

Proposed Rules

Federal Register

Vol. 71, No. 132

Tuesday, July 11, 2006

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

[FV-05-379]

RIN 0581-AC56

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 19 to 26 percent is proposed. Furthermore, it is proposed that an applicant entering into a year round inspection contract with AMS will incur costs for the plant survey and sanitation inspection. Finally, it is proposed that an applicant entering into a year round inspection contract, less than year round (four or more consecutive 40 hour weeks) contract, or lot inspection will incur costs for Sunday differential when an employee works on Sunday. 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. In addition, various editorial changes are being proposed to enhance clarity.

DATES: Comments must be postmarked, courier dated, or sent via the internet on or before August 10, 2006.

ADDRESSES: Interested persons are invited to submit comments via the Internet or by mail or courier concerning this proposal. Comments submitted by mail or courier 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 identify and implement appropriate changes to reduce its costs. Such actions can reduce the need for fee increases. The processed fruit and vegetable grading and inspection service administers a number of user-fee programs with established fee schedules to offset the cost of the service. The fee schedule for the subject lot, year-round, and less than year-round processed fruit and vegetable inspection programs was last revised on October 30, 2003 (68 FR 61733). However, even with cost control efforts, the existing fee schedule for these programs will not generate sufficient revenues to cover costs and sustain an adequate reserve balance, 4 months of costs, as called for by Agency policy (AMS Directive 408.1).

At the start of Fiscal Year (FY) 2006, the processed fruit and vegetable grading and inspection service had a reserve balance of \$8 million, of which, the lot, year-round, and less than year-round programs accounted for \$3.5 million. AMS projects that the costs for the services covered by this proposal will rise from \$15 million in FY 2005 to

\$15.4 million in FY 2006. Revenues for FY 2006 are projected to be at \$15.0 million. The increase in costs is primarily a result of rising employee salaries and benefits. For example, since the last fee schedule change, employees have received a 3.1 and 3.4 percent pay increase effective January 2005 and January 2006, respectively.

For FY 2006, the end-of-year reserve balance will decline from \$3.4 million to \$3.0 million, and the months of reserve will fall from 2.6 months to 2.4 months. For FY 2007, without a fee increase, the end-of-year reserve balance would be \$2.5 million; the months of reserve would be 1.9; with the projected costs of 15.8 million and revenues of \$15.3 million.

With the proposed fee increase these services will generate sufficient revenue so that by the end of FY 2007, the reserve balance would be \$5.3 million and 4.0 months. AMS will perform fee analyses to determine if further fee adjustments in FY 2007 are necessary to maintain an adequate reserve and ensure fiscal stability.

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 first action would increase user fee revenue generated under the lot inspection program and the year-round and less than year-round inspection programs by an estimated \$1.5 million in FY 2006 and FY 2007. The second action would recoup the cost for a plant survey and sanitation inspection performed in plants entering into an in-plant inspection contract with AMS. Currently, fees that are charged for a plant survey and sanitation inspection under § 52.48 are credited back to plants entering into an in-plant inspection contract with AMS within 60 days of the survey. There are presently 239 plants with an in-plant inspection contract not being charged for the plant survey and sanitation inspection. Billing for the plant survey and sanitation inspection would increase user fee revenue generated under the year-round and less than year-round inspection programs by approximately \$143,000 annually. The third action would recoup the cost for Sunday differential for plants entering into a year-round in-plant contract, entering into a less than year-round in-plant (four or more

consecutive 40 hour weeks) contract, and not under contract. During calendar year 2004, there were 3,562 Sunday differential hours not being charged at premium rate to plants. Billing plants for Sunday differential would increase user fee revenue generated under the lot inspection program, the year-round inspection program, and the less than year-round inspection program by approximately \$35,000 annually. The forth action would change the word "approval" to "approved" in § 52.2, Inspection Services; types of, paragraph (d) Pack certification.

These actions are 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 Processed Products Branch'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 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 should not significantly affect these entities. With regard to alternatives, this proposed fee increase will move the program towards an adequate reserve and financial stability. Without the fee increase, this result would not be accomplished. 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.

Proposed 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 would 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 AMS continues to pursue opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover lot, year-round, and less than year-round inspection program costs while maintaining an adequate reserve balance.

Based on the Agency's analysis of increasing program costs, AMS is proposing to (1) increase the fees relating to lot, year-round, and less than year-round inspection services, (2) bill in-plant applicants for plant survey and sanitation inspection, and (3) bill applicants for Sunday differential when applicable. For inspection services charged under § 52.42, overtime and holiday work would continue to be charged as provided in that section.

At the start of Fiscal Year (FY) 2006, the processed fruit and vegetable grading and inspection service had a reserve balance of \$8 million, of which, the lot, year-round, and less than year-round programs accounted for \$3.5 million. AMS projects that the costs for the services covered by this proposal will rise from \$15 million in FY 2005 to \$15.4 million in FY 2006. Revenues for FY 2006 are projected to be at \$15.0 million. The increase in costs is primarily a result of rising employee salaries and benefits. For example, since the last fee schedule change, employees have received a 3.1 and 3.4 percent pay

increase effective January 2005 and January 2006, respectively.

For FY 2006, the end-of-year reserve balance will decline from \$3.4 million to \$3.0 million, and the months of reserve will fall from 2.6 months to 2.4 months. For FY 2007, without a fee increase, the end-of-year reserve balance would be \$2.5 million; the months of reserve would be 1.9; with the projected costs of \$15.8 million and revenues of \$15.3 million.

With the proposed fee increase these services will generate sufficient revenue so that by the end of FY 2007, the reserve balance would be \$5.3 million and 4.0 months. AMS will perform fee analyses to determine if further fee adjustments in FY 2007 are necessary to maintain an adequate reserve and ensure fiscal stability.

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 proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR §§ 52.42–52.51. Unless otherwise provided for by written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 52.42 are:

Current	Proposed
\$52.00/hr	\$62.00/hr.

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

Current	Proposed
\$52.00/hr	\$62.00/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	Proposed
\$39.00/hr	\$49.00/hr.

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

Each inspector:

Current	Proposed
\$52.00/hr	\$65.00/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:

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 in 7 CFR parts 944 and 999.

Current	Proposed
\$52.00/hr	\$65.00/hr.

Furthermore, AMS would recoup the cost for a plant survey and sanitation inspection performed in plants entering into an in-plant inspection contract with AMS. Currently, fees that are charged for a plant survey and sanitation inspection are credited back to plants entering into an in-plant inspection contract with AMS within 60 days of the survey. There are presently 239 plants with an in-plant inspection contract not being charged for the plant survey and sanitation inspection. Billing for the plant survey and sanitation inspection would increase user fee revenue generated under the year-round and less than year-round inspection programs by approximately \$143,000 annually. In addition, AMS would recoup the cost for Sunday differential for plants entering into a year-round in-plant contract, entering into a less than year-round in-plant (four or more consecutive 40 hour weeks) contract, and not under contract. During calendar year 2004, there were 3,562 Sunday differential hours not being charged to plants. Billing plants for Sunday differential would increase user fee revenue generated under the lot inspection program, the year-round inspection program, and the less than year-round inspection program by approximately \$35,000 annually. Finally, the last action would change the word "approval" to "approved" in § 52.2, Inspection Service; types of, paragraph (d) Pack certification.

A thirty day comment period is provided for interested persons to comment on this proposed action. Thirty days is deemed appropriate because any fee increase, if adopted, should be in place as soon as possible in order to move the program towards an adequate reserve and financial stability.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, and Vegetables.

For the reasons set forth in the preamble, 7 CFR part 52 is proposed to be amended as follows:

PART 52—[AMENDED]

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

Authority: 7 U.S.C. 1621–1627.

§ 52.2 [Amended]

2. In § 52.2, paragraph (d) under the term "pack certification" the word "approval" is revised to read "approved".

3. In § 52.42, the figure "\$52.00" is revised to read "\$62.00" and a sentence is added at the end of the section to read as follows:

§ 52.42 Schedule of fees.

* * * A twenty-five (25) percent Sunday differential charge will be made for all work performed on Sunday.

4. Section 52.48 is revised to read as follows:

§ 52.48 Charges for plant survey and inspection.

The fees to be charged for a plant survey and inspection shall be at the rates prescribed in § 52.42 and § 52.51, respectively.

5. In § 52.50, the figure "\$52.00" is revised to read "\$62.00".

6. In § 52.51, paragraph (c)(1), the figure "\$39.00" is revised to read "\$49.00", in paragraph (c)(2), the figure "\$52.00" is revised to read "\$65.00", and in paragraph (d)(1), the figure "\$52.00" is revised to read "\$65.00", and new paragraphs (c)(6) and (d)(6) are added to read as follows:

§ 52.51 Charges for inspection services on a contract basis.

* * * * *

(c) * * *

(6) *Sunday differential.* A 25 percent Sunday differential will be charged for all work performed on Sunday.

(d) * * *

(6) *Sunday differential.* A 25 percent Sunday differential will be charged for all work performed on Sunday.

* * * * *

Dated: July 3, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–10768 Filed 7–10–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 925 and 944

[Docket No. FV03–925–1 PR]

Grapes Grown in a Designated Area of Southeastern California and Imported Table Grapes; Extension of Comment Period on Changing Regulatory Periods

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of comment period.

SUMMARY: Notice is hereby given that the comment period on proposed changes in the regulatory periods when minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under Marketing Order No. 925 (order), and to imported grapes under the table grape import regulation is reopened and extended.

DATES: Comments must be received by September 11, 2006.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, E-mail: moab.docketclerk@usda.gov, or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue, the May 25, 2005, issue, the July 25, 2005, issue, and the September 27, 2005, issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; E-mail: terry.vawter@usda.gov or kurt.kimmel@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: A proposed rule was issued on May 20, 2005, and published in the **Federal Register** on May 25, 2005 (70 FR 30001), that would change the regulatory periods when the minimum grade, size, quality, and maturity requirements apply to southeastern California grapes under the order and to imported grapes under the table grape import regulation.