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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 56 and 70

[Docket No. PY-02-002]

RIN 0581-AC10

#### 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, 2003.

**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 January 1, 2002, revealed that anticipated revenue would not adequately cover increasing program costs. Costs in FY 2003 are projected at \$27.2 million. Without a fee increase, FY 2003 revenues are projected at \$26.0 million and trust fund balances would be \$15.2 million. With a fee increase, FY 2003 revenues are projected at \$27.2 million and trust fund balances would remain at \$16.4 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, 2002 and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 3.6 percent, however, the increase was actually 4.52 to 5.42 percent, depending on locality. Another general and locality salary increase estimated at 2.6 percent is expected in January 2003. Also, from October 2001 through September 2003, salaries and fringe benefits of federally-licensed State employees will have increased by about 6 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 5.8 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 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 .....	31.52	33.36
Administrative charges—Poultry grading:		
Per pound of poultry .....	.00036	.00037
Minimum per month .....	250	260
Maximum per month .....	2,650	2,675
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs .....	.046	.048
Minimum per month .....	250	260
Maximum per month .....	2,650	2,675
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 .....	31.52	33.36
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:		

Service	Current	Proposed
Regular hours .....	54.40	57.68
Weekend and holiday hours .....	62.76	66.64

**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** (67 FR 48816) on July 26, 2002. Comments on the proposed rule were solicited from interested parties until August 26. 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 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 will 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, 2002, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2003. Costs in FY 2003 are projected at \$27.2 million. Without a fee increase, FY 2003 revenues are projected at \$26.0 million and trust fund balances would be \$15.2 million. With a fee increase, FY 2003 revenues are projected at \$27.2 million and trust fund balances would remain at \$16.4 million.

This action will raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional \$1.2 million during FY 2003. The hourly rate for resident and nonresident service will increase by approximately 5.8 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 0.007 to 0.037 cents per pound of poultry handled. In a shell egg plant, the range will be less than 0.021 to 0.036 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 this action until 30 days after publication in the **Federal Register**. The revised fees need to be implemented on an expedite 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 \$57.68 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 \$66.64 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 \$2,675. 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 \$57.68 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 \$66.64 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 \$2,675. The minimum charge also applies where an approved application is in effect and no product is handled.

\* \* \* \* \*

Dated: December 19, 2002.

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

[FR Doc. 02-32504 Filed 12-24-02; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**8 CFR Parts 103 and 245**

[INS No. 2124-01; AG Order No. 2642-2002]

RIN 1115-AG14

**Adjustment of Status for Certain Aliens from Vietnam, Cambodia, and Laos in the United States**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes the Department of Justice regulations implementing section 586 of Public Law 106-429, which provides for the adjustment of status for certain aliens from Vietnam, Cambodia, and Laos. Eligible applicants must have been physically present in the United States both prior to and on October 1, 1997, and inspected and paroled into the United States before October 1, 1997, either from Vietnam under the Orderly Departure Program, from a refugee camp in East Asia, or from a displaced persons camp administered by the United Nations in Thailand. This rule establishes eligibility, evidence, and application and adjudication procedures. Starting January 27, 2003, aliens who believe they are eligible may apply for permanent residence under section 586. This rule also adds a new section in the regulations that lists the types of evidence an alien may use to demonstrate his or her physical presence in the United States on a specific date.

**DATES:** This final rule is effective January 27, 2003.

**FOR FURTHER INFORMATION CONTACT:** Michael Valverde, Residence and Status Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, Telephone (202) 514-4754.

**SUPPLEMENTARY INFORMATION:**

**What Is Section 568 of Public Law 106-429?**

On November 6, 2000, the President signed Public Law 106-429, the Foreign Operations Appropriations Act of 2001. Section 586 of Public Law 106-429, 8 U.S.C. 1255 note, provides for adjustment of status to that of lawful permanent resident for 5,000 eligible natives or citizens of Vietnam, Cambodia, and Laos.

**Who Is Eligible for Adjustment of Status to That of Lawful Permanent Resident Under Section 586 of Public Law 106-429?**

This final rule establishes the eligibility requirements for adjustment of status under section 586 of Public Law 106-429. To be eligible, an alien must demonstrate that he or she:

- (1) Is a citizen or native of Vietnam, Cambodia, or Laos;
- (2) Was inspected and paroled into the United States before October 1, 1997;
- (3) Was physically present in the United States prior to and on October 1, 1997;
- (4) Was paroled into the United States:

- (a) From Vietnam under the auspices of the Orderly Departure Program;

- (b) From a refugee camp in East Asia; or

- (c) From a displaced persons camp administered by the United Nations High Commissioner for Refugees in Thailand;

- (5) Applied for adjustment of status under section 586 of Public Law 106-429 during the period beginning on January 27, 2003 and ending on January 25, 2006, and paid all appropriate fees; and

- (6) Is otherwise eligible to receive an immigrant visa and otherwise admissible to the United States for permanent residence except for those grounds of inadmissibility that do not apply or that are waived.

**What Does This Final Rule Do?**

The preamble to this final rule discusses issues raised in the public comment letters submitted regarding the proposed regulation, published at 67 FR 45402 (July 9, 2002). This rule makes several changes to the regulation in response to those comments, as discussed below. Finally, this rule provides instructions for aliens seeking to apply for adjustment of status under section 586 and marks the start and end dates for the three-year application period.

**Public Comment**

The proposed regulation set forth a 60-day period, from July 9, 2002, until September 9, 2002, for any interested member of the public to submit comments on the proposed regulation. The Department of Justice ("Department") received seven letters, raising a total of 23 distinct issues. These comments are discussed below and are generally divided into three sections: comments concerning eligibility and evidence for adjustment