

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 52

Processed Fruits and Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing inspection and certification for processed fruits, vegetables, and processed products. A projected fee increase ranging from 8 to 11 percent is proposed. 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 and to ensure the program's financial stability. Also affected are the fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Act of 1937.

DATES: Comments must be postmarked, courier dated, or sent via the Internet on or before September 5, 2003.

ADDRESSES: Interested persons are invited to submit comments on the internet or written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, Washington, DC 20250-0247, telephone (202) 720-4693, or e-mail Terry.Bane@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 and on the Internet at <http://www.ams.usda.gov/fv/ppbdocklist.htm>.

FOR FURTHER INFORMATION CONTACT: Mr. Terry B. Bane at the above address, call (202) 720-4693, or e-mail Terry.Bane@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule 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. 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 Agency 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 November 19, 2000 (63 FR 66485). However, even with cost control efforts, the existing fee schedule will not generate sufficient revenues to cover the lot, year round, and less than year round processed fruit and vegetable inspection program costs and sustain an adequate reserve balance (4 months of costs) as called for by Agency policy (AMS Directive 408.1).

AMS projects that program costs will increase to approximately \$14.4 million in FY 2004 and \$14.9 million in FY 2005, primarily from increases in employee salaries and benefits. An estimated 3.4 percent pay increase for employees effective January 2004 and January 2005 will increase program costs approximately \$375,000 in FY 2004 and approximately \$390,000 in FY 2005. Without a fee increase, the FY 2004 and FY 2005 end-of-year reserve balances will decline from \$4.3 million to \$3.6 million (3.0 months reserve), and \$2.4 million (1.9 months reserve), respectively. The required 4 month level would be approximately \$5.0 million. The proposed fee increase ranging from 8 to 11 percent will increase revenue by \$1.3 million per year and will enable AMS to replenish program reserves to a 4 month level, approximately \$5.0 million, for both FYs 2004 and 2005.

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 \$1.3 million 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, year round, and less than year round inspection services (including applicants who must meet import requirements¹, 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. AMS has not identified any other federal rules which may duplicate, overlap, or conflict with this proposed rule.

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 (ranging from 8 to 11 percent), and should not significantly affect these entities. 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

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.