Rules and Regulations

Federal Register
Vol. 63, No. 189
Wednesday, September 30, 1998

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. PY–98–002]

Egg, Poultry, and Rabbit Grading Increase in Fees and Charges

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: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas C. Bailey, Chief, Standardization Branch, (202) 720–3506.

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

This rule 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.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities.

There are about 400 users of Poultry Programs' grading services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This rule raises the fees charged to all businesses for voluntary grading services for eggs, poultry, and rabbits. The AMS estimates that overall this rule will yield an additional $1.5 million during FY 1999. The hourly resident rate for grading services will increase by approximately 4.1 percent while the hourly nonresident rate for grading service will increase by approximately 15 percent. The costs to entities will be proportional to their use of service, so that costs are shared equitably by all users. Furthermore, 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 existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). The Agency has engaged in streamlining efforts to reduce costs including staff and space reductions or closing of field offices. However, overall, costs are increasing despite these efforts.

Without a fee increase, revenue projections for FY 1999 would be $19.8 million, with costs projected at $22.3 million. The shortfall, if allowed to continue, would translate into an approximate 3.8 month operating reserve at the end of FY 1999 or $7.1 million, which is less than Agency policy requires. With the fee increase, FY 1999 revenue is projected to be $21.3 million and costs are projected at $22.3 million. Trust fund balances would be $8.5 million or 4.3 months.

The AMS has certified that this action will not have a significant impact on a substantial number of small entities, as defined in the RFA (5 U.S.C. 601).

The information collection requirements that appear in the sections to be amended by this rule 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.

Background

The Agricultural Marketing Act (AMA) of 1946 authorizes official 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. 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 the program.

Several streamlining actions to be completed in FY 1998 will result in cost savings. They include staff and space reductions or closing of field offices. However, overall, costs are increasing despite these efforts.

Employee salaries and benefits account for approximately 82 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.57 to 6.52 percent, depending on locality, became effective in January 1998 and has materially affected program costs. Another general and locality salary increase estimated at 3.0 percent is expected in January 1999. Also, from October 1997 through September 1999, salaries and fringe benefits of federally licensed State employees will have increased by about 6 percent. As a result, the hourly resident rate for grading services will increase by approximately 4.1 percent. The hourly resident rate covers graders' salaries, fringe benefits, and related costs.

Another factor affecting the current fee structure is the increased demand for grading services on a fee basis. Resident grading service is provided by a grader with a regular tour of duty in a plant, while fee grading service is provided by a grader on an intermittent, as-needed basis. Historically, the majority of shell egg and poultry grading has been done on a resident basis according to the official U.S. quality grade standards. In recent years, however, there has been an increase in the volume of shell eggs and poultry being traded according to product-specific purchase requirements where USDA certification is required, and this

work is done predominantly on a fee basis. Fee services for many plants require more supervisory time and travel to staff, train, and supervise graders. As a result, a greater proportion of overhead costs for supervision and support staff must be charged to fee services. Rates to cover these costs were only minimally raised in years prior to the last fee increase effective May 1, 1997. Current analysis shows that these rates need to be increased an additional 15 percent to totally support their fair share of the program's overhead costs.

Additionally, rates for appeal grading and review of a grader's decision are only occasionally used, currently accounting for less than $5,000 revenue annually. A separate rate for this service would be discontinued and these services would be charged using fee service rates for the time required to perform such service. This amendment would simplify the rate structure and any change in revenue would be negligible.

A recent review of the current fee schedule, effective May 1, 1997, revealed that anticipated revenue will not adequately cover increasing program costs. Without a fee increase, projected FY 1999 revenues for grading services are $19.8 million, with costs projected at $22.3 million, and trust fund balances would be $7.1 million, below appropriate levels. With a fee increase, projected FY 1999 revenues would be $21.3 million and costs are projected at $22.3 million. Trust fund balances would be $8.5 million or 4.3 months of operating costs.

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:		
Inauguration of service	310	310
Hourly charges		
Regular hours	26.56	27.64
Administrative charges—Poultry grading		
Per pound of poultry	.00033	.00034
Minimum per month	225	225
Maximum per month	2,250	2,500
Administrative charges—Shell egg grading		
Per 30-dozen case of shell eggs	.038	.040
Minimum per month	225	225
Maximum per month	2,250	2,500
Administrative charges—Rabbit grading		
Based on 25% of grader's salary, Minimum per month	225	250
Nonresident Service: [1]		
Hourly charges		
Regular hours	26.56	27.64
Administrative charges		
Based on 25% of grader's salary, Minimum per month	225	250
Fee and Appeal Service:		
Hourly charges		
Regular hours	38.96	44.80
Weekend and holiday hours	43.24	51.60

[1] For poultry and shell egg grading.

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** (63 FR 31362) on June 9, 1998. Comments on the proposed rule were solicited from interested parties until August 10, 1998.

During the 60-day comment period, the Agency received two comments, one from a State commissioner of agriculture and one from a poultry processor. Both were in opposition to the proposal, expressing a general concern about the cost of the grading program in light of financial difficulties faced by the industry.

The State commissioner of agriculture went on to suggest that the Agency give each State more supervisory grading authority and decrease the number of federal supervisors. The commissioner also suggested that the Agency promote greater consumer demand for graded product as an incentive for industry's continued use of grading services.

A cornerstone of the grading program is the uniform interpretation and application of the official USDA grade standards and grades nationwide. This uniformity enables buyers and sellers to trade graded products sight-unseen in domestic and international marketing channels with confidence. The current supervisory network starts at headquarters and reaches through regional and Federal-State offices to the individual graders. State supervisors are used in conjunction with, but not in lieu of Federal supervisors. The Federal supervisory chain ensures that the training of both Federal and State graders and their application of grade standards and grades is impartial and consistent nationwide. Delegating Federal supervisory functions to State employees would weaken existing supervisory accountability and program uniformity, which over time would likely erode user confidence in the programs.

The issue of explaining the value of grading to consumers has been raised over the years by the Agency and by members of the food industry. In 1996, the Agency conducted focus groups to better understand the issue. Using the focus group findings, the Agency developed new educational materials and strategies targeted at consumers and volume buyers. Although these efforts are expected to provide long-term benefits to users of the grading programs, they do not provide an alternative to a fee increase.

Although the Agency seeks to minimize or negate any fee increases for the poultry, rabbit, and egg grading programs, it must also operate these programs on a sound financial basis. Accordingly, the Agency is implementing the proposed increases to ensure the financial stability of these grading programs.

During the review of the comments and proposal, one error was discovered. In the proposed rule, § 70.72 refers to a fee for laboratory analysis that is no longer performed by this program. References to this service were deleted from § 70.72 in April 1997, but were inadvertently reinserted into the proposed rule. Therefore, the text of the final rule has been corrected by removing the phrase ''laboratory analysis,'' each time it appears in the heading and regulatory text of § 70.72 of the proposed rule.

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**, because the proposed fees need to be implemented on an expedited basis in order to avoid financial losses in the grading program this fiscal year. Also, the effective date of the fee increase will be set to coincide with the next billing cycle.

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 $44.80 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 $51.60 per hour. Information on legal holidays is available from the Supervisor.

3. Section 56.47 is revised to read as follows:

§ 56.47 Fees for appeal grading or review of a grader's decision.

The cost of an appeal grading or review of a grader's decision shall be borne by the appellant on a fee basis at rates set forth in § 56.46, plus any travel and additional expenses. If the appeal grading or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

4. 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 $0.040, except that the minimum charge per billing period shall be $225 and the maximum charge shall be $2,500. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

5. In § 56.54, paragraph (a)(2) is revised to read as follows:

§ 56.54 Charges for continuous grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $250 will be made each billing period. 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

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

Authority: 7 U.S.C. 1621–1627.

7. 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 $44.80 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 $51.60 per hour. Information on legal holidays is available from the Supervisor.

8. Section 70.72 is revised to read as follows:

§ 70.72 Fees for appeal grading, or examination or review of a grader's decision.

The costs of an appeal grading, or examination or review of a grader's decision, will be borne by the appellant on a fee basis at rates set forth in § 70.71, plus any travel and additional expenses. If the appeal grading, or examination or review of a grader's decision discloses that a material error was made in the original determination, no fee or expenses will be charged.

9. In § 70.76, paragraph (a)(2) is revised to read as follows:

§ 70.76 Charges for continuous poultry grading performed on a nonresident basis.

* * * * *

(a) * * *

(2) An administrative service charge equal to 25 percent of the grader's total salary costs. A minimum charge of $250 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

10. In § 70.77, paragraphs (a)(4) and (a)(5) are 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 $0.00034, except that the minimum charge per billing period shall be $225 and the maximum charge shall be $2,500. The minimum charge also applies where an approved application is in effect and no product is handled.

(5) For rabbit grading: An administrative service charge equal to

25 percent of the grader's total salary costs. A minimum charge of $250 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

* * * * *

Dated: September 25, 1998.

Thomas O'Brien,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 98–26222 Filed 9–29–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AA85

Peanut Crop Insurance Regulations; and Common Crop Insurance Regulations, Peanut Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: The document contains a correction to the final regulation which was published Tuesday, June 9, 1998 (63 FR 31331–31337). The regulation pertains to the insurance of peanuts.

EFFECTIVE DATE: September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Background

The final regulation that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured and include the peanut crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms.

Need For Correction

As published, the final regulation contained errors which may prove to be misleading and need to be clarified. Segregation I peanuts should not have been included in the definition of ''average price per pound'' in section 1 of the peanut crop insurance provisions. Removal of Segregation I peanuts from this definition will keep quality adjustment for peanuts under section 14(f) consistent with previous crop years. In section 5 of the crop provisions, the spelling of ''Mullen'' County is being corrected to ''McMullen''.

Correction of Publication

Accordingly, the publication on June 9, 1998, of the final regulation at 63 FR 31331–31337 is corrected as follows:

PART 457—[CORRECTED]

§ 457.134 [Corrected]

On page 31335, in the third column, in § 457.134, section 1, definition of ''average price per pound'', paragraph (2) is corrected to read: ''(2) The highest non-quota price election contained in the Special Provisions for all Segregation II and III peanuts not eligible to be valued as quota peanuts.''

On page 31336, in the last column, in § 457.134, section 5, the county name of ''Mullen'' in the table is corrected to read: ''McMullen.''

Signed in Washington, D.C., on September 24, 1998.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 98–26095 Filed 9–29–98; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 240

[EOIR No. 124I; AG Order No. 2182–98]

RIN 1125–AA25

Suspension of Deportation and Cancellation of Removal

AGENCY: Executive Office for Immigration Review, and Immigration and Naturalization Service, Department of Justice.

ACTION: Interim rule.

SUMMARY: This rule amends the regulations of the Executive Office for Immigration Review (EOIR) and the Immigration and Naturalization Service (Service) by eliminating the conditional grant process at 8 CFR 240.21, and establishing a permanent procedure for processing suspension of deportation and cancellation of removal cases. This rule is necessary to implement the numerical limitation on suspension of deportation and cancellation of removal and adjustment of status imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

DATES: *Effective Date:* This interim rule is effective September 30, 1998.

Comment Date: Written comments must be submitted on or before November 30, 1998.

ADDRESSES: Please submit written comments, in triplicate, to Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: For matters relating to the Executive Office for Immigration Review—Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, telephone (703) 305–0470. For matters relating to the Immigration and Naturalization Service—Marguerite N. Przybylski, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Washington, D.C. 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: This interim rule amends 8 CFR part 240 by eliminating the interim rule in section 240.21 and creating a new section 240.21.

Background

On September 30, 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208 (IIRIRA). Under section 304(a)(3) of IIRIRA, the Attorney General may not cancel the removal and adjust the status under section 240A(b) of the Immigration and Nationality Act (INA), nor suspend the deportation and adjust the status under section 244(a) of the INA (as in effect before April 1, 1997) of a total of more than 4,000 aliens in any fiscal year. Section 309(c)(7) of IIRIRA provides that this numerical limitation applies regardless of when an alien has applied for the relief, even if before the date of IIRIRA's enactment on September 30, 1996.

By mid-February 1997, EOIR had determined it had essentially reached the fiscal year 1997 numerical limitation on suspension of deportation grants. On February 13, 1997, the Board of Immigration Appeals (Board) issued a directive to defer the adjudication of grants of suspension of deportation until further notice. The Immigration Courts received a directive to reserve decision in suspension of deportation cases that they intended to grant. The instructions were intended to be a temporary measure to give the Department time to consider how best to implement the statutory cap.