

# 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](mailto: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](mailto: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 requirements<sup>1</sup>, 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

<sup>1</sup> 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.

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 increase the fees relating to lot, year round, and less than year round inspection services.

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.

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 proposed fees and charges for processed fruit and vegetable inspection as found in 7 CFR §§ 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: \$47.00/hr.  
Proposed: \$52.00/hr.

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

Current: \$47.00/hr.  
Proposed: \$52.00/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: \$36.00/hr.  
Proposed: \$39.00/hr.

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

Current: \$48.00/hr.  
Proposed: \$52.00/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: \$48.00/hr.  
Proposed: \$52.00/hr.

A thirty day comment period is provided for interested persons to comment on this proposed action. Thirty days is deemed appropriate because it's preferable to have any fee increase, if adopted, to be in place as close as possible to the beginning of the fiscal year, October 1, 2003.

### 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 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.

#### § 52.42 [Amended]

2. In § 52.42, the figure “\$47.00” is revised to read “\$52.00”.

#### § 52.50 [Amended]

3. In § 52.50, the figure “\$47.00” is revised to read “\$52.00”.

#### § 52.51 [Amended]

4. In § 52.51, paragraph (c) (1), the figure “\$36.00” is revised to read “\$39.00”, in paragraph (c) (2), the figure “\$48.00” is revised to read “\$52.00”, and in paragraph (d) (1), the figure “\$48.00” is revised to read “\$52.00”.

Dated: July 31, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–20008 Filed 8–5–03; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 1124 and 1131

[Docket No. AO–368–A32, AO–271–A37; DA–03–04]

#### Milk in the Pacific Northwest and Arizona-Las Vegas Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1124 .....	Pacific Northwest.	AO–368–A32
1131 .....	Arizona-Las Vegas.	AO–271–A37

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule; Notice of public hearing on proposed rulemaking.

**SUMMARY:** A public hearing is being held to consider proposals to amend the producer-handler provisions of the Arizona-Las Vegas and Pacific Northwest orders. The proposals seek to, among other things, end the regulatory exemption of producer-handlers from the pooling and pricing provisions of these two milk marketing orders if their Class I route distribution exceeds three million pounds of milk per month. Additionally, the hearing will consider a proposal that would prohibit the ability to simultaneously pool the same milk on the Arizona-Las Vegas order and on a State-operated milk order that provides for marketwide pooling.

**DATES:** The hearing will convene at 8:30 a.m. on Tuesday, September 23, 2003.

**ADDRESSES:** The hearing will be held at the Sheraton Airport Hotel, 1600 South 52nd Street, Tempe, AZ 85281, telephone: (480) 967–6600.

**FOR FURTHER INFORMATION CONTACT:** Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231-Room 2971, 1400 Independence Avenue, Washington, DC 20250–0231, (202)–720–2357, e-mail address [jack.rower@usda.gov](mailto:jack.rower@usda.gov).

Persons requiring a sign language interpreter or other special accommodations should contact