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 Part 51

[Docket Number FV–99–302]

RIN 0581–AB63

Fees for Destination Market Inspections of Fresh Fruits, Vegetables and Other Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 14 percent for most of the fees charged for the inspection of these products at destination markets. The fees for inspecting multiple lots of the same product during inspections would be increased more significantly and the per package fees for dock-side inspections would be increased and changed from a three interval schedule, based on weight, to a two interval schedule based on different weight thresholds. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under the Agricultural Act of 1949 would also be affected.

DATES: Comments must be postmarked or courier dated on or before November 19, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments are to be sent to the Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049-South, Washington, DC 20090–6456; faxed to (202) 720–5136 or sent via e-mail to *FPB.DocketClerk@usda.gov*. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rob Huttenlocker, Assistant Chief, Fresh Products Branch, at the above address or call (202) 720–9771.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed by the Office of Management and Budget and has been determined to be not significant for the purposes of Executive Order 12866.

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

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, FPB's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Current revenue projections for FPB's destination market inspection work during FY 99 are $13.7 million with costs projected at $13.9 million and an end-of-year reserve of $2.2 million. However, FPB's trust fund balance for this program will be approximately $2.4 million under the approximate $4.6 million deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $14.5 million during FY 00 and to approximately $15.0 million during FY 01. These cost increases will result from inflationary increases with regard to current FPB operations and services (primarily salary and benefits), the training and equipment required to promote improved workplace safety, and the acquisition of additional computer-related technology.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 3.54 to 4.02 percent depending on locality, effective January 1999, has significantly increased program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by approximately $500,000 per year. In addition, a general and locality salary increase of at least 4.4 percent is anticipated in January 2000. This salary adjustment will increase FPB's costs by over $600,000 per year.

Additional revenues are also necessary in order for FPB to cover the costs of the additional staff, office space, and equipment ($150,000) needed in two federal market offices that were established during FY 99 (*e.g.*, Brooklyn, New York, and Oklahoma City, Oklahoma). Additional, revenues are also needed to cover the costs of providing safety orientation training to FPB's personnel and purchasing safety shoes for FPB's inspection personnel ($50,000). Finally, FPB needs an additional $200,000 per year to cover the costs of securing the equipment (*e.g.*, digital imaging cameras and computers and necessary information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This proposed fee increase should result in an estimated $2.5 million in additional revenues per year (only $1.8 million during FY 00 since any fee increase would be effective on or after January 1, 2000) and should enable FPB to cover its costs while building its reserves from the current level of $2.2 million to closer to the $4.6 million level by the end of FY 2001.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The proposed action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) Providing current program operations and services; (2) improving the timeliness with which inspection services are provided; (3) creating a safer working environment; and (4) acquiring technological advancements (*e.g.*, digital imaging cameras and computers and necessary information systems upgrades) aimed at expanding FPB's services and making them more efficient in the future. This proposed rule should increase user fee revenue generated under the destination market program by approximately $2.5 million or approximately 18 percent per year. While most of the fees would increase by approximately 14 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as ''sublots,'' would be increased from $14–$32 because FPB's current fee does not nearly cover the costs of performing these inspections (between 20–25 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends. This action is authorized under the Agricultural Marketing Act (AMA) of 1946 (see 7 U.S.C. 1622(h)) which states that the Secretary of Agriculture may assess and collect ''such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *.''

There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements [1]—inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). There would be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 51 have been approved previously by OMB and assigned OMB No. 0581-0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule.

The destination market grading services are voluntary (except when required for imported commodities) and the fees charged to users of these services vary with usage. However, the impact on all businesses, including small entities, is very similar. Further, even though fees would be raised, the increase would not be excessive (approximately fourteen percent for the most common fees) and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed action is not intended to have retroactive effect. This proposed 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 proposed rule.

Proposed Action

The AMA authorizes official inspection, grading and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This proposed rule would amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

AMS regularly reviews its user-fee programs to determine if the fees are adequate. While FPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Current revenue projections for destination market inspection work during FY 99 are $13.7 million with costs projected at $13.9 million and an end-of-year reserve of $2.2 million. However, FPB's trust fund balance for this program will be approximately $2.4 million under the approximate $4.6 million deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $14.5 million during FY 00 and to approximately $15.0 million during FY 01. These cost increases (which are outlined below) will result from inflationary increases with regard to current FPB operations and services (primarily salary and benefits), the training and equipment required to promote improved workplace saftey, and the acquisition of additional computer and related technology.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 3.54 to 4.02 percent depending on locality, effective January 1999, significantly increased program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by approximately $500,000 per year. In addition, a general and locality salary increase of at least 4.4 percent is anticipated in January 2000. This salary adjustment will increase FPB's costs by over $600,000 per year.

Additional revenues are also necessary in order for FPB to cover the costs of the additional staff, office space, and equipment ($150,000) needed in two federal market offices that were established during FY 99 (*e.g.*, Brooklyn, New York, and Oklahoma City, Oklahoma). Additional, revenues are also needed to cover the costs of providing safety orientation training to FPB's personnel and purchasing safety shoes for FPB's inspection personnel ($50,000). Finally, FPB needs an additional $200,000 per year to cover the costs of securing the equipment (*e.g.*, digital imaging cameras and computers and information systems upgrades) needed to expand FPB's

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect.

Currently, there are 15 commodities subject to 8e import regulations: avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, limes, olives (other than Spanish-style green olives), onions, oranges, Irish potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR parts 944, 980 and 999. Section 999.600 establishes minimum quality, identification, certification and safeguard requirements for foreign produced farmers stock, shelled and cleaned in-shell peanuts presented for importation into the United States. Import requirements applicable to peanuts may be found under subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3), as amended November 28, 1990, and August 10, 1993, and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271).

services and to make existing services more efficient in the future.

This proposed fee increase should result in an estimated $2.5 million in additional revenues per year (only $1.8 million during FY 00 since any fee increase would be effective on or after January 1, 2000) and should enable FPB to cover its costs while building its reserves from the current level of $2.2 million to closer to the $4.6 million level by the end of FY 2001.

Based on the aforementioned analysis of this program's increasing costs, AMS proposes to increase the fees for destination market inspection services. The following table compares current fees and charges with the proposed fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. This table also reflects the proposed change to the per package fees for dock-side inspections that are currently on a three interval schedule based on weight, to a two interval schedule based on different weight thresholds. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$86	$98.
—Half carlot equivalent or less of each product	$72	$82.
—For each additional lot of the same product	$14	$32.
Condition only inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$72	$82.
—Half carlot equivalent or less of each product	$66	$75.
—For each additional lot of the same product	$14	$32.
Quality and condition and condition only inspections of five or more products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—For the first five products	$305	$348.
—For each additional product	$43	$49.
—For each additional lot of any of the same product	$14	$32.
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	$43	$49.
—For each additional lot of any of the same product	$14	$32.
Dock-side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing less than 15 pounds	1.1 cents	NA.
—For each package weighing 15 to 29 pounds	2.2 cents	NA.
—For each package weighing 30 or more pounds	3.3 cents	NA.
—For each package weighing less than 26 pounds	NA	2.5 cents.
—For each package weighing 26 or more pounds	NA	3.5 cents.
—For each additional lot of any of the same product	$14	$32.
—Minimum charge per individual product	$86	$98.
Inspections performed for other purposes during the grader's regularly scheduled work week	$43 per hour	$49 per hour.
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	$21.50 per hour	$24.50 per hour.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) For products in quantities of 51 or more packages:

(i) Quality and condition inspection of 1 to 4 products unloaded from the same conveyance:

(A) $98 for over a half carlot equivalent of an individual product.

(B) $82 for a half carlot equivalent or less of an individual product.

(C) $32 for each additional lot of the same product.

(ii) Condition only inspection of 1 to 4 products unloaded from the same conveyance:

(A) $82 for over a half carlot equivalent of an individual product.

(B) $75 for a half carlot equivalent or less of an individual product.

(C) $32 for each additional lot of the same product.

(iii) Quality and condition inspection and/or condition only inspection of 5 or more products unloaded from the same conveyance:

(A) $348 for the first 5 products.

(B) $49 for each additional product.

(C) $32 for each additional lot of any of the same product.

(2) For quality and condition inspection and/or condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $49 for each individual product.

(ii) $32 for each additional lot of any of the same product.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) For each package inspected according to the following rates:

(i) 2.5 cents per package weighing less than 26 pounds; and

(ii) 3.5 cents per package weighing 26 or more pounds.

(2) $32 for each additional lot of any of the same product.

(3) A minimum charge of $98 for each product inspected.

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dock-side, the carlot fees in § 51.38(a) shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $49 an hour: Provided, That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections; and

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee.

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $24.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: September 15, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–24438 Filed 9–17–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA–99–07]

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; suspension.

SUMMARY: This document invites written comments on a proposal to suspend certain sections of the Eastern Colorado Federal milk marketing order until implementation of Federal milk order reform on October 1, 1999. The proposed rule would reinstate a suspension that expired on August 31, 1999, which makes it easier for cooperative associations to qualify milk for pooling under the order. Dairy Farmers of America, Inc. (DFA), a cooperative association that represents nearly all of the producers who supply milk to the Eastern Colorado market, has requested continuation of the suspension. DFA asserts that the suspension is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments must be submitted on or before September 27, 1999.

ADDRESSES: Comments (two copies) should be filed with USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552. Reference should be given to the title of the action and its docket number.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090–6456, (202) 720–9368, e-mail address: clifford.carman@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. For the purposes of determining which dairy farms are ''small businesses,'' the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 1999, the milk of 203 producers was pooled on the Eastern Colorado milk order. Of these producers, 105 were below the 326,000-pound production guideline and are considered small businesses.

For June 1999, there were eight handlers operating pool plants under the Eastern Colorado milk order. Of these handlers, five are considered small businesses.

This rule would lessen the regulatory impact of the order on certain milk