

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY-01-005]

RIN 0581-AB99

Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to increase the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges need to be increased to cover the increase in salaries of Federal employees, salary increases of State employees cooperatively utilized in administering the programs, and other increased Agency costs.

DATES: Comments must be received on or before September 12, 2001.

ADDRESSES: Send written comments to David Bowden, Jr., Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, room 3944-South, 1400 Independence Avenue, SW,

Washington, DC 20250. Comments may be faxed to (202) 690-0941.

State that your comments refer to Docket No. PY-01-005 and note the date and page number of this issue of the Federal Register.

Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Rex A. Barnes, Chief, Grading Branch, (202) 720-3271.

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

The Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*) authorizes official voluntary grading and certification on a user-fee basis of eggs, poultry, and rabbits. 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 these programs to determine if fees are adequate and if costs are reasonable. This action would amend the schedule for fees and charges for grading services rendered to the egg, poultry, and rabbit industries to reflect the costs currently associated with them.

A recent review of the current fee schedule, effective October 1, 2000, revealed that anticipated revenue will not adequately cover increasing program costs. Without a fee increase, FY 2002 revenues for grading services are projected at \$24.1 million, costs are projected at \$26.0 million, and trust fund balances would be \$14.8 million. With a fee increase, FY 2002 revenues

are projected at \$25.3 million, costs are projected at \$26.0 million, and trust fund balances would be \$16.0 million.

Employee salaries and benefits account for approximately 81 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.56 to 4.46 percent, depending on locality, became effective in January 2001 and has materially affected program costs. Another general and locality salary increase estimated at 3.6 percent is expected in January 2002. Also, from October 2000 through September 2001, salaries and fringe benefits of federally licensed State employees will have increased by about 6.0 percent.

The impact of these cost increases was determined for resident, nonresident, and fee services. To offset projected cost increases, the hourly resident and nonresident rate would be increased by approximately 5 percent and the fee rate would be increased by approximately 6 percent. The hourly rate for resident and nonresident service covers graders' salaries and benefits. The hourly rate for fee service covers graders' salaries and benefits, plus the cost of travel and supervision.

Administrative charges that cover the cost of supervision for resident poultry and shell egg grading would also be increased as shown in the table below. Administrative charges for resident rabbit grading and nonresident services would not be changed.

The following table compares current fees and charges with proposed fees and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

| Service | Current | Proposed |
|--|---------|----------|
| Resident Service (egg, poultry, rabbit grading) | | |
| Inauguration of service | 310 | 310 |
| Hourly charges: | | |
| Regular hours | 29.96 | 31.52 |
| Administrative charges—Poultry grading: | | |
| Per pound of poultry | .00035 | .00036 |
| Minimum per month | 225 | 250 |
| Maximum per month | 2,625 | 2,650 |
| Administrative charges—Shell egg grading: | | |
| Per 30-dozen case of shell eggs | .044 | .046 |
| Minimum per month | 225 | 250 |
| Maximum per month | 2,625 | 2,650 |
| Administrative charges—Rabbit grading: | | |
| Based on 25% of grader's salary. | | |
| Minimum per month | 260 | 260 |

| Service | Current | Proposed |
|--|---------|----------|
| Nonresident Service (egg, poultry grading) | | |
| Hourly charges: | | |
| Regular hours | 29.96 | 31.52 |
| Administrative charges: | | |
| Based on 25% of grader's salary. | | |
| Minimum per month | 260 | 260 |
| Fee and Appeal Service (egg, poultry, rabbit grading) | | |
| Hourly charges: | | |
| Regular hours | 51.32 | 54.40 |
| Weekend and holiday hours | 59.12 | 62.76 |

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).

Regulatory Flexibility

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 is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

There are about 400 users of Poultry Programs' grading services. These official plants can pack eggs, poultry, and rabbits in packages bearing the USDA grade shield when AMS graders are present to certify that the products meet the grade requirements as labeled. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). These entities are under no obligation to use grading services as authorized under the Agricultural Marketing Act of 1946.

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 grading services are projected at \$24.1 million, costs are projected at \$26.0 million, and trust fund balances would be \$14.8 million. With a fee increase, FY 2002 revenues are projected at \$25.3 million, costs are projected at \$26.0 million, and trust fund balances would be \$16.0 million.

This action would raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional \$1.2 million during FY 2002. The hourly rate for resident and nonresident service would

increase by approximately 5 percent and the fee rate would increase by approximately 6 percent. The impact of these rate changes in a poultry plant would range from less than 0.006 to 0.02 cents per pound of poultry handled. In a shell egg plant, the range would be less than 0.028 to 0.033 cents per dozen eggs handled.

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

The information collection requirements that appear in the sections to be amended by this action have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act (44 U.S.C. Chapter 35) as follows: § 56.52(a)(4)—No. 0581-0128; and § 70.77(a)(4)—No. 0581-0127.

A thirty-day comment period is provided for interested persons to comment on this proposed rule. This period is appropriate in order to implement, as early as possible in fiscal year 2002, any fee changes adopted as a result of this rulemaking action.

List of Subjects

7 CFR Part 56

Eggs and egg products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

7 CFR Part 70

Food grades and standards, Food labeling, Poultry and poultry products, Rabbits and rabbit products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that Title 7, Code of Federal Regulations, parts 56 and 70 be amended as follows:

PART 56—GRADING OF SHELL EGGS

1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. In § 56.46, paragraphs (b) and (c) are revised to read as follows:

§ 56.46 On a fee basis.

(a) * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be \$54.40 and shall include the time actually required to perform the grading, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$62.76 per hour. Information on legal holidays is available from the Supervisor.

3. In § 56.52, paragraph (a)(4) is revised to read as follows:

§ 56.52 Continuous grading performed on resident basis.

* * * * *

(a) * * *

(4) An administrative service charge based upon the aggregate number of 30-dozen cases of all shell eggs handled in the plant per billing period multiplied by \$0.046, except that the minimum charge per billing period shall be \$250 and the maximum charge shall be \$2,650. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

4. The authority citation for part 70 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

5. In § 70.71, paragraphs (b) and (c) are revised to read as follows:

§ 70.71 On a fee basis.

(a) * * *

(b) Fees for grading services will be based on the time required to perform such services for class, quality, quantity (weight test), or condition, whether ready-to-cook poultry, ready-to-cook rabbits, or specified poultry food products are involved. The hourly charge shall be \$54.40 and shall include the time actually required to perform the work, waiting time, travel time, and any clerical costs involved in issuing a certificate.

(c) Grading services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$62.76 per hour. Information on legal holidays is available from the Supervisor.

6. In § 70.77, paragraph (a)(4) is revised to read as follows:

§ 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

* * * * *

(a) * * *

(4) For poultry grading: An administrative service charge based upon the aggregate weight of the total volume of all live and ready-to-cook poultry handled in the plant per billing period computed in accordance with the following: Total pounds per billing period multiplied by \$0.00036, except that the minimum charge per billing period shall be \$250 and the maximum charge shall be \$2,650. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: August 7, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01-20246 Filed 8-10-01; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-99-04]

RIN 0581-AB59

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (General Specifications) by reducing the maximum allowable bacterial estimate and somatic cell count in producer herd milk, by reducing the maximum allowable bacterial estimate in commingled milk, and by modifying the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. These changes would align the General Specifications with model regulations relating to quality and sanitation requirements of the production and processing of manufacturing grade milk. In addition, this document proposes to revise the process by which drug residue test methods are evaluated and accepted to provide greater consistency with the Grade A milk program and proposes certain other changes to the regulations for clarity and consistency.

DATES: Comments must be submitted on or before October 12, 2001.

ADDRESSES: Written comments may be submitted to: Duane R. Spomer, Chief, Dairy Standardization Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2946-S, South Building, P.O. Box 96456, Washington, DC 20090-6456. Comments may also be faxed to (202) 720-2643 or e-mailed to Duane.Spomer@usda.gov.

Comments should reference the date and page of this issue of the **Federal Register**. All comments received will be available for public inspection at the above address during regular business hours (8 a.m.-4:30 p.m.).

The current General Specifications for Dairy Plants Approved for USDA Inspection and Grading are available either through the above address or by accessing AMS' Home Page on the

Internet at www.ams.usda.gov/dairy/stand.htm.

FOR FURTHER INFORMATION CONTACT:

Susan Sausville, Dairy Products Marketing Specialist, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2746, South Building, P.O. Box 96456, Washington, D.C. 20290-6456, (202) 720-7473, Susan.Sausville@usda.gov.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866 and Regulatory Flexibility Act

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 (OMB).

The proposed rule has been reviewed in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and AMS has considered the economic impact of this action on small entities. It is determined that its provisions would not have a significant economic impact on a substantial number of small entities.

AMS provides, under the authority of the Agricultural Marketing Act of 1946, voluntary, user-fee funded inspection and grading services to approximately 400 dairy manufacturing plants. All of the dairy manufacturing plants utilizing the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

The proposed amendments would not have a significant economic impact because many State regulatory agencies have already incorporated these changes into State laws and regulations governing dairy manufacturing plants. The proposed changes would more closely align the General Specifications with mandatory State regulatory requirements in a number of areas including:

- The reduction of producer herd milk somatic cell count,
- The reduction of producer herd milk bacterial estimate,
- The follow-up protocol for producers whose herd milk exceeds the permitted bacterial estimate,
- The reduction in the bacterial estimate for commingled milk counts,
- The laboratory procedures that determine somatic cell content of producer herd milk, and
- The drug residue monitoring program.

Furthermore, the proposed amendments would not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost