

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

FV-00-326

PROCESSED FRUITS AND VEGETABLES

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing inspection and certification for processed fruits, vegetables, and processed products made from them by increasing by approximately three to nine percent fees charged for the inspection services. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services 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 Act of 1937 would also be affected.

EFFECTIVE DATE: November 19, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver, Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 0709 South Building, Washington, D.C. 20090-6456, telephone (202) 720-4693, or e-mail James.Rodeheaver@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. Also, pursuant to the requirements of 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 Processed Products Branch (PPB) of the Fruit and Vegetable Programs, AMS, has and will continue to seek out cost savings opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. The fee schedule was last revised on October 4, 1998 (63 FR 50745). However, even with such efforts, the existing fee schedule will not generate sufficient revenues to cover lot, year round, and less than year round inspection program costs and sustain an adequate reserve balance. PPB programs for lot, year round, and less than year round will have obligations in FY 2000 of approximately \$12.9 million, necessitating a reserve of \$4.3 million. The current reserve is \$2.6 million. Current revenue projections for FY 2000 without a fee increase are \$12.0 million while program costs increase to approximately \$13.1 million in FY 2001. These cost increases will result primarily from increases in salaries and benefits. Accounting for a significant portion of the total

operating budget, salaries rose from 3.54 to 4.02 percent, effective January 1999, increasing the cost of operating these programs by \$295,000. A 4.8 percent pay increase effective January 1, 2000, increased program costs another \$385,000. The revenue projections, that include final fees, are \$13.5 million for FY 2001. The final fee increase of approximately 3 to 9 percent, should result in an estimated approximately \$1.0 million in FY 2001 and should enable PPB to cover its costs and re-establish adequate program reserves.

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. This action would increase user fee revenue generated under the lot inspection program and the year round and less than year round inspection programs by approximately \$1,020,000 annually. This action is authorized under the AMA of 1946 [see 7 U.S.C. 1622(h)] which provides that the Secretary of Agriculture 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 1,250 users of PPB's lot, and less than year round and year round inspection services (including applicants who must meet import requirements 1/, inspections which amount to under 2 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 121.201).

There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. PPB has not identified any other federal rules which may duplicate, overlap or conflict with this final rule.

Inspection services covered by this final rule are voluntary, except when required for certain imported commodities under 7 CFR Parts 944 and 999. The total fees charged to users of these services vary with usage. The impact on all businesses, including small entities, is very similar. Further, even though fees will be increased, the amount of the increase is small (three to nine percent), and should not significantly affect these entities.

1/ Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-604), 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 only during those periods when domestic marketing order regulations are in effect.

Currently, there are 4 processed commodities subject to 8e import regulations: canned ripe olives, dates, prunes, and processed raisins. A current listing of the regulated commodities can be found under 7 CFR Parts 944 and 999.

Finally, except for those applicants who are required to obtain inspections in connection with certain imports these businesses are under no obligation to use these inspection services.

Executive Order 12988

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

Final Action

The AMA authorizes official inspection, grading, and certification for processed fruits, vegetables, and processed products made from them. The AMA provides that the Secretary collect reasonable fees from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule will amend the schedule for fees for inspection services rendered to the processed 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 PPB continues to pursue opportunities to reduce its costs, the existing fee schedule will

not generate sufficient revenues to cover lot, less than year round and year round inspection program costs while maintaining an adequate reserve balance.

PPB programs for lot, year round, and less than year round will have obligations in FY 2000 of approximately \$12.9 million, necessitating a reserve of \$4.3 million. The current reserve is \$2.6 million. Current revenue projections for FY 2000 without a fee increase are \$12.0 million while program costs increase to approximately \$13.1 million in FY 2001. These cost increases will result primarily from increases in salaries and benefits.

Accounting for a significant portion of the total operating budget, salaries rose from 3.54 to 4.02 percent, effective January 1999, increasing the cost of operating these programs by \$295,000.

A 4.8 percent pay increase effective January 1, 2000, increased program costs another \$385,000. The revenue projections, that include final fees, are \$13.5 million for FY 2001. The final fee increase of approximately 3 to 9 percent, should result in an estimated approximately \$1.0 million in FY 2001 and should enable PPB to cover its costs and re-establish adequate program reserves.

Based on the aforementioned analysis of increasing program costs, AMS is increasing the fees relating to lot inspection service and the fees for less than year round and year round inspection services. For inspection services charged under §52.42, overtime and holiday work would continue to be charged as

provided in that section. For inspection services charged on a contract basis under §52.51 overtime work would also continue to be charged as provided in that section. The following fee schedule compares current fees and charges with final fees and charges for processed fruit and vegetable inspection as found in 7CFR §§52.42-52.51. 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 §52.42 are:

Current	Final
\$43.00/hr.	\$47.00/hr.

Charges for travel and other expenses as found in §52.50 are:

Current	Final
\$43.00/hr.	\$47.00/hr.

Charges for year-round in-plant inspection services on a contract basis as found in §52.51 (c) are:

(1) For inspector assigned on a year-round basis:

Current	Final
\$35.00/hr.	\$36.00/hr.

(2) For inspector assigned on less than a year-round basis:

Each inspector:

Current	Final
\$45.00/hr.	\$48.00/hr.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as

found in §52.51 (d) are:

(1) Each inspector:

Current	Final
\$45.00/hr.	\$48.00/hr.

A notice of proposed rulemaking was published in the FEDERAL REGISTER (65 FR 39824) on June 28, 2000, with a 60-day comment period. The comment period closed on August 28, 2000. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. Two comments were received regarding this proposed rule.

The first, from a student, concerned with the specific cost-reducing alternatives considered by AMS to offset salary increases, inflation and to maintain fiscal stability in the program. The second comment was from a processor, which urged that we reduce the rate of the proposed increase by applying cost savings.

AMS is continually seeking ways to reduce costs to the industry and increase operational efficiency. Since the last fee increase for processed fruit and vegetable grading and certification services in October 1998, AMS downsized a field office to an inspection point, closed three inspection points, eliminated several grading and clerical positions, and postponed filling several vacated positions. These steps have resulted in a

cumulative cost saving of approximately \$561,500.

The processor expressed concern with the rate of the fee increase, characterizing it as "very steep." The commenter indicated that the rate increases exceeded inflation since 1998 and that its own hourly rate for its manufacturing personnel and its selling prices have not risen as much as the fee rates over the past two years. The processor concluded that the cost burden of the fee increases to manufacturers would be substantial and noted that over the past ten years the hourly fee has increased from \$28.00 per hour to \$48.00. The commenter observed that the rate of increase would exceed wage increases in that time frame.

As discussed above, the AMA provides that AMS collect reasonable fees from users of the services to cover, as nearly as practicable, the costs of the services rendered. While cost increases may result primarily from increases in salaries and benefits, other overhead costs such as rent and materials are also covered. The fees proposed in this rulemaking appropriately reflect the cost of providing the services rendered. Actually, the rate of the proposed increase is below the average rate of increase for these services since 1989. Since December 1989, fees increased by an annualized rate of about 4.13 percent. The proposed increase will represent an annualized increase of only about 1.9 percent. Further, we will continue our efforts to reduce costs to the industry and increase efficiencies whenever

possible.

With regard to the commenter's concerns regarding the application of overtime charges, the proposed fee increase does not change the way overtime is charged for both hourly and contract fees. AMS has numerous service options available with respect to duration, regularity of hours, and fees for inspection services. The Agency is available to work with applicants for services to select the type of service which most efficiently meets its needs.

In light of the continuing need to maintain the AMS grading program on a financially sound basis, AMS has decided to proceed with the fee increase as set forth in the proposal.

Pursuant to 5 U.S.C. 553, 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 because: (1) the fiscal year 2000 reserve balance of the program's trust fund is under the desired level necessary to ensure an adequate reserve balance; (2) the fee change adopted herein should be implemented as soon as possible to begin replenishing the operating reserve and bring revenue in line with costs; and (3) the fee increase is to be effective November 19, 2000.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements,

and Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 52 is amended to read as follows:

PART 52 [Amended]

1. The authority citation for part 52 continues to read as follows:

Authority: 7 U.S.C. 1621 - 1627.

§52.42 [Amended]

2. In §52.42, the figure "\$43.00" is revised to read "\$47.00".

§52.50 [Amended]

3. In §52.50, the figure "\$43.00" is revised to read "\$47.00".

§52.51 [Amended]

4. In §52.51, paragraph (c) (1), the figure "\$35.00" is revised to read "\$36.00", in paragraph (c) (2), the figure "\$45.00" is revised to read "\$48.00", and in paragraph (d) (1), the figure "\$45.00" is revised to read "\$48.00".

Dated:

Deputy Administrator, Fruit and Vegetable Programs

