

# Proposed Rules

Federal Register

Vol. 65, No. 115

Wednesday, June 14, 2000

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-00-002]

RIN 0581-AB89

#### 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 July 14, 2000.

**ADDRESSES:** Send written comments to Elizabeth S. Crosby, Acting Chief, Standardization Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0259, room 3944-South, 1400 Independence Avenue, SW, Washington, DC 20250-0259. Comments may be faxed to (202) 690-0941.

State that your comments refer to Docket No. PY-00-002 and note the date and page number of this issue of the **Federal Register**.

Comments received may be inspected at the above location between 8:00 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, 1999, revealed that anticipated revenue will 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 would be increased by approximately 4 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. 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 would remain unchanged as shown in the table below.

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
<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 .....	225	225
Maximum per month .....	2,625	2,625
Administrative charges—Rabbit grading		
Based on 25% of grader's salary.		

Service	Current	Proposed
Minimum per month .....	260	260
<b>Nonresident Service (egg, poultry grading)</b>		
Hourly charges:		
Regular hours .....	28.00	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

### 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 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 would raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional \$0.5 million during FY 2001. The hourly rate for

resident and nonresident service would increase by approximately 4 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 0.002 to 0.02 cents per pound of poultry handled. In a shell egg plant, the range would 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.

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 2001, 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 \$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: June 8, 2000.

**Kathleen A. Merrigan,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 00-15013 Filed 6-13-00; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 982

[Docket No. FV00-982-2 PR]

#### Hazelnuts Grown in Oregon and Washington; Increased Assessment Rate

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rate established for the Hazelnut Marketing Board (Board) for the 2000-2001 and subsequent marketing years from \$0.004 to \$0.005 per pound of hazelnuts handled. The Board locally administers the marketing order, which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by July 14, 2000.

**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. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be 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:

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, hazelnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable hazelnuts beginning on July 1, 2000, and continue until amended, suspended, or terminated. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before

parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Board for the 2000-2001 and subsequent marketing years from \$0.004 to \$0.005 per pound of hazelnuts handled.

The order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of hazelnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate and budget were recommended by a mail vote. The recommendation will be discussed and reconfirmed at the Board's next scheduled public meeting. Thus, all directly affected persons will have an opportunity to participate and provide input.

For the 1997-98 and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board, in a mail vote completed at the end of April 2000, unanimously recommended 2000-2001 expenditures of \$596,293 and an assessment rate of \$0.005 per pound of hazelnuts. In comparison, last year's budgeted expenditures were \$568,457. The assessment rate of \$0.005 is \$0.001 higher than the rate currently in effect. At the current rate of \$0.004 per pound and an estimated 2000-2001 hazelnut