

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

62. The authority citation for part 930 continues to read as follows:

Authority: 5 U.S.C. 3301, 3320, 7301; 40 U.S.C. 491; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218 E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306. (Separate authority is listed under § 930.107)

§ 930.110 [Amended]

63. Section 930.110 is amended by removing “and the Federal Personnel Manual”.

§ 930.115 [Amended]

64. Section 930.115 is amended by removing “or the Federal Personnel Manual”.

PART 960—FEDERAL EXECUTIVE BOARDS

65. The authority citation for part 960 continues to read as follows:

Authority: Memorandum of the President for Heads of Departments and Agencies (November 10, 1961).

§ 960.108 [Amended]

66. In § 960.108, remove “through the Federal Personnel Manual System and other appropriate instruments”.

[FR Doc. 01–31353 Filed 12–26–01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–01–005]

RIN 0581–AB99

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, 2002.

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, 2000, revealed that anticipated revenue would not adequately cover increasing program costs. Without a fee increase, FY 2002 revenues for grading services are projected at \$24.1 million, costs are projected at \$26.0 million, and trust fund balances would be \$14.8 million. With a fee increase, FY 2002 revenues are projected at \$25.3 million, costs are projected at \$26.0 million, and trust fund balances would be \$16.0 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 3.56 to 4.46 percent, depending on locality, became effective in January 2001 and has materially affected program costs. Another general and locality salary increase estimated at 3.6 percent is expected in January 2002. Also, from October 2000 through September 2001, salaries and fringe benefits of federally licensed State employees will have increased by about 6.0 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 5 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.

Administrative charges that cover the cost of supervision for resident poultry and shell egg grading will also be increased as shown in the table below. Administrative charges for resident rabbit grading and nonresident services will not be changed.

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
Resident Service (egg, poultry, rabbit grading)		
Inauguration of service	310	310
Hourly charges:		
Regular hours	29.96	31.52
Administrative charges—Poultry grading:		
Per pound of poultry00035	.00036
Minimum per month	225	250
Maximum per month	2,625	2,650
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs044	.046
Minimum per month	225	250
Maximum per month	2,625	2,650
Administrative charges—Rabbit grading:		
Based on 25% of grader’s salary		

Service	Current	Proposed
Minimum per month	260	260
Nonresident Service (egg, poultry grading)		
Hourly charges:		
Regular hours	29.96	31.52
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	51.32	54.40
Weekend and holiday hours	59.12	62.76

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** (66 FR 42456) on August 13, 2001. Comments on the proposed rule were solicited from interested parties until September 12, 2001.

The Agency received one comment during the 30-day comment period from an egg industry association. The association requested that the Agency not implement the fee increase, or delay implementation of the increase, because current economic conditions of the shell egg industry are abysmal. 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 must 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 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 2002 revenues for grading services are projected at \$24.1 million, costs are projected at \$26.0 million, and trust fund balances would be \$14.8 million. With a fee increase, FY 2002 revenues are projected at \$25.3 million, costs are projected at \$26.0 million, and trust fund balances would be \$16.0 million.

This action will raise the fees charged to users of grading services. The AMS estimates that overall, this rule will yield an additional \$1.2 million during FY 2002. The hourly rate for resident and nonresident service will increase by approximately 5 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 0.006 to 0.02 cents per pound of poultry handled. In a shell egg plant, the range will be less than 0.028 to 0.033 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. In § 56.46, paragraphs (b) and (c) are revised to read as follows:

§ 56.46 On a fee basis.

(a) * * *

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be \$54.40 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 \$62.76 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 \$0.046, except that the minimum charge per billing period shall be \$250 and the maximum charge shall be \$2,650. 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. In § 70.71, paragraphs (b) and (c) are revised to read as follows:

§ 70.71 On a fee basis.

(a) * * *

(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 \$54.40 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 \$62.76 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 \$0.00036, except that the minimum charge per billing period shall be \$250 and the maximum charge shall be \$2,650. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: December 20, 2001.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 01–31820 Filed 12–26–01; 8:45 am]

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DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1707

Testimony by DNFSB Employees and Production of Official Records in Legal Proceedings

AGENCY: Defense Nuclear Facilities Safety Board (DNFSB).

ACTION: Final rule.

SUMMARY: The Defense Nuclear Facilities Safety Board (DNFSB) is implementing procedures governing testimony by DNFSB employees and the production of official records in legal proceedings. This rule sets forth procedures that requesters must follow when making demands or requests to a DNFSB employee to produce official records or information or to provide testimony relating to official information in connection with a legal proceeding in which the DNFSB is not a party. This rule establishes procedures to respond to such demands and requests in an orderly and consistent manner. This rule, among other benefits, promotes uniformity in decisions, protects confidential information, provides guidance to requesters, and reduces the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

EFFECTIVE DATE: January 28, 2002.

FOR FURTHER INFORMATION CONTACT: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, telephone: 202–694–7062; FAX: 202–208–6518.

SUPPLEMENTARY INFORMATION:

Background

On November 14, 2001, DNFSB published in the **Federal Register** a notice of proposed rulemaking proposing to establish procedures governing testimony by DNFSB employees and the production of official records in legal proceedings to which DNFSB is not a party (66 FR 57003–57007). This rule establishes a new part 1707 of our regulations, which sets forth the DNFSB rules for responding to requests for information, records, or testimony in legal proceedings.

The Defense Nuclear Facilities Safety Board may receive subpoenas and requests for DNFSB employees to provide evidence in litigation in which the DNFSB is not a party. These subpoenas and requests may also be for DNFSB records that are not available to the public under the Freedom of Information Act. Also, DNFSB could receive subpoenas or requests for DNFSB employees to appear as witnesses in litigation in conjunction with a request for nonpublic records.

Responding to such demands and requests could divert DNFSB resources from their congressionally mandated functions. This regulation will ensure a more efficient use of DNFSB resources, minimize the possibility of involving DNFSB in issues unrelated to its responsibilities, promote uniformity in responding to such requests and subpoenas, and maintain impartiality of DNFSB in matters that are in dispute between other parties. It also serves DNFSB's duty to protect sensitive, confidential, and privileged information and records.

This rule, issued under the authority of 5 U.S.C. 301, is similar to rules issued by numerous Government agencies and departments. Section 301 of Title 5, the "housekeeping statute," authorizes the head of an executive agency to issue "regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." In *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), the Supreme Court upheld the authority of Federal agencies to establish procedures pursuant to section 301 similar to those established here. Federal courts have consistently held that a person seeking testimony or records from an agency must comply with the agency's "Touhy regulation" before seeking judicial enforcement of a subpoena. In addition, under section 2286b of the enabling statute of the Defense Nuclear Facilities Safety Board, 42 U.S.C. 2286 et seq., the DNFSB has