

Rules and Regulations

Federal Register

Vol. 72, No. 49

Wednesday, March 14, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 56 and 70

[Docket No. AMS 2006–0142; PY–06–002]

RIN 0581–AC64

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, certification, and audit services, and establishing a separate billing rate for the audit services. The fees and charges are being 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: *Effective Date:* April 1, 2007.

FOR FURTHER INFORMATION CONTACT: David Bowden, Jr., Chief, USDA, AMS, PY, Standards, Promotion 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, *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.¹ 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

¹ 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 \$11.1 million would fall short of the required minimum level.

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 has been established.

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 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
Resident Service (Egg, Poultry, and Rabbit Grading)		
Inauguration of service	310	310
Hourly charges:		
Regular hours	36.36	39.04
Administrative charges—Poultry grading:		
Per pound of poultry00039	.00043
Minimum per month	260	275
Maximum per month	2,875	3,075
Administrative charges—Shell egg grading:		
Per 30-dozen case of shell eggs051	.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
Nonresident Service (Egg and Poultry Grading)		
Hourly charges:		
Regular hours	36.36	39.04
Administrative charges:		
Based on 25% of grader's salary, minimum per month	260	275
Nonresident Fee and Appeal Service (Egg, Poultry, and Rabbit Grading)		
Hourly charges:		
Regular hours	65.00	69.68
Weekend and holiday hours	75.12	80.12
Audit Fee (Verification of Standards and Quality Systems)		
Hourly charges:		
Regular hours	65.00	82.16
Weekend and holiday hours	75.12	102.84

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** (71 FR 59028) on October 6, 2006. Comments on the proposed rule were solicited from interested parties until November 6. One comment was received which was outside of the scope of the rulemaking.

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 *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 will 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 will yield an additional \$1.3 million during FY 2007. The hourly rate for resident and nonresident service will also increase by approximately 7.0 percent and the fee rate will also increase by approximately 7.0 percent. The impact of these rate changes in a poultry plant will not be substantial and will range from about \$0.00013 to \$0.0011 per pound of poultry handled. In a shell egg plant, the range will 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.

Pursuant to 5 U.S.C. 533, 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 expedited basis in order to avoid further financial losses in the grading program. The effective date of the fee increase, is April 1, 2007.

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.

■ 2. Section 56.1 is amended by adding “Auditing Services” to read as follows:

§ 56.1 Meaning of words 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 revising the section heading and 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: March 9, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-4657 Filed 3-13-07; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

Food Labeling

CFR Correction

In Title 21 of the Code of Federal Regulations, Parts 100 to 169, revised as of April 1, 2006, on page 18, in § 101.4, the introductory text of paragraph (h) is corrected by revising the phrase "or at the Office of the Federal Register, 800 N. Capitol St. NW., suite 700, Washington, DC." to read: "or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html."

[FR Doc. 07-55502 Filed 3-13-07; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07-06-237]

RIN 1625-AA09

Drawbridge Operation Regulations; Outer Clam Bay Boardwalk Bridge, Mile 0.3, Near North Naples, Collier County, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulation governing the operation of the Outer Clam Bay Boardwalk Drawbridge, mile 0.3, near North Naples in Collier County, Florida. The rule will require the drawbridge to open on signal, with at least 30 minutes advance notice. This rule will allow the unrestricted movement of pedestrian traffic while providing for the reasonable needs of navigation.

DATES: This rule is effective April 13, 2007.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD07-06-237) and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131-3050 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, telephone number 305-415-6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On November 17, 2006, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Outer Clam Bay Boardwalk Bridge, Mile 0.3, Near North Naples, Collier County, FL in the **Federal Register** (71 FR 66895). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The current regulation of the Outer Clam Bay Boardwalk Drawbridge, mile 0.3, near North Naples, at Collier County, published in 33 CFR 117.323 requires the drawspan to open on signal between 9 a.m. and 5 p.m., if at least one-hour advance notice is given. Between 5 p.m. and 9 a.m., the draw is left in the open position.

On October 19, 2006, the officials of Collier County requested that the Coast Guard review the existing regulations governing the operation of the Outer Clam Bay Boardwalk Drawbridge because they contended that the regulation did not meet the needs of pedestrians utilizing the boardwalk and drawspan.

County records indicated that the owner has had one request for an opening since 1986 and the vessel did not show up for the requested opening. Night time vessel traffic is negligible.

The boardwalk provides access to a recreational beachfront area 24 hours a day. Leaving the drawspan in the open position prevents beachgoers from accessing the recreational area between the hours of 5 p.m. and 9 a.m.

Discussion of Comments and Changes

The Coast Guard received no responses to the Notice of Proposed Rulemaking. The rule will provide access to the recreational beachfront area 24 hours a day while meeting the reasonable needs of navigation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This rule modifies the existing bridge schedule to allow pedestrian and vehicle traffic unrestricted access to the recreation area while providing for the reasonable needs of navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the Outer Clam Bay Boardwalk Drawbridge. The rule would not have a significant economic impact on a substantial number of small entities because the rule provides for openings to vessel traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in