

# 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-03-301]

RIN 0581-AB63

#### Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services

**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 15 percent certain fees charged for the inspection of these products at destination markets. The fees for inspecting multiple lots of the same product during inspections will be increased from \$14.00 to \$45.00, and the per package fees for dock-side inspections will be 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 (AMA 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 section 1308 of the Farm Security and Rural Investigation Act of 2002.

**DATES:** Comments must be postmarked, courier dated, or sent via the internet on or before October 8, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments are to be sent to the U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Programs, Fresh Products Branch, 1400 Independence Ave., SW., Room 2049-S,

Washington, DC 20250-0240, faxed to (202) 720-5136, or sent via email to [FPB.DocketClerk@usda.gov](mailto: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:** Rita Bibbs-Booth, USDA, 1400 Independence Ave., SW., Room 2049-S, Washington, DC 20250-0240, or call (202) 720-0391.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order 12866 and Regulatory Flexibility Act

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

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

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; and (3) improving the work environment.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) 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 the Agency mandated reserve balance. Current revenue projections for FPB's destination market inspection work during FY-03 are \$12.0 million with costs projected at \$18.3 million and an end-of-year reserve of \$14.8 million. However, this reserve balance is due to appropriated funding received in October 2001, for infrastructure, workplace, and technological

improvements. FPB's costs of operating the destination market program are expected to increase to approximately \$18.9 million during FY-04 and to approximately \$19.4 million during FY-05. The current fee structure with the infusion of the appropriated funding is expected to fund the terminal market inspection services until FY-2006, when FPB will fall below the Agency's mandated four-month reserve level.

This proposed fee increase should result in an estimated \$1.8 million in additional revenues per year (effective in FY 04, if the fees are implemented by October 1, 2003). This will not cover all of FPB's costs. FPB will need to continue to increase fees bi-yearly in order to cover the program's operating cost and maintain the required reserve balance. FPB believes that increasing fees incrementally is appropriate at this time. Additional fee increases beyond FY-2004 will be needed to sustain the program in the future.

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 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over \$700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over \$600,000 per year.

Additional funds of approximately \$155,000 are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen