

# Proposed Rules

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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-06-002]

RIN 0581-AC64

#### 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, certification, and audit services, and to establish a separate billing rate for the audit services. The 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. The AMS is required to collect fees from users of these services to cover the costs of services rendered.

**DATES:** Comments must be received on or before November 6, 2006.

**ADDRESSES:** Send written comments, in duplicate, to David Bowden, Jr., Chief, USDA, AMS, PY, Standardization Branch, STOP 0256, Room 3932-S, 1400 Independence Avenue, SW., Washington, DC 20250-0256. Comments, in duplicate, may also be faxed to (202) 720-5631.

Comments may be submitted electronically to: [AMSPYDockets@usda.gov](mailto:AMSPYDockets@usda.gov) or <http://www.regulations.gov>.

Comments received will be available for public inspection at the above location between 8 a.m. and 4:30 p.m., e.s.t., Monday through Friday, except legal holidays. Comments received will also be available on the AMS Web site <http://www.ams.usda.gov/rulemaking> or may be inspected at the above address.

All comments should reference docket number PY-06-002 and note the date and page number of this issue of the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Johnson, Chief, Grading Branch, (202) 720-3271.

#### SUPPLEMENTARY INFORMATION:

##### Background and Proposed Changes

The Agricultural Marketing Act of 1946 (AMA), as amended, (7 U.S.C. 1621, *et seq.*), gives AMS the authority to provide services so that agricultural products may be marketed to their best advantage, that global marketing and trade may be facilitated, and that consumers may be able to ascertain characteristics involved in the production and processing of products and obtain the quality of product they desire. The AMA also provides for the collection of fees from users of these services that are reasonable and cover the cost of providing services. Voluntary grading and certification of eggs, poultry, and rabbits and verification and conformance audits, fall within this authorization.

A recent review determined that the existing fee schedule, effective September 25, 2005, will not generate sufficient revenue to cover program costs while maintaining an adequate trust fund reserve balance in FY 2007. Revenue in FY 2005 was \$30.1 million while expenses were \$33.8 million. After factoring in investment income, the result was a loss of \$3.4 million. This loss reduced the trust fund reserve balance to \$12.4 million. FY 2006 revenue is currently projected at \$33.8 million and expenses in FY 2006 are projected at \$34.8 million, which will reduce the trust fund reserve balance to \$12.0 million. However, prior-year adjustments and projected investment income will increase the projected end-of-year trust fund reserve balance to \$13.3 million. Without a fee increase, FY 2007 revenue is projected to be \$33.8 million. Expenses are projected to be \$36.6 million. After factoring in investment income, this loss would leave a reserve of \$11.1 million, which is below the required minimum level.<sup>1</sup>

<sup>1</sup> The required minimum level for the trust fund reserve is equal to four months of the revenue projected from collecting inspection fees during that fiscal year. With FY 2007 revenue projected to be \$33.8 million, four months of the revenue in FY2007 equals \$11.3 million. Therefore a reserve of

With a fee increase, FY 2007 revenue is projected at \$35.1 million.

Over \$1 million in cost cutting measures will be taken by the Agency in FY 2006 and FY 2007 to maintain acceptable trust fund reserve levels. These cost reductions will include reorganization of field offices and not filling targeted vacancies. The fee increase in conjunction with cost reductions will result in trust fund reserve balances that would be maintained at the required minimum level.

The review also included an in-depth analysis of expenses specifically related to auditing services. The audit program, initiated in 1999, was developed to provide industry, as well as domestic and foreign governmental entities, with verification of quality management systems, label claims, and other industry-developed standards. The number of audits has grown from five in FY 1999 to 524 in FY 2005. They are presently conducted by 30 full-time auditors. Audit fees are based on the approved hourly nonresident fee rate established for egg, poultry, and rabbit grading and certification services provided by the Agency pursuant to 7 CFR parts 56 and 70. The review revealed that this rate did not sufficiently cover the cost of providing audit services, primarily due to the use of higher-salaried employees to perform audits. Consequently, a separate billing rate for performing audits is proposed.

The nonresident fee rate for audits was developed using the salary and fringe benefit information for Agricultural Commodity Graders stationed in the field, the employees typically assigned to perform fee grading service. Most of these employees are full-time at the GS-8/9 pay grade classifications. However, due to the complexity of planning, performing, and interpreting the results of assessments, audits are typically performed by employees at the GS-11/12 pay grade.

Upon considering all audit operational expenses, the Agency determined that the actual cost of audit services, excluding travel costs, to be \$82.16 per hour. Included in the analysis were employee salaries and benefits, overhead; total revenue hours available, and other anticipated costs

\$11.1 million would fall short of the required minimum level.

such as federally mandated pay raises through FY 2007, rent, communications, utilities, contractual services, supplies, and equipment. Also, this action adds to the regulations a definition of auditing services and description of such services as appropriate.

The Agency considered alternatives to creating a separate user-fee for audit services, but found that none were sufficient. Maintaining the same user-fee for audit services that is currently used for conventional egg, poultry, and rabbit grading and certification services would not sufficiently cover the cost of providing audit services. Another option was to terminate all audit services, which would adversely affect producers, businesses, and consumers who desire audit services and those

entities with already-established programs.

Employee salaries and benefits account for approximately 85 percent of the total operating budget. The last general and locality salary increase for Federal employees became effective on January 1, 2006, and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 2.2 percent; however, the increase was actually 3.89 to 5.35 percent, depending on locality. The average increase in salary over the past five years has been 3.71 percent and was used for the projected salary increase for January 2007. Also, from October 2005 through September 2007, salaries and fringe benefits of federally-licensed State employees will increase by about 6.0 percent.

The following table compares current and proposed fees and charges and shows the new audit fees. To offset projected cost increases, the hourly resident and nonresident rate would be increased by approximately 7.0 percent and the fee rate would also be increased by approximately 7.0 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 minimum monthly administrative volume charge for resident shell egg, poultry, and rabbit grading would be changed to \$275. The billing rates for auditing services would be \$82.16 for regular hours and \$102.84 for weekend and holiday hours.

| Service  | Current | Proposed |
|--|---------|----------|
| <b>Resident Service (egg, poultry, and rabbit grading)</b>                   |         |          |
| Inauguration of service .....  | 310     | 310      |
| Hourly charges:  |         |          |
| Regular hours .....  | 36.36   | 39.04    |
| Administrative charges—Poultry grading:                                      |         |          |
| Per pound of poultry .....   | .00039  | .00043   |
| Minimum per month .....  | 260     | 275      |
| Maximum per month .....  | 2,875   | 3,075    |
| Administrative charges—Shell egg grading:                                    |         |          |
| Per 30-dozen case of shell eggs .....  | .051    | .053     |
| Minimum per month .....  | 260     | 275      |
| Maximum per month .....  | 2,875   | 3,075    |
| Administrative charges—Rabbit grading:                                       |         |          |
| Based on 25% of grader's salary, minimum per month .....                     | 260     | 275      |
| <b>Nonresident Service (egg and poultry grading)</b>                         |         |          |
| Hourly charges:  |         |          |
| Regular hours .....  | 36.36   | 39.04    |
| Administrative charges:  |         |          |
| Based on 25% of grader's salary, minimum per month .....                     | 260     | 275      |
| <b>Nonresident Fee and Appeal Service (egg, poultry, and rabbit grading)</b> |         |          |
| Hourly charges:  |         |          |
| Regular hours .....  | 65.00   | 69.68    |
| Weekend and holiday hours .....  | 75.12   | 80.12    |
| <b>Audit Fee (Verification of Standards and Quality Systems)</b>             |         |          |
| Hourly charges:  |         |          |
| Regular hours .....  | 65.00   | 82.16    |
| Weekend and holiday hours .....  | 75.12   | 102.84   |

#### Executive Order 12866

This proposed rule 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 Act

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 378 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

September 25, 2005, will not generate sufficient revenue to cover program costs while maintaining an adequate reserve balance in FY 2007. Costs in FY 2007 are projected at \$36.6 million. Without a fee increase, FY 2007 revenue is projected at \$33.8 million and the trust fund reserve balance would be below minimum required levels. With a fee increase, FY 2007 revenues are projected at \$35.1 million. Strategic cost-cutting measures will be taken by the program to ensure sufficient trust fund levels. Cost reductions will include reorganization of field offices and not filling targeted vacancies.

This action would raise the fees charged to users of grading and auditing services. Also, this action adds to the regulations a definition of auditing services and description of such services as appropriate. The AMS estimates that, overall, this rule would yield an additional \$1.3 million during FY 2007. The hourly rate for resident and nonresident service would also increase by approximately 7.0 percent and the fee rate would also increase by approximately 7.0 percent. The impact of these rate changes in a poultry plant would not be substantial and would range from about \$0.00013 to \$0.0011 per pound of poultry handled. In a shell egg plant, the range would be \$0.00022 to \$0.00224 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 30-day comment period is provided for interested persons to comment on this proposed rule. Given the current financial status of this program, this comment period is deemed appropriate in order to implement, as early as possible in FY 2007, 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 56.1 is amended by adding “Auditing Services” to read as follows:

##### § 56.1 Meaning of words and terms.

\* \* \* \* \*

*Auditing services* means the act of providing independent verification of written quality assurance and value added standards for production, processing and distribution of shell eggs. Auditing services are performed by graders authorized by the Secretary to perform such audits and the service provided will be in accordance with the provisions of this part for grading services, as appropriate.

\* \* \* \* \*

3. In § 56.28, the section heading is revised and paragraph (d) is added to read as follows:

##### § 56.28 Types of service.

\* \* \* \* \*

(d) *Auditing service.* This type of service is performed when an applicant requests independent verification of written quality assurance and value added standards for production, processing, and distribution of shell eggs. Charges or fees are based on time, travel, and expenses needed to perform the work.

4. Section 56.46 is amended by:

A. Removing in paragraph (b), “\$65.00” and adding “\$69.68” in its place.

B. Removing in paragraph (c), “\$75.12” and adding “\$80.12” in its place.

C. Adding new paragraphs (d) and (e) to read as follows:

##### § 56.46 On a fee basis.

\* \* \* \* \*

(d) Fees for audit services will be based on the time and expenses required to perform the audit. The

hourly charge shall be \$82.16 and shall include the time actually required to perform the audit, waiting time, travel time, travel expenses and any clerical costs involved in issuing an audit report.

(e) Audit services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$102.84 per hour. Information on legal holidays is available from the Supervisor.

5. Section 56.52 is amended by removing in paragraph (a)(4), “\$0.051” and adding “\$0.053” in its place, removing “\$260” and adding “\$275” in its place, and removing “\$2,875” and adding “\$3,075” in its place.

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

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

**Authority:** 7 U.S.C. 1621–1627.

7. Section 70.1 is amended by adding “Auditing Services” to read as follows:

##### § 70.1 Definitions.

\* \* \* \* \*

*Auditing services* means the act of providing independent verification of written quality assurance and value added standards for production, processing and distribution of poultry and rabbits. Auditing services are performed by graders authorized by the Secretary to perform such audits and the service provided will be in accordance with the provisions of this part for grading services, as appropriate.

\* \* \* \* \*

8. In § 70.4 the section heading is revised, and paragraph (c) is added to read as follows:

##### § 70.4 Services available.

\* \* \* \* \*

(c) *Auditing service.* This type of service is performed when an applicant requests independent verification of written quality assurance and value added standards for production, processing, and distribution of poultry and rabbits. Charges or fees are based on time, travel, and expenses needed to perform the work.

9. Section 70.71 is amended by:

A. Removing in paragraph (b), “\$65.00” and adding “\$69.68” in its place.

B. Removing in paragraph (c), “\$75.12” and adding “\$80.12” in its place.

C. Adding new paragraphs (d) and (e) to read as follows:

##### § 70.71 On a fee basis.

\* \* \* \* \*

(d) Fees for audit services will be based on the time and expenses required to perform the audit. The hourly charge shall be \$82.16 and shall include the time actually required to perform the audit, waiting time, travel time, travel expenses and any clerical costs involved in issuing a certificate.

(e) Audit services rendered on Saturdays, Sundays, or legal holidays shall be charged for at the rate of \$102.84 per hour. Information on legal holidays is available from the Supervisor.

10. Section 70.77 is amended by removing in paragraph (a)(4) "\$0.00039" and adding "\$0.00043" in its place, removing "\$260" and adding "\$275" in its place, and removing "\$2,875" and adding "\$3,075" in its place.

Dated: September 29, 2006.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. E6-16528 Filed 10-5-06; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2006-25436; Airspace Docket No. 06-AGL-05]

#### Proposed Modification of Class E Airspace; Hayward, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document proposes to modify Class E airspace at Hayward, WI. Standard Instrument Approach Procedures have been developed for Sawyer County Airport, Hayward, WI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for Hayward, WI.

**DATES:** Comments must be received on or before November 24, 2006.

**ADDRESSES:** Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket Number FAA-2006-/Airspace Docket No. 06-AGL-05, at the beginning of your comments. You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal,

any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at FAA Terminal Operations, Central Service Office, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

**FOR FURTHER INFORMATION CONTACT:** Steve Davis, FAA Terminal Operations, Central Service Office, System Support Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7131.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2006-25436/Airspace Docket No. 06-AGL-05." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's Web page at <http://www.faa.gov> or the Superintendent of Document's Web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267-9677, to request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Hayward, WI, for Sawyer County Airport. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing instrument approach procedures. Class E airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9N dated September 1, 2005, and effective September 16, 2005, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be removed subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.