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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 56 and 70

[Docket No. AMS-PY-07-0065]

RIN 0581-AC73

#### Multi Year Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading and Audit Services

**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, certification, and audit services for the next two fiscal years, FY 2008 and FY 2009. The fees and charges are being increased by 2.76% to 7.74% 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. AMS is required to collect fees from users of these services to cover the costs of services rendered.

**EFFECTIVE DATE:** March 30, 2008.

**FOR FURTHER INFORMATION CONTACT:** David Bowden, Jr., Chief, USDA, AMS, PY, Standards, Promotions and Technology Branch, (202) 690-3148.

#### SUPPLEMENTARY INFORMATION:

#### Background and Proposed Changes

The Agricultural Marketing Act of 1946 (AMA), as amended, (7 U.S.C. 1621-1627), 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 April 1, 2007, will not generate sufficient revenue to cover program costs while maintaining an adequate trust fund reserve balance in FY 2008 and FY 2009. Revenue, investment income and other adjustments in FY 2006 were \$36 million while expenses were \$35 million, resulting in a trust fund reserve balance increase from \$12.3 million to \$13.3 million.<sup>1</sup>

FY 2007 revenue, investment income and other adjustments are currently projected at \$35.9 million and expenses in FY 2007 are projected at \$35.8 million. This will result in a trust fund reserve balance of \$13.4 million.

Without a fee increase, FY 2008 revenue is projected to be \$35 million. Expenses are projected to be \$37.4 million, which would leave a reserve of \$11 million. With a fee increase, FY 2008 revenue is projected at \$37.5 million. The fee increase will result in a trust fund reserve balance of \$13.5 million.

Without a fee increase, FY 2009 revenue is projected at \$34.9 million. Expenses are projected at \$38.2 million, which would leave a reserve of \$7.7 million. With a fee increase in FY 2009, revenue is projected at \$38.8 million. The fee increase will result in a trust fund reserve balance of \$14 million.

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, 2007, and it materially affected program costs. Projected cost estimates for that increase were based on a salary increase of 1.7 percent; however, the increase was actually 1.81 to 3.02 percent, depending on locality. The average annual increase in salary over the past five years has been 3.71 percent and was used for the projected salary increase for January 2008 and

<sup>1</sup> With the increase, the reserve would be \$14 million. However a six month reserve is needed for all program contingencies, including shutdown.

January 2009. Also, from October 2007 through September 2009, salaries and fringe benefits of federally-licensed State employees are estimated to increase by about 6.0 percent.

The hourly rate for resident and non-resident service covers graders' salaries and benefits. The current hourly rates of \$39.04, \$69.68, and \$80.12 for the resident and fee service cover graders' salaries and benefits, plus the cost of travel and supervision. The minimum monthly administrative volume charge for resident poultry, shell egg, and rabbit grading remains at \$275, because the fee analysis determined that raising the minimum monthly administrative charge would not generate additional reserve.

For FY 2008 the resident fee rate will be \$40.88 for regular hours and \$64.44 for holiday hours, an increase of approximately 5 percent from the previous year. Beginning in January 2009, the resident fees rates will be \$42.68 for regular hours and \$67.28 for holiday hours, an increase of approximately 4 percent from the previous year.

For FY 2008 the non-resident fee rates will be \$74.08 for regular hours and \$86.68 for weekend and holiday hours, an increase of approximately 7 percent from the previous year. Beginning in January 2009, the non-resident fee rates will be \$77.28 for regular hours and \$93.24 for weekend and holiday hours, an increase of approximately 6 percent from the previous year.

Current rates for auditing services are \$82.16 and \$102.84. In FY 2008 they will be \$87.56 for regular hours and \$112.00 for weekend and holiday hours, an increase of approximately 8 percent from the previous year. Beginning in January 2009, the audit rates will be \$89.20 for regular hours and \$116.08 for weekend and holiday hours, an increase of approximately 3 percent.

The inauguration charge of \$310, when an application for service has been received, has been eliminated. By restructuring the inauguration charge, expenses incurred for plant surveys and billed to applicants will reflect a more accurate accounting for the services rendered. Since a plant survey still is required, the fee for the survey will be borne by the applicant at rates set forth for shell eggs in \$ 56.46 (a)-(c) and for poultry and rabbits in \$ 70.71 (a)-(c), plus any travel and additional expenses.

The following table compares current and new fees. The fee rate will be increased by approximately 7.0 percent. The hourly rate for resident and nonresident service covers graders' salaries and benefits.

Service	Current	2008	2009
<b>Resident Service (egg, poultry, and rabbit grading)</b>			
Inauguration of service .....	310	0	0
Hourly charges:			
Regular hours .....	39.04	40.88	42.68
Holiday hours .....	61.44	64.44	67.28
Administrative charges—Poultry grading .....	.00043	.00045	.00047
Per pound of poultry .....	275	275	275
Minimum per month .....	3,075	3,150	3,225
Maximum per month .....			
Administrative charges—Shell egg grading .....	.053	.055	.058
Per 30-dozen case of shell eggs .....	275	275	275
Minimum per month .....	3,075	3,150	3,225
Maximum per month .....			
Administrative charges—Rabbit grading:			
Based on 25% of grader's salary, minimum per month .....	275	275	275
<b>Non-resident Service (egg, poultry, and rabbit grading)</b>			
Hourly charges:			
Regular hours .....	39.04	40.88	42.68
Administrative charges:			
Based on 25% of grader's salary, minimum per month .....	275	275	275
<b>Nonresident Fee and Appeal Service (egg, poultry, and rabbit grading)</b>			
Hourly charges:			
Regular hours .....	69.68	74.08	77.28
Weekend and holiday hours .....	80.12	86.68	93.24
<b>Audit Fee (Plant Systems, Animal Welfare, QSVF)</b>			
Hourly charges:			
Regular hours .....	82.16	87.56	89.20
Weekend and holiday hours .....	102.84	112.00	116.08

## Comments

Based on the analysis of costs to provide these services, a proposed rule to increase fees for these services was published in the **Federal Register** (72 FR 62591) on November 6, 2007. Comments on the proposed rule were solicited from interested parties until December 6, 2007. No comments were received.

## Executive Order 12866

This action 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. 601–674), 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 390 users of Poultry Programs' 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 program services as authorized under the Agricultural Marketing Act of 1946.

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 April 1, 2007, will not generate sufficient revenue to cover program costs while maintaining an adequate reserve balance in FY 2008 and FY 2009.

Expenses in FY 2008 are projected at \$37.4 million. Without a fee increase, FY 2008 revenue is projected at \$35 million. With a fee increase, FY 2008 revenues are projected at \$37.5 million.

Expenses in FY 2009 are projected at \$38.2 million. Without a fee increase, FY 2009 revenues are projected at \$34.9 million. With a fee increase, FY 2009 revenues are projected at \$38.8 million.

This action will raise the fees charged to users of grading and auditing services. AMS estimates that, overall, this rule will yield about \$2.4 million during FY 2008 and an additional \$1.3 million for FY 2009. The hourly rate for resident and nonresident service will increase by approximately 4.71 percent in FY 2008 and 4.4 percent in FY 2009. The fee rate will increase by approximately 7 percent in FY 2008 and approximately 6 percent in FY 2009. The audit fee will increase by approximately 8 percent in FY 2008 and approximately 3 percent in FY 2009. The impact of these rate changes in a poultry plant will range from about \$0.000078 to \$0.000952 per pound of poultry handled in FY 2008 and \$0.000085 to \$0.001068 in FY 2009. In a shell egg plant, the range will be \$0.000273 to \$0.003499 per dozen eggs handled in FY 2008 and \$0.000410 to \$0.004870 per dozen eggs handled in FY 2009.

## 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. 533, it is found and determined that good cause exists for not postponing the effective date 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 is March 30, 2008.

#### 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 is amended as follows:

#### PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

##### § 56.46 [Amended]

- 2. Section 56.46 is amended by:
- A. Removing in paragraph (b), “\$69.68” and adding “\$74.08, beginning March 30, 2008, and \$77.28 on or after January 25, 2009,” in its place.
  - B. Removing in paragraph (c), “\$80.12 per hour” and adding “\$86.68 per hour, beginning March 30, 2008, and \$93.24 per hour on or after January 25, 2009,” in its place.
  - C. Removing in paragraph (d), “\$82.16” and adding “\$87.56 beginning March 30, 2008, and \$89.20 on or after January 25, 2009,” in its place.
  - D. Removing in paragraph (e), “\$102.84 per hour” and adding

“\$112.00 per hour beginning March 30, 2008, and \$116.08 per hour on or after January 25, 2009,” in its place.

■ 3. Section 56.52 is amended by:

- A. Removing the first sentence of paragraph (a)(1), and adding three sentences to read as set forth below; and
- B. Removing in paragraph (a)(4), “\$0.053” and adding “\$0.055 beginning March 30, 2008, and \$0.058 on or after January 25, 2009,” in its place, and removing “\$3,075” and adding “\$3,150 beginning March 30, 2008, and \$3,225 on or after January 25, 2009,” in its place.

##### § 56.52 Charges for continuous grading performed on a resident basis.

\* \* \* \* \*

(a) \* \* \*

(1) When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to § 56.30. The costs for completing the plant survey shall be borne by the applicant on a fee basis at rates set forth in § 56.46 (a) through (c), plus any travel and additional expenses. No charges will be assessed when the application is required because of a change in name or ownership. \* \* \*

\* \* \* \* \*

#### 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.

##### § 70.71 [Amended]

- 5. Section 70.71 is amended by:
- A. Removing in paragraph (b) “\$69.68” and adding “\$74.08 beginning March 30, 2008, and \$77.28 on or after January 25, 2009,” in its place.
- B. Removing in paragraph (c) “\$80.12 per hour” and adding “\$86.68 per hour beginning March 30, 2008, and \$93.24 per hour on or after January 25, 2009,” in its place.
- C. Removing in paragraph (d), “\$82.16” and adding “\$87.56 beginning March 30, 2008, and \$89.20 on or after January 25, 2009,” in its place.
- D. Removing in paragraph (e), “\$102.84 per hour” and adding “\$112.00 per hour beginning March 30, 2008, and \$116.08 per hour on or after January 25, 2009,” in its place.
- 6. Section 70.77 is amended by:
- A. Removing the first sentence of paragraph (a)(1), and adding three sentences to read as set forth below; and
- B. Removing in paragraph (a)(4), “\$0.00043” and adding “\$0.00045

beginning March 30, 2008, and \$0.00047 on or after January 25, 2009,” in its place, and removing “\$3,075” and adding “\$3,150 beginning March 30, 2008, and \$3,225 on or after January 25, 2009,” in its place.

##### § 70.77 Charges for continuous poultry or rabbit grading performed on a resident basis.

\* \* \* \* \*

(a) \* \* \*

(1) When a signed application for service has been received, the State supervisor or the supervisor's assistant shall complete a plant survey pursuant to § 70.34. The costs for completing the plant survey shall be borne by the applicant on a fee basis at rates set forth in § 70.71 (a) through (c), plus any travel and additional expenses. No charges will be assessed when the application is required because of a change in name or ownership. \* \* \*

\* \* \* \* \*

Dated: February 28, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08–928 Filed 2–28–08; 11:26 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### Farm Service Agency

##### 7 CFR Part 786

**RIN 0560–AH74**

##### Dairy Disaster Assistance Payment Program III

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes a new program, the Dairy Disaster Assistance Payment Program III, as authorized by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007. The program will provide \$16 million in assistance for producers in counties designated as a major disaster or emergency area by the President, or those declared a natural disaster area by the Secretary of Agriculture. Counties declared disasters by the President may be eligible, even though agricultural loss was not covered by the declaration, if there has been a Farm Service Agency Administrator's Physical Loss Notice covering such losses. The natural disaster declarations by the Secretary or the President must have been issued between January 1, 2005 and December 31, 2007, that is, after January 1, 2005, and before December 31, 2007. Counties