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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

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 a fee increase ranging from 8 to 11 percent 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 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.

EFFECTIVE DATE: October 31, 2003.

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 should be approximately \$5.0 million. The final 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 will 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 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. AMS has not identified any other federal rules which may duplicate, overlap, or conflict with this final 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 procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Final Action

A proposed rule was published in the **Federal Register** at 68 FR 46504 on August 6, 2003, providing interested persons with a thirty-day period to comment. No comments were received.

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

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.

¹ Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-