

Rules and Regulations

Federal Register

Vol. 68, No. 236

Tuesday, December 9, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY-03-001]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fees and charges for Federal voluntary egg, poultry, and rabbit grading. These fees and charges are 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.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief,

Standardization Branch, (202) 720-3506.

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.

The AMS regularly reviews these programs to determine if fees are adequate and if costs are reasonable. This rule will 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 January 1, 2003, revealed that anticipated revenue would not adequately cover increasing program costs. Costs in FY 2004 are projected at \$29.8 million. Without a fee increase, FY 2004 revenues are projected at \$29.0 million and trust fund balances would be \$14.6 million. With a fee increase, FY 2004 revenues are projected at \$29.8 million and trust fund balances would remain at \$15.2 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, 2003, and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 2.6 percent, however, the increase was actually 4.02 to 4.87 percent, depending on locality. Another general and locality salary increase estimated at 2 percent is expected in January 2004. Also, from October 2002 through September 2004, salaries and fringe benefits of federally-licensed State employees will have increased by about 3 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 will be increased by approximately 3 percent and the fee rate will be increased by approximately 4 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.

As shown in the table below, only the maximum monthly administrative charge that covers overhead costs for resident poultry and shell egg grading would be increased, while other administrative charges 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, and rabbit grading)		
Inauguration of service	310	310
Hourly charges:		
Regular hours	33.36	34.36
Administrative charges—Poultry grading:		
Per pound of poultry00037	.00037
Minimum per month	260	260
Maximum per month	2,675	2,755
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs048	.048
Minimum per month	260	260
Maximum per month	2,675	2,755
Administrative charges—Rabbit grading:		
Based on 25% of grader's salary, minimum per month	260	260
Nonresident Service (egg and poultry grading)		
Hourly charges:		
Regular hours	33.36	34.36

Service	Current	Proposed
Administrative charges: Based on 25% of grader's salary, minimum per month	260	260
Fee and Appeal Service (egg, poultry, and rabbit grading)		
Hourly charges:		
Regular hours:	57.68	60.00
Weekend and holiday hours	66.64	69.32

Comments

Based on the analysis of costs to provide these services, a proposed rule to increase the fees for these services was published in the **Federal Register** (68 FR 37984) on June 26, 2003. Comments on the proposed rule were solicited from interested parties until July 28. No comments were received. The Agency will implement these increases, as proposed, to ensure the financial stability of its grading programs.

Executive Order 12866

This action has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility

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, 2003, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2004. Costs in FY 2004 are projected at \$29.8 million. Without a fee increase, FY 2004 revenues are projected at \$29.0 million and trust fund balances would be \$14.6

million. With a fee increase, FY 2004 revenues are projected at \$29.8 million and trust fund balances would remain at \$15.2 million.

This action will raise the fees charged to users of grading services. The AMS estimates that overall, this rule will yield an additional \$800,000 during FY 2004. The hourly rate for resident and nonresident service will increase by approximately 3 percent and the fee rate will increase by approximately 4 percent. The impact of these rate changes in a poultry plant will range from less than 0.0001 to 0.025 cents per pound of poultry handled. In a shell egg plant, the range will be less than 0.00002 to 0.11 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.

Pursuant to 5 U.S.C. 533, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. The revised fees need to be implemented on an expedited basis in order to avoid further financial losses in the grading program. The effective date of the fee increase will coincide with the billing cycle that begins on the first day of the first month after the date of publication in the **Federal Register**.

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, title 7, Code of Federal Regulations, parts 56 and 70 are 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 \$60.00 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 \$69.32 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 \$2,755. 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 \$60.00 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 \$69.32 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 \$2,755. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: December 4, 2003.

A.J. Yates,
Administrator, Agricultural Marketing
Service.

[FR Doc. 03–30596 Filed 12–8–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 11 and 16

[Docket No. 03–25]

RIN 1557–AC12

Reporting and Disclosure Requirements for National Banks With Securities Registered Under the Securities Exchange Act of 1934; Securities Offering Disclosure Rules

AGENCY: Office of the Comptroller of the Currency.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is revising its regulations to reflect amendments to the Securities Exchange Act of 1934 (Exchange Act) made by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley Act). These amendments to the Exchange Act give the OCC the authority to administer and enforce a number of the Sarbanes-Oxley Act's new reporting, disclosure, and corporate governance requirements with respect to national banks that have a class of securities registered under the Exchange Act. We are also revising our securities offering disclosure rules for national banks that issue securities that are not subject to the registration requirements of Securities Act of 1933.

EFFECTIVE DATE: This rule is effective on January 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Ann Nash, Counsel, 202–874–5090; or Martha Clarke, Counsel, Legislative & Regulatory Activities Division, 202–874–5090.

SUPPLEMENTARY INFORMATION:

Background

Section 12(i) of the Exchange Act vests the OCC with the powers, functions, and duties otherwise vested with the Securities and Exchange Commission (SEC) to administer and enforce certain provisions of the Exchange Act as they apply to national banks that have a class of securities registered under the Exchange Act (registered national banks).¹

¹ Under section 12(i), the OCC and the other Federal banking agencies have the power to issue rules that are necessary to carry out their functions under the Exchange Act. These rules are required to be substantially similar to the SEC's rules unless a Federal banking agency determines that substantially similar regulations with respect to the insured depository institutions that it supervises are not necessary or appropriate in the public interest or for the protection of investors and the agency publishes its findings in the **Federal Register** within 60 days after the SEC issues regulations.

Prior to the enactment of the Sarbanes-Oxley Act,² section 12(i) gave the OCC the authority to administer and enforce sections 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act. The Sarbanes-Oxley Act amended some of those sections of the Exchange Act to impose additional requirements and, as a result, the OCC will administer and enforce these new requirements as they apply to registered national banks. In addition, the Sarbanes-Oxley Act amended section 12(i) to add new sections of the securities laws to the list of provisions that are enforced and administered by the OCC.

Titles III and IV of the Sarbanes-Oxley Act include a number of provisions that are designed to improve the corporate governance and financial disclosures of issuers that have a class of securities registered under sections 12(b) or 12(g) of the Exchange Act or that are required to file periodic reports with the SEC under section 15(d) of the Exchange Act (public issuers). All registered national banks are public issuers for purposes of the law.

Pursuant to the amendments to section 12(i) made by the Sarbanes-Oxley Act, the OCC administers and enforces the following new provisions of the Act with respect to registered national banks in addition to any new requirements that were added through amendments to sections of the Exchange Act that were enforced by the OCC prior to the enactment of the Sarbanes-Oxley Act.

- Section 301³ establishes certain oversight, independence, funding, and other requirements for the audit committees of certain public issuers. It requires the SEC to issue implementing rules that prohibit any national securities exchange or national securities association from listing the securities of an issuer that fails to comply with these audit committee requirements. The SEC issued final rules to implement section 301 on April 9, 2003.⁴ The rules took effect on April 25, 2003. In the rules, the SEC applies section 301 only to public issuers listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association.⁵ Thus, section 301 applies only to registered national banks that are so listed.

- Section 302 requires the SEC to adopt rules that require the principal executive officers and principal financial officers of public issuers to

² Pub. L. 107–204, 116 Stat. 745 (July 30, 2002).

³ 15 U.S.C. 78j–1(m).

⁴ 68 FR 18788 (April 16, 2003).

⁵ *Id.* at 18790; 17 CFR 240.10A–3(e)(9).