

Proposed Rules

Federal Register
Vol. 67, No. 144
Friday, July 26, 2002

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-02-002]

RIN 0581-AC10

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 August 26, 2002.

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-02-002 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 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.

A recent review determined that the existing fee schedule, effective January 1, 2002, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2003. Costs in FY 2003 are projected at \$27.2 million. Without a fee increase, FY 2003 revenues are projected at \$26.0 million and trust fund balances would be \$15.2 million. With a fee increase, FY 2003 revenues are projected at \$27.2 million and trust fund balances would remain at \$16.4 million.

Employee salaries and benefits account for approximately 82 percent of

the total operating budget. The last general and locality salary increase for Federal employees became effective on January 1, 2002 and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 3.6 percent, however, the increase was actually 4.52 to 5.42 percent, depending on locality. Another general and locality salary increase estimated at 2.6 percent is expected in January 2003. Also, from October 2001 through September 2003, salaries and fringe benefits of federally-licensed State employees will have increased by about 6 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 5.8 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	31.52	33.36
Administrative charges—Poultry grading:		
Per pound of poultry00036	.00037
Minimum per month	250	260
Maximum per month	2,650	2,675
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs046	.048
Minimum per month	250	260
Maximum per month	2,650	2,675
Administrative charges—Rabbit grading:		
Based on 25% of grader's salary, minimum per month	260	260
Nonresident Service (egg, poultry grading)		
Hourly charges:		

Service	Current	Proposed
Regular hours	31.52	33.36
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	54.40	57.68
Weekend and holiday hours	62.76	66.64

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 fees are adequate and if costs are reasonable. A recent review determined that the existing fee schedule, effective January 1, 2002, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2003. Costs in FY 2003 are projected at \$27.2 million. Without a fee increase, FY 2003 revenues are projected at \$26.0 million and trust fund balances would be \$15.2 million. With a fee increase, FY 2003 revenues are projected at \$27.2 million and trust fund balances would remain at 16.4 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 2003. The hourly rate for resident and nonresident service would increase by approximately 5.8 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 0.007 to 0.037 cents per pound of poultry handled. In a shell egg plant, the range would be less than 0.021 to 0.036 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 30-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 FY 2003, 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. Section 56.46 is revised to read as follows:

§ 56.46 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be \$57.68 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 \$66.64 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 \$0.048, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,675. 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. Section 70.71 is revised to read as follows:

§ 70.71 On a fee basis.

(a) Unless otherwise provided in this part, the fees to be charged and collected for any service performed, in accordance with this part, on a fee basis shall be based on the applicable rates specified in this section.

(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 \$57.68 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 \$66.64 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 \$0.00037, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: July 22, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02-18922 Filed 7-25-02; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE**Immigration and Naturalization Service****8 CFR Part 103**

[INS No. 2198-02; AG Order No. 2603-2002]

RIN 1115-AG61

Address Notification To Be Filed With Designated Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) by requiring every alien who is applying for immigration benefits to acknowledge having received notice that he or she is required to provide a valid current address to the Service, including any change of address within 10 days of the change; that the Service will use the most recent address provided by the alien for all purposes, including the service of a Notice to Appear if the Service initiates removal proceedings; and, if the alien has changed address and failed to provide the new address to the Service, that the alien will be held responsible for any communications sent to the most recent address provided by the alien. This rule will satisfy the requirements for advance notice to the alien of the obligation to provide a current address to the Service, and of the consequences that may result for failure to do so, including the entry of an *in absentia* removal order against the alien if the alien fails to appear at a removal hearing.

DATES: Written comments must be submitted on or before August 26, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Immigration and Naturalization Service, 425 I Street NW, Room 4034, Washington, DC 20536. To ensure proper handling please reference INS No. 2198-02 on your correspondence. You may also submit comments electronically to the Service at insregs@usdoj.gov. When submitting comments electronically, please include INS No. 2198-02 in the subject box. Comments are available for public inspection at the above address by calling (202) 514-3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT:

Barry O'Melinn, Chief Appellate Counsel, 5113 Leesburg Pike, Room 200, Falls Church, Virginia 22041, (703) 756-6257.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 8 CFR 103.2 by adding a new paragraph that requires aliens to acknowledge having received notice of the existing statutory obligation to keep the Service informed of their current address, and that, if they change address and fail to provide notice of the change of address to the Service, they will be held responsible for all communications sent to the most recent address provided by the alien.

The proposed rule will assist aliens who apply for benefits to ensure that the Service will be able to contact them with respect to any issues relating to their applications for benefits, which may include requests by the Service for additional information or for the aliens to appear for an interview in connection with the applications. An alien who fails to respond to such communications from the Service may lose substantial rights, because the Service will deem the alien to have abandoned the application and deny it. See 8 CFR 103.2(b)(13).

The changes made by the proposed rule will also make clear to the alien that, should it ever become necessary for the Service to place the alien in removal proceedings, the Service will be able to effectuate service of the Notice to Appear, Form I-862, by mailing it to the most recent address provided by the alien for purposes of removal proceedings, as provided in section 239(c) of the Act, and that, if the alien fails to appear at a scheduled hearing, after notice of the hearing was sent to the most recent address provided by the alien, the alien is subject to being ordered removed *in absentia*. This rule is intended to avoid the kind of factual circumstances that gave rise to the decision by the Board of Immigration Appeals (Board) in *Matter of G-Y-R*, 23 I&N Dec. 181 (BIA 2001), which concluded that an *in absentia* order cannot be entered against an alien who failed to appear at removal proceedings where the alien had not provided a new address in the last five years and the Service knew that the alien did not receive the Notice to Appear because it was returned by the Postal Service as undeliverable.

Why Is It Necessary To Add Mandatory Acknowledgments to Service Forms?

The Board's decision in *Matter of G-Y-R* focused on the issue of constructive notice of the initiation of removal proceedings, in a case where the Service knew that the subject alien did not actually receive the Notice to Appear because it was returned by the Postal Service as undeliverable. In that circumstance, the Board held that an *in absentia* order of removal is inappropriate, because the record reflected that the alien did not actually receive, and could not be charged with receiving, the Notice to Appear informing the alien of the statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address. Under the present law and regulations, as construed by the Board, an alien cannot be charged with