

Service	Current	Proposed
<b>Nonresident Service (egg and poultry grading)</b>		
Hourly charges: Regular hours .....	33.36	34.36
Administrative charges: Based on 25% of grader's salary, minimum per month .....	260	260
<b>Fee and Appeal Service (egg, poultry, and rabbit grading)</b>		
Hourly charges:		
Regular hours .....	57.68	60.00
Weekend and holiday hours .....	66.64	69.32

**Executive Order 12866**

This action 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).

**Regulatory Flexibility**

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 400 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 January 1, 2003, will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance in FY 2004. Costs in FY 2004 are projected at \$29.8 million. Without a fee increase, FY 2004 revenues are projected at \$29.0 million and trust fund balances would be \$14.6 million. With a fee increase, FY 2004 revenues are projected at \$29.8 million and trust fund balances would remain at \$15.2 million.

This action would raise the fees charged to users of grading services. The AMS estimates that overall, this rule would yield an additional \$800,000 during FY 2004. The hourly rate for resident and nonresident service would increase by approximately 3 percent and the fee rate would increase by

approximately 4 percent. The impact of these rate changes in a poultry plant would range from less than 0.0001 to 0.025 cents per pound of poultry handled. In a shell egg plant, the range would be less than 0.00002 to 0.11 cents 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. This period is appropriate in order to implement, as early as possible in FY 2004, 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 56.46 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 \$60.00 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 \$69.32 per hour. Information on legal holidays is available from the Supervisor.

3. 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 \$0.048, except that the minimum charge per billing period shall be \$260 and the maximum charge shall be \$2,755. 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**

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

**Authority:** 7 U.S.C. 1621–1627.

5. Section 70.71 is revised to read as follows: