

# 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-97-001]

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

**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. These 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.

**DATES:** Comments must be received on or before March 3, 1997.

**ADDRESSES:** Send written comments, in duplicate, to Douglas C. Bailey, Chief, Standardization Branch, Poultry Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 3944-South, P.O. Box 96456, Washington, DC 20090-6456. Comments received may be inspected at this location between 8:00 a.m. and 4:30 p.m., Eastern Time, Monday thru Friday, except holidays. State that your comments refer to Docket No. PY-97-001.

**FOR FURTHER INFORMATION CONTACT:** Rex A. Barnes, Chief, Grading Branch, (202) 720-3271.

**SUPPLEMENTARY INFORMATION:** This proposed rule 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).

This proposed 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 more than 400 users of the Poultry Division's grading services. Many of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). This proposed rule will raise the fees charged to businesses for voluntary grading services for eggs, poultry, and rabbits. The AMS estimates that overall this rule would yield an additional \$1.2 million during fiscal year 1998. Even though fees will be raised, the hourly resident rate for grading services will increase approximately 5.5 percent and will not significantly affect these entities. These businesses are under no obligation to use these grading services, and any decision on their part to discontinue the use of the services would not prevent them from marketing their products.

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 the proposed rule have been previously approved by OMB and assigned OMB Control Numbers under the Paperwork Reduction Act of 1980 as follows: § 56.52(a)(4)—No. 0581-0128; and § 70.77(a)(4)—No. 0581-0127.

#### Background and Proposed Changes

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 the user 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 proposal would 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.

In 1995 the egg products inspection program was transferred to the Food Safety and Inspection Service. In order to offset the loss of efficiencies and to avoid an increase in user fees for the remaining shell egg and poultry grading programs, AMS took several streamlining actions in supervisory and support activities. These actions included reducing the number of supervisory visits; consolidating and closing submanagement offices; consolidating the billing and support functions into two regional offices; realigning regional boundaries; and substantially reducing the Washington, D.C. headquarters staff. As a result, no fee increase was necessary due to the reorganization. However, increased salaries and other costs and a substantial shift from resident to nonresident grading services now require an increase in fees.

Employee salaries and benefits are major program costs that account for approximately 82 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, and an additional general and locality salary increase, ranging from 2.39 to 2.87 percent depending upon locality, effective January 1996, has materially affected program costs. Another general and locality salary increase is scheduled in January 1997. The general salary increase will be 2.3 percent. Also, from November 1994 through September 1997, salaries and fringe benefits of federally licensed State employees will have increased by about 7 percent. Further, since October 1993, standardization program costs must be recovered from user fees. As a result, the hourly resident rate for grading services will increase by approximately 5.5 percent. The hourly resident rate covers graders' salaries, fringe benefits, and related costs.

Another factor affecting the current fee structure is the shift from resident to nonresident grading services.

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. Today, however, a growing volume of shell eggs and poultry is being traded according to product-specific purchase requirements where USDA certification is required, work done increasingly on a

nonresident fee basis. This shift has increased the proportion of overhead costs necessary to administer the nonresident services. As a result, users of nonresident services are not supporting their share of the program's overhead costs under the present fee structure.

A recent review of the fee schedule, effective November 1, 1994, revealed that anticipated revenue will not adequately cover increasing program costs. Without a fee increase, projected FY 98 revenues for grading services are \$21.7 million with costs projected at \$23.1 million, and trust fund balances would be below appropriate levels.

With a fee increase, projected FY 98 revenues are \$22.9 million with costs projected at \$23.1 million.

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 shell egg and poultry grading—Administrative charges (supervision, other overhead and administrative costs) assessed on the volume of product handled:		
Per pound of poultry .....	.00031	.00033
Per 30-dozen case of shell eggs .....	.036	.038
Minimum per month .....	215	225
Maximum per month .....	2,150	2,250
Nonresident shell egg and poultry grading and Resident rabbit grading—Administrative charge based on 25% of grader's salary, minimum per month .....	215	225
Nonresident fee basis poultry, shell egg and rabbit grading:		
—Regular time, rate per hour .....	33.64	38.96
—Saturdays, Sundays, and legal holidays, rate per hour .....	35.52	43.24
Appeal grading and Review of grader's decision—Rate per hour .....	27.36	30.56
Inauguration of resident grading service .....	310	310

## 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 7 CFR, 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. In § 56.46, paragraphs (b) and (c) are revised to read as follows:

### § 56.46 On a fee basis.

\* \* \* \* \*

(b) Fees for grading services will be based on the time required to perform the services. The hourly charge shall be \$38.96 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 \$43.24 per hour. Information on legal holidays is available from the Supervisor.

3. § 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 at an hourly rate of \$30.56 for the time spent in performing the appeal and travel time to and from the site of the appeal, plus any 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 \$0.038, except that the minimum charge per billing period shall be \$225 and the maximum charge shall be \$2,250. 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 \$225 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. In § 70.71, paragraphs (b) and (c) are revised to read as follows:

### § 70.71 On a fee basis.

\* \* \* \* \*

(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 \$38.96 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 \$43.24 per hour. Information on legal holidays is available from the Supervisor.

8. § 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 at an hourly rate of \$30.56 for the time spent in performing the appeal and

travel time to and from the site of the appeal, plus any 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 \$225 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 \$0.00033, except that the minimum charge per billing period shall be \$225 and the maximum charge shall be \$2,250. 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 \$225 will be made each billing period. The minimum charge also applies where an approved application is in effect and no product is handled.

\* \* \* \* \*

Dated: January 27, 1997.

Lon Hatamiya,  
Administrator.

[FR Doc. 97-2404 Filed 1-30-97; 8:45 am]

BILLING CODE 3410-02-P

**Animal and Plant Health Inspection Service**

**7 CFR Part 301**

[Docket No. 96-063-3]

**Imported Fire Ant; Approved Treatments**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the imported fire ant regulations to lengthen the certification period for containerized nursery stock treated with a 10 parts per million dosage of the insecticide tefluthrin in its granular formulation and to remove the 15 parts per million dosage rate for granular tefluthrin. Research has demonstrated that a 10 parts per million dosage of granular tefluthrin is efficacious for 18 months, which is 12 months longer than the current certification period for that dosage and 6 months longer than the current certification period for a 15 parts per million dosage. Lengthening the certification period for the 10 parts per million dosage and removing the 15 parts per million dosage would reduce the amount of insecticide used, which would reduce the costs incurred by persons moving containerized nursery stock interstate from areas quarantined for the imported fire ant.

**DATES:** Consideration will be given only to comments received on or before March 17, 1997.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 96-063-3, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 96-063-3. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236, (301) 734-5255; or E-mail: rmilberg@aphis.usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

Imported fire ants, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, are

aggressive, stinging insects that, in large numbers, can seriously injure or even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery.

The regulations in "Subpart—Imported Fire Ant" (7 CFR 301.81 through 301.81-10, referred to below as the regulations) quarantine infested States or infested areas within States and impose restrictions on the interstate movement of certain regulated articles from those quarantined States or areas for the purpose of preventing the artificial spread of the imported fire ant.

Sections 301.81-4 and 301.81-5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the appendix to the subpart, which sets forth the treatment provisions of the "Imported Fire Ant Program Manual."

Currently, the appendix offers three dosage rate/certification period options for granular tefluthrin: 0 to 6 months for a 10 parts per million (ppm) dosage, 0 to 12 months for a 15 ppm dosage, and a continuous certification period for a 25 ppm dosage.

Tests conducted by the Animal and Plant Health Inspection Service (APHIS) at its Imported Fire Ant Methods Development Station (IFAMDS) in Gulfport, MS, have demonstrated that granular tefluthrin incorporated at a dosage rate of 10 ppm into soil or potting media for containerized nursery stock is efficacious for 18 months. This is 12 months longer than the current certification period for a 10 ppm dosage and 6 months longer than the current certification period for a 15 ppm dosage. Based on that efficacy data, we have determined that containerized nursery stock could be certified for interstate movement for 18 months after treatment with granular tefluthrin at a dosage rate of 10 ppm.

Therefore, we are proposing to amend the appendix to the regulations by increasing the certification period for the 10 ppm dosage of granular tefluthrin from 0-6 months to 0-18 months. In light of that longer certification period for the lower 10 ppm dosage, the 15 ppm dosage, which has a certification period of 0 to 12 months, would no longer be necessary and would be removed. The dosage rate of 25 ppm would be required for certification of containerized nursery stock for interstate movement from quarantined areas for more than 18 months.