

# Rules and Regulations

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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.

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## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1203

#### Procedures for Review of Rules and Regulations of the Office of Personnel Management

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to reflect a change in a statutory citation.

**EFFECTIVE DATE:** September 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653-7200.

**SUPPLEMENTARY INFORMATION:** The Merit Systems Protection Board is amending its rules of practice and procedure for review of rules and regulations of the Office of Personnel Management to reflect a change in a statutory citation. Section 6(a)(2) of the Veterans Employment Opportunities Act of 1998 (Pub. L. 105-339) redesignated 5 U.S.C. 2302(b)(11), which makes it a prohibited personnel practice to take or fail to take a personnel action that would violate any law, rule, or regulation implementing or directly concerning the merit system principles, as 5 U.S.C. 2302(b)(12). That statutory provision is cited in the Board's regulations at 5 CFR 1203.11(b)(2), which describes the additional information that must be submitted with a request for review of an OPM regulation where that prohibited personnel practice is at issue. Therefore, the Board is amending its regulations at 5 CFR 1203.11(b)(2) to conform to the redesignated statutory provision.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

### List of Subjects in 5 CFR Part 1203

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1203 as follows:

#### PART 1203—PROCEDURES FOR REVIEW OF RULES AND REGULATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

1. The authority citation for part 1203 continues to read as follows:

**Authority:** 5 U.S.C. 1204(a), 1204(f), and 1204(h).

##### § 1203.11 [Amended]

2. Amend § 1203.11 in paragraph (b)(2) by removing "5 U.S.C. 2302(b)(11)" and adding, in its place, "5 U.S.C. 2302(b)(12)".

Dated: September 21, 2000.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 00-24737 Filed 9-26-00; 8:45 am]

**BILLING CODE 7400-01-U**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 56 and 70

[Docket No. PY-00-002]

RIN 0581-AB89

#### 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:** October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** David Bowden, Jr., Chief, Standardization Branch, (202) 720-3506.

**SUPPLEMENTARY INFORMATION:**

### Background

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 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 October 1, 1999, revealed that anticipated revenue would not adequately cover increasing program costs. Without a fee increase, FY 2001 revenues for grading services are projected at \$23.7 million, costs are projected at \$24.9 million, and trust fund balances would be \$11.3 million. With a fee increase, FY 2001 revenues are projected at \$24.3 million, costs are projected at \$24.9 million, and trust fund balances would be \$11.9 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 4.76 to 5.31 percent, depending on locality, became effective in January 2000 and has materially affected program costs. Another general and locality salary increase estimated at 3.7 percent is expected in January 2001. Also, from October 1999 through September 2001, salaries and fringe benefits of federally licensed State employees will have increased by about 6.7 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 4 percent and the fee rate will 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. The hourly rate for an appeal grading or review of a grader's decision covers the

time required to perform such service. Due to changes in the number of Poultry Program offices and the resulting reduction in costs, administrative charges that cover the cost of

supervision for resident and nonresident service will remain unchanged as shown in the table below. The following table compares current fees and charges with the revised fees

and charges for egg, poultry, and rabbit grading as found in 7 CFR parts 56 and 70:

Service	Current	Proposed
<b>Resident Service (egg, poultry, rabbit grading)</b>		
Inauguration of service .....	310	310
Hourly charges:		
Regular hours .....	28.80	29.96
Administrative charges—Poultry grading:		
Per pound of poultry .....	.00035	.00035
Minimum per month .....	225	225
Maximum per month .....	2,625	2,625
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs .....	.044	.044
Minimum per month .....	255	225
Maximum per month .....	2,625	2,625
Administrative charges—Rabbit grading: Based on 25 % of grader's salary:		
Minimum per month .....	260	260
<b>Nonresident Service (egg, poultry grading)</b>		
Hourly charges:		
Regular hours .....	28.80	29.96
Administrative charges: Based on 25 % of grader's salary:		
Minimum per month .....	260	260
<b>Fee and Appeal Service (egg, poultry, rabbit grading)</b>		
Hourly charges:		
Regular hours .....	48.40	51.32
Weekend and holiday hours .....	55.76	59.12

**Comments**

Based on an analysis of costs to provide these services, a proposed rule to increase the fees for these services was published in the **Federal Register** (65 FR 37298) on June 14, 2000. Comments on the proposed rule were solicited from interested parties until July 14, 2000. The Agency received four comments during the 30-day comment period. They were from one producer, one processor, and two industry associations. All four opposed the fee increase.

The producer and the two associations expressed concern that the increase was coming at a time of economic hardship and suggested that the Agency increase efforts to reduce costs. One of the associations suggested that the increase be postponed for 6 months, then re-evaluated and recalculated at that time. The processor indicated that it wanted to continue using the service, but could not if the cost became prohibitive.

Employee salaries and benefits account for approximately 81 percent of the total operating budget, and rates for these expenditures are set by various Federal and State governing bodies. Projected increases in these costs require the Agency to increase hourly

rates to keep the programs operating on a sound financial basis. Further, as discussed earlier and shown in the previous table, while the hourly rates would increase, the administrative charges would remain unchanged. Due to changes in the number of Poultry Program offices and the resulting reduction in costs, administrative charges that cover the cost of supervision for resident and nonresident service will remain unchanged. Although the Agency seeks to minimize or negate any fee increases for the poultry, rabbit, and egg grading programs, it must operate these programs on a sound financial basis. Therefore, the Agency is implementing those 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 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 would not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2001 revenues for grading services are projected at \$23.7 million, costs are projected at \$24.9 million, and trust fund balances would be \$11.3 million. With a fee increase, FY 2001 revenues are projected at \$24.3 million, costs are

projected at \$24.9 million, and trust fund balances would be \$11.9 million.

This action will raise the fees charged to users of grading services. The AMS estimates that overall, this rule will yield an additional \$0.5 million during FY 2001. The hourly rate for resident and nonresident service will increase by approximately 4 percent and the fee rate will increase by approximately 6 percent. The impact of these rate changes in a poultry plant will range from less than 0.002 to 0.02 cents per pound of poultry handled. In a shell egg plant, the range will be less than 0.009 to 0.09 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. 553, it is found and determined that good cause exists for not postponing the effective date of the 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 be set to coincide with the billing cycle that begins on the first day of the first month after 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 \$51.32 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 \$59.12 per hour. Information on legal holidays is available from the Supervisor.

#### PART 70—VOLUNTARY GRADING OF POULTRY PRODUCTS AND RABBIT PRODUCTS

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

**Authority:** 7 U.S.C. 1621-1627.

4. 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 \$51.32 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 \$59.12 per hour. Information on legal holidays is available from the Supervisor.

Dated: September 21, 2000.

**Kathleen A. Merrigan,**  
Administrator, Agricultural Marketing Service.

[FR Doc. 00-24778 Filed 9-26-00; 8:45 am]

**BILLING CODE 3410-02-P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 989

[Docket No. FV00-989-5 IFR]

#### Raisins Produced From Grapes Grown in California; Decreased Assessment Rate

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the Raisin Administrative Committee (Committee) for the 2000-01 and subsequent crop years from \$8.50 to \$6.50 per ton of free tonnage raisins acquired by handlers, and reserve tonnage raisins released or sold to handlers for use in free tonnage outlets. The Committee locally administers the Federal marketing order which regulates the handling of raisins produced from grapes grown in California (order). Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective September 28, 2000. Comments received by November 27, 2000, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order