessary to identify the certifying agency and its location, and (2) other pertinent information to determine that a firm is eligible to apply and receive services available through the program to assess organic certifying agencies. Such information can be supplied without data processing equipment or outside technical expertise.

Based on available information, AMS has determined that all State and private certifying agencies develop and maintain as a normal business practice the records and documents necessary to prepare the quality manual required by ISO Guide 65.

The onsite audit would consist of a review and evaluation of a certifying agency's process for certifying organic farms and handlers. Verifying implementation of the provisions of a certifying agency's quality manual and compliance with the requirements of ISO Guide 65 would include a review and evaluation of existing records and documents described in the quality manual, interviews of certifiers' employees and customers, and observation of certification activities.

1. Application for Service—Form LS–314.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response.

Respondents: State and private organic certifying agencies.

Estimated Number of Respondents: 44.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 11 hours.

Total Cost: $220.

2. Quality Manual.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 23.28 hours per response.

Respondents: State and private organic certifying agencies.

Estimated Number of Respondents: 44.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1024 hours.

Total Cost: $20,480.

3. Maintenance of records for on-site audit.

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 6.0 hours per recordkeeper.

Recordkeepers: State and private organic certifying agencies.

Estimated Number of Recordkeepers: 44.

Estimated Total Recordkeeping Hours: 264 hours.

Total Cost: $5,280.

The total average cost of the estimated annual reporting burden per certifying agency would be approximately $590.

We are soliciting comments from the public (as well as affected certifying agencies) concerning the information collection and recordkeeping requirements contained in this interim final rule. Comments are specifically invited on the following: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's burden estimate of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection and recordkeeping requirements contained in this action should reference OMB number 0581–0183 and the Program to Assess Organic Certifying Agencies, Docket Number LS–99–04, together with the date and page number of this issue of the **Federal Register**. Comments should be sent to Larry Meadows, Chief, Meat Grading and Certification Branch,

Livestock and Seed Program, AMS, USDA, STOP 0248, 1400 Independence Avenue, SW., Washington, D.C. 20250–0248; telephone: (202) 720–1246 or Fax: (202) 690–4119. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this rule will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are best assured of having full effect if they are received within 30 days after publication of the rule in the **Federal Register**.

Pursuant to 5 U.S.C. 553, it is 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**. This action establishes a voluntary, fee for service program, under the Agricultural Marketing Act of 1946, to assess State and private organic certifying agencies as meeting the requirements prescribed under ISO Guide 65. Providing this assessment, which must be conducted by a competent authority, is necessary to comply with EU requirements that organic certifiers must be compliant with the ISO Guide 65 which EU plans to enforce after June 30, 1999. This assessment will ensure uninterrupted imports of U.S. organic products to countries in the EU.

Accordingly, this rule would benefit certifying agencies as well as producers and handlers of organically produced agricultural commodities (including those involved with wild crop harvesting). This program is similar to other audit-based programs in the Department. Given the current need for an ISO Guide 65 based program at the USDA governmental level and the expectations of EU countries, it is necessary to implement these regulations as soon as possible. A 60-day period is provided for interested persons to comment on this rule.

List of Subjects in 7 CFR Part 37

Administrative practice and procedure, Agriculture, Assessment of organic certifying agencies, Incorporation by reference, Organically produced agricultural commodities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, Title 7 of Chapter I of the Code of Federal Regulations is amended as follows:

1. Part 37 is added to read as follows:

PART 37—PROGRAM TO ASSESS ORGANIC CERTIFYING AGENCIES

Sec.

37.1 Definitions.
37.2 Services.
37.3 Availability of service.
37.4 How to apply for service.
37.5 Order of furnishing service.
37.6 When application may be withdrawn.
37.7 Authority to request service.
37.8 Financial interest of official.
37.9 Access to establishments or records; record retention.
37.10 Official assessment.
37.11 Publication of program assessment status.
37.12 Reassessment.
37.13 Suspension or denial of program assessment; appeals and termination.
37.14 Fees and other charges.
37.15 Payment of fees.
37.16 OMB assigned numbers.

Authority: 7 U.S.C. 1621–1627.

§ 37.1 Definitions.

Words used in this part in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of such regulations, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Assessment services. The services provided by the Meat Grading and Certification Branch in accordance with the regulations that may result in assessment of an organic certification program that certifies agricultural commodities to established specifications or standards.

Act. The Agricultural Marketing Act of 1946 (Title II of the act of Congress approved August 14, 1946, 60 Stat. 1087, as amended by Pub. L. 272, 84th Cong., 69 Stat. 553, 7 U.S.C. 1621–1627).

Agricultural commodity. Any agricultural commodity or product, raw or processed, that is used for human or animal consumption or use.

Agricultural Marketing Service. The Agricultural Marketing Service of the Department.

Applicant. Any person who applies for service under the regulations.

Audit. A systematic review of the adequacy of program or system documentation, or the review of the completeness of implementation of a documented program or system.

Auditor. Person authorized by the Branch to conduct official assessments of agricultural commodity product certification programs.

Branch. The Meat Grading and Certification Branch.

Branch Chief. The Chief of the Branch, or any officer or employee of the Meat Grading and Certification Branch, Livestock and Seed Program, Agricultural Marketing Service, to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his or her stead.

Department. The United States Department of Agriculture.

Deputy Administrator. The Deputy Administrator of the Livestock and Seed Program of the Agricultural Marketing Service or any officer or employee of the Livestock and Seed Program to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his or her stead.

Legal holiday. Those days designated as legal public holidays in Title 5, United States Code, Section 6103(a).

Livestock and Seed Program. The Livestock and Seed Program of the Agricultural Marketing Service.

Part. The program to assess organic certifying agencies in the regulations.

Person. Any individual, partnership, corporation, or other legal entity, or Government agency.

Quality Manual. A manual documenting an organic certifying agency's quality system and associated quality certification procedures used to certify organic producers and handlers of organically produced agricultural commodities in accordance with established specifications or standards.

Regulations. The regulations in this part.

§ 37.2 Services.

Organic certifying agencies requesting assessment services under this Part shall conform to the provisions of the regulations and the requirements of International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 65—General Requirements for Bodies Operating Product Certification Systems, Ref. No. ISO/IEC Guide 65:1996, or other internationally recognized guidelines or requirements. The Director of the Federal Register approves the incorporation by reference of ISO/IEC Guide 65 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from the American National Standards Institute, 11 West 42nd Street, New York, NY 10036. You may inspect a copy at USDA, AMS, LSP, MGCB; STOP 0248, Room 2628–S; 1400 Independence Ave., SW., Washington, DC 20250–0248 or at the Office of the

Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC 20488.

(a) Assessment services provided under the regulations shall consist of:

(1) Review of the adequacy of an applicant's quality manual against the requirements of ISO Guide 65; and

(2) Onsite auditing of an applicant's organic certification program to ensure implementation of the provisions of the quality manual and the applicant's compliance with the requirements of ISO Guide 65.

(b) Organic certifying agencies also may request assessment services under other international recognized guidelines or requirements. Developmental assistance in the form of training to explain requirements for quality system assessment is available upon request.

§ 37.3 Availability of service.

Service under these regulations is available to State and private organic certifying agencies.

§ 37.4 How to apply for service.

(a) *Application.* Any organic certifying agency may apply to the Branch Chief, Meat Grading and Certification (MGC) Branch, Livestock and Seed (LS) Program, AMS, P.O. Box 96456, Room 2628-South, Washington, D.C., 20090-6456 for assessment service. The application shall be made on Form LS-314, Application for Service. The applicant shall provide the following:

(1) The name and address of the establishment at which service is desired;

(2) The name and post office address of the applicant;

(3) The financial interest of the applicant in the program, except where application is made by an official of a State Government agency in their official capacity;

(4) The type of business and services provided;

(5) The type of commodity certified; and

(6) the signature of the applicant (or the signature and title of his representative). The application shall indicate the status of the applicant as an individual, partnership, corporation, or other form of entity. Any change in such status, at any time while service is being received, shall be promptly reported to the Department by the person receiving the service.

(b) *Notice of eligibility for service.* The applicant will be notified whether its application is approved, and the request for service deemed made under the regulations. Upon approval of a request for service, the applicant shall provide a copy of its quality manual.

(c) Applicants requiring additional assessment audits who have already submitted Form LS-314 are not required to submit an additional Form LS-314: *Provided that,* the required information on the original Form LS-314 remains unchanged.

§ 37.5 Order of furnishing service.

Service under the regulations shall be furnished to applicants in the order in which requests for service therefore are received, insofar as consistent with good management, efficiency, and economy.

§ 37.6 When application may be withdrawn.

An application or a request for service may be withdrawn by the applicant at any time before the application is approved or prior to performance of service: provided that, the applicant shall pay any expenses which have been incurred by the Department in connection with such application.

§ 37.7 Authority to request service.

Proof of the interest of an applicant involved in the request for service, or of the authority of any person applying for the service on behalf of another may be required, at the discretion of the reviewing official.

§ 37.8 Financial interest of official.

No auditor or other Department official shall review any programs or documents concerning a certification program in which the official is directly or indirectly financially interested.

§ 37.9 Access to establishments or records; record retention.

The applicant shall cause records and documents, with respect to which service is requested, to be made easily accessible for examination. Supervisors and other employees of the Department responsible for maintaining uniformity and accuracy of service shall have access to all parts of establishments covered by approved applications for service under the regulations, during normal business hours or during periods of production, for the purpose of evaluating systems or processes associated with an approved certification program. Records and documents shall be retained for at least 5 years beyond the date of the applicant's request for service.

§ 37.10 Official assessment.

Official assessment of an applicant's certification program shall be granted upon successful completion of a two-step review process, as provided for in § 37.2.

(a) *Documentation approval.* Documentation approval will be provided by the Branch Chief regarding the adequacy of an applicant's quality manual with respect to ISO Guide 65 requirements upon completion of an adequacy audit by the auditors.

(b) *Program assessment.* Assessment of a certification program will be issued by the Branch Chief by written memorandum or other approved method of assessment upon successful completion of an onsite audit conducted by the auditors of an applicant's organic certification program ensuring that the provisions of the applicant's quality manual have been implemented and that the applicant's certification program complies with the requirements of ISO Guide 65.

(c) *Disapproval and corrections.* An applicant determined not to meet applicable assessment requirements shall be provided by the Branch Chief with a written summary of observed program deficiencies. The applicant may appeal such a determination in accordance with the provisions of § 37.13 or implement required corrective action. After completion of the corrective action, the applicant may contact the Branch Chief to schedule another audit for assessment.

§ 37.11 Publication of program assessment status.

(a) The names of assessed certifying agencies shall be posted for public reference on the Livestock and Seed Program's website at: http://www.ams.usda.gov/lsg/. Such postings shall include: certifier's name and contact information; referenced specification or standard(s) covered under the scope of assessment; effective date of assessment; and control number(s) of official certificate(s), as applicable.

(b) The names of assessed certifying agencies posted on the Livestock and Seed Program's website may be removed from the website upon suspension or termination of assessment for noncompliance with the regulations pursuant to § 37.13.

§ 37.12 Reassessment.

Approved certification programs shall be subject to periodic reassessment to ensure ongoing compliance with the regulations, including the requirements of ISO Guide 65. The frequency of such reassessment shall be based on the relative risk associated with the certification program's integrity, as determined by the Branch Chief.

§ 37.13 Suspension or denial of program assessment; appeals and termination.

(a) *Suspension or denial of assessment.* When a review of a certification program by auditors finds noncompliance with the regulations, including the requirements of ISO Guide 65, the Branch Chief may suspend or deny assessment until subsequent audits show the noncompliance has been corrected.

(b) *Appeals.* Appeals of adverse decisions by an auditor or the Branch Chief may be made in writing to the Livestock and Seed Program Deputy Administrator at Room 2092-South, 1400 Independence Avenue, SW., Washington, D.C. 20250–0249.

(c) *Termination.* If noncompliance with the regulations remains uncorrected beyond a reasonable amount of time, as determined by the Livestock and Seed Program Deputy Administrator, an application may be rejected or program assessment terminated.

(1) *Procedure.* Actions under this subparagraph concerning rejection of an application or termination of assessment shall be conducted in accordance with the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes set forth in §§ 1.130 through 1.151 of this title.

(2) [Reserved]

§ 37.14 Fees and other charges.

Fees and other charges equal as nearly as may be to the cost of the assessment services rendered under the regulations, including reassessments, shall be assessed and collected from applicants in accordance with the following provisions.

(a) *Fees for Service.* Except as otherwise provided in this section, fees-for-service shall be based on the time required to render the service provided calculated to the nearest 15-minute period, including auditor's travel, review and approval of quality manual, the conduct of the onsite audit, and time required to prepare reports and any other documents in connection with the performance of service. The base hourly rate for such service is $42.20 per hour for 8 hours or less of work performed between the hours of 6 a.m. and 6 p.m., Monday through Friday, except on legal holidays. The premium hourly rate for all applicants is $47.80 per hour charged to users of the service for the hours worked in excess of 8 hours per day between the hours of 6 a.m. and 6 p.m.; for the hours worked between 6 p.m. and 6 a.m., Monday through Friday; and for any time worked on Saturday and Sunday, except on legal holidays. The holiday rate for all applicants is $79.60 charged to users of the service for all hours worked on legal holidays.

(b) *Travel charges.* When service is requested at a place so distant from an auditor's headquarters, or place of prior assignment on circuitous routing, that a total of one-half hour or more is required for the auditor to travel to such place and back to the headquarters, or to the next place of assignment on a circuitous routing, the charge for such service shall include mileage charge administratively determined by the Department, and travel tolls, if applicable, or such travel prorated against all the applicants furnished the service involved on an equitable basis, or where the travel is made by public transportation (including hired vehicles), a fee equal to the actual cost thereof. However, the applicant will not be charged a new mileage rate without notification before the service is rendered.

(c) *Per diem charges.* When service is requested at a place away from the auditor's headquarters, the fee for such service shall include a per diem charge if the employee performing the service is paid per diem in accordance with existing travel regulations. Per diem charges to applicants will cover the same period of time for which the auditor receives per diem reimbursement. The per diem rate will be administratively determined by the Department. However, the applicant will not be charged a new per diem rate without notification before the service is rendered.

(d) *Other costs.* When costs, other than costs specified in paragraphs (a), (b), and (c) of this section are associated with providing the services, the applicant will be charged for these costs. The amount of the costs charged will be determined administratively by the Department. However, the applicant will not be charged for such cost without notification before the service is rendered of the charge for such item of expense.

§ 37.15 Payment of fees.

Fees and other charges for service shall be paid by the applicant to the Livestock and Seed Program, AMS, P.O. Box 96456, Room 2628-South, Washington, D.C. 20090–6456, with a check made payable to the Agricultural Marketing Service.

§ 37.16 OMB assigned numbers.

The information collection and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0183.

Dated: June 4, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–14688 Filed 6–7–99; 10:53 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 331

RIN 3064–AC23

Asset and Liability Backup Program

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for comment.

SUMMARY: The FDIC is adopting an interim final rule to require asset and liability backup programs (ALBPs) for limited deposit account and loan account information in a limited number of institutions to facilitate timely and accurate restoration of key financial records in the event that an FDIC-insured depository institution (insured depository institution) experiences a Year 2000 (Y2K) computer problem and is placed in receivership. Specifically, this rule requires those insured depository institutions receiving Y2K ratings of less than "Satisfactory" on or after July 31, 1999 (affected institutions) to follow specific programs to backup certain information concerning deposit and loan accounts. This information will be retained by each bank or savings and loan (thrift) to which the rule applies and used by the FDIC only if such an institution must be closed. This regulation will automatically sunset on June 30, 2000, and will no longer be applicable after that date. An affected institution will be exempted from the ALBP rule if its primary federal regulator provides a written determination to the Executive Secretary, FDIC, that the ALBP is not needed.

DATES: This interim final rule will be effective July 9, 1999. Comments must be received by July 9, 1999.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. Comments may be hand-delivered to the guard station located at the rear of the