

executive agency as defined in 5 U.S.C. 105; for the legislative branch, the Secretary of the Senate, the Clerk of the House of Representatives, or the head of any other legislative branch agency; for the judicial branch, the Director of the Administrative Office of the U.S. Courts; for the Postal Service, the Postmaster General; and for any other independent establishment that is an entity of the Federal Government, the head of the establishment. For the purpose of an approval of coverage under this subpart, *agency head* is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that the designated representative must be a department headquarters-level official who reports directly to the executive department head, or to the deputy department head, and who is the sole such representative for the entire department. For the purpose of a denial of coverage under this subpart, *agency head* is also deemed to include the designated representative of the *agency head*, as defined in the first sentence of this definition, at any level within the agency.

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PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 3. The authority citation for part 842 is revised to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under sections 3 and 7(c) of Pub. L. 105–274, 112, Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under section 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 842.107 also issued under sections 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251; Sec. 842.107 also issued under section 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and section 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under section 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under section 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under section 4005 of Pub. L. 101–239, 103 Stat. 2106 and section 7001 of Pub. L. 101–508, 104 Stat. 1388, subpart H also issued under 5 U.S.C. 1104; sec. 842.810 also issued under Appendix C to Pub. L. 106–554, 114 Stat. 2763A–164.

Subpart H—Law Enforcement Officers, Firefighters, and Air Traffic Controllers

■ 4. Amend § 842.802 by revising the definition of *agency head* to read as follows:

§ 842.802 Definitions

* * * * *

Agency head means, for the executive branch agencies, the head of an executive agency as defined in 5 U.S.C. 105; for the legislative branch, the Secretary of State, the Clerk of the House of representatives, or the head of any other legislative branch agency; for the judicial branch, the Director of the Administrative Office of the U.S. Courts; for the Postal Service, the Postmaster General; and for any other independent establishment that is an entity of the Federal Government, the head of the establishment. For the purpose of an approval of coverage under this subpart, *agency head* is also deemed to include the designated representative of the head of an executive department as defined in 5 U.S.C. 101, except that, for provisions dealing with law enforcement officers and firefighters, the designated representative must be a department headquarters-level official who reports directly to the executive department head, or to the deputy department head, and who is the sole such representative for the entire department. For the purpose of a denial of coverage under this subpart, *agency head* is also deemed to include the designated representative of the *agency head*, as defined in the first sentence of this definition, at any level within the agency.

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[FR Doc. 05–14240 Filed 7–21–05; 8:45 am]

BILLING CODE 6325–39–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–05–001]

RIN 0581–AC44

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 being 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: Effective September 25, 2005.

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 of eggs, poultry, and rabbits on a user-fee basis. The AMA provides that reasonable fees be collected from users of 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, 2004, would not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2006. Costs in FY 2006 are projected at \$31.9 million. Without a fee increase, FY 2006 revenues are projected at \$30.5 million and trust fund balances would be \$14.5 million. With a fee increase, FY 2006 revenues are projected at \$31.9 million and trust fund balances would remain at \$15.9 million.

Employee salaries and benefits account for approximately 82 percent of the total operating budget. A general and locality salary increase for Federal employees, effective in January 2004, materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 2.0 percent, however, the increase was actually 3.89 to 5.35 percent, depending on locality. The last increase of 3.25 to 4.3 percent, depending on locality, became effective in January 2005 and another increase, estimated at 1.5 percent, is expected in January 2006. Also, from October 2004 through September 2006, salaries and fringe benefits of federally-licensed State employees will have increased by about 6.0 percent. This paragraph, which also appeared in the proposed rule, has been updated to reflect more current information.

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 5.8 percent and the fee rate will be increased by

approximately 8.3 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, the minimum monthly administrative volume charge for resident poultry, shell egg, and rabbit grading will not change.

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 | 34.36 | 36.36 |
| Administrative charges—Poultry grading: | | |
| Per pound of poultry | .00037 | .00039 |
| Minimum per month | 260 | 260 |
| Maximum per month | 2,755 | 2,875 |
| Administrative charges—Shell egg grading: | | |
| Per 30-dozen case of shell eggs | .048 | .051 |
| Minimum per month | 260 | 260 |
| Maximum per month | 2,755 | 2,875 |
| 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 | 34.36 | 36.36 |
| 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 | 60.00 | 65.00 |
| Weekend and holiday hours | 69.32 | 75.12 |

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** (70 FR 9883) on March 1, 2005. Comments on the proposed rule were solicited from interested parties until March 31. One comment was received from an egg industry association.

The association acknowledged the Agency's need to increase fees. However, the association requested that the increase be postponed for a period of six months. The commenter stated that an immediate increase would be an added hardship on an already economically depressed industry but, in a few months, industry self-help programs should be up and running. As stated in the proposal, the Agency intended that the fee increase be implemented as early as possible in FY 2006. The closest available billing cycle begins on September 25, 2005. Accordingly, this rule will be effective on that date.

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 this rule will not have a significant economic impact on a substantial number of small entities.

There are about 376 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, 2004, will not generate

sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2006. Costs in FY 2006 are projected at \$31.9 million. Without a fee increase, FY 2006 revenues are projected at \$30.5 million and trust fund balances would be \$14.5 million. With a fee increase, FY 2006 revenues are projected at \$31.9 million and trust fund balances would remain at \$15.9 million.

This action will raise the fees charged to users of grading services. The AMS estimates that overall, this rule will yield an additional \$1,400,000 during FY 2006. The hourly rate for resident and nonresident service will increase by approximately 5.8 percent and the fee rate will increase by approximately 8.3 percent. The impact of these rate changes in a poultry plant will range from about 0.0075 to 0.10 cents per pound of poultry handled. In a shell egg plant, the range will be less than 0.037 to 0.466 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, September 25, 2005, will coincide with the first billing period in FY 2006.

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 \$65.00 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 \$75.12 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 \$0.051, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,875. 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 \$65.00 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 \$75.12 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 \$0.00039, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,875. The minimum charge also applies where an approved application is in effect and no product is handled.

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Dated: July 19, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 983

[Docket No. FV05–983–4 IFR]

Pistachios Grown in California; Establishment of Procedures for Exempting Handlers From Minimum Quality Testing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes procedures for exempting handlers from quality requirements, including maximum limits for quality defects and minimum size, prescribed under the California pistachio marketing order (order). The order regulates the handling of pistachios grown in California and is administered locally by the Administrative Committee for Pistachios (Committee). These procedures will be used by the Committee in considering handler requests for exemptions from minimum quality testing requirements and when considering revocations of such exemptions. Additionally, this rule establishes an appeals process for handlers who have been denied an exemption or had an approved exemption revoked.

DATES: Effective July 23, 2005; comments received by September 20, 2005 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, 1400 Independence Avenue SW., STOP 0237,