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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–04–310]

RIN 0581–AC46

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises 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. 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 inspection on imported commodities are 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: Effective January 27, 2006.

FOR FURTHER INFORMATION CONTACT: Rita Bibbs-Booth, Program Support Section, Fresh Products Branch, Fruit and Vegetable Programs, USDA, 1400 Independence Ave., SW., Room 0640–S, Washington, DC 20250–0295, 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 therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirement set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS proposed this initial regulatory flexibility analysis.

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 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 in 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 revenue to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for FPB's destination market inspection work during FY 2005 are $14.6 million with costs projected at $20.9 million and an end-of-year reserve balance of $17.6 million. However, this reserve balance is due to appropriated funding received in October 2001, and for infrastructure, workplace, and technological improvements. FPB's costs of operating the destination market program are expected to increase to approximately $22.4 million during FY 2006 and $23.1 million during FY 2007. The current fee structure with the infusion of the appropriated funding is expected to fund the terminal market inspection program until FY 2008, when FPB will fall below the Agency's mandated four-month reserve level.

This fee increase should result in an estimated $1.4 million in additional revenues per year (effective in FY 2006). This will not cover all of FPB's costs. FPB will need to continue to increase fees 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 2006 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 3.71 to 4.87 percent depending on locality, effective January 2005, has significantly increased program costs. In addition, general and locality salary increases for Federal employees ranging from 3.90% to 4.92% depending on locality, effective from January 2004, also significantly increased program costs. These salary adjustments have increased 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. 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) the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen inspection reporting process. FEIRS was implemented in 2004. This system has been put in place to enhance and streamline FPB's fruit and vegetable inspection process, however, additional revenue is required to maintain FEIRS.

This rule should increase user fee revenue generated under the destination market program by approximately 15 percent. This action is authorized under the Agricultural Marketing Act of 1946 (AMA of 1946) (See 7 U.S.C. 1622(h)), which provides that the Secretary of Agriculture may 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 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements [1]—inspections which amount to under 2.5 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 would be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in part 51 have been approved previously by OMB and assigned OMB No. 0581–0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this rule.

The destination market grading services are voluntary (except when required for imported commodities) and the fees charged to users of these services vary with usage. However, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is not excessive and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule 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.

Action

The AMA of 1946 authorizes official inspection, grading, and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA of 1946 provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the cost of the services rendered. This rule would amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

The Agricultural Marketing Service (AMS) regularly reviews its user-fee programs to determine if the fees are adequate. While FPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for destination market inspection work during FY–05 are $14.6 million, with costs projected at $20.9 million and an end-of-year reserve of $17.6 million. However, this reserve balance is due to appropriated funding received from Congress in October of 2001. These funds were established to build up the terminal market inspection reserve fund and for infrastructure improvements including development and maintenance of the inspector training center, workplace and technological improvements, including digital imaging and automation of the inspection process. However, by FY–08, without increasing fees, FPB's trust fund balance for this program will be below the agency mandated four months of operating reserve (approximately $4.6 million) deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $22.4 million in FY–06 and to approximately $23.1 million during FY–07. These cost increases (which are outlined below) will result from inflationary increases with regard to current FPB operations and services (primarily salaries and benefits), increased inspection demands, and the acquisition and maintenance of computer technology (*i.e.*, FEIRS).

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 3.71 to 4.87 percent depending on locality, effective January 2005, has significantly increased program costs. In addition, general and locality salary increases for Federal employees ranging from 3.90% to 4.92% depending on locality, effective from January 2004, also significantly increased program costs. These salary adjustments have increased 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. 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 revenues (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 continue to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began, in 2001, developing (with appropriate funds) an automated system known as FEIRS, to replace its manual paper and pen inspection reporting process. Approximately $10,000 in additional revenue per month will be needed to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

Based on the aforementioned analysis of this program's increasing costs, AMS proposed to increase the fees for destination market inspection services. The following table compares current fees and charges with the proposed fees and charges for fresh fruit and vegetable inspections as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charge in the schedule of fees as found in § 51.38 are:

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 during those periods when domestic marketing order regulations are in effect. Section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, required USDA among other things to develop new peanut quality and handling standards for imported peanuts marketed in the United States.

Currently, there are 14 commodities subject to 8e import regulations: Avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, olives (other than Spanish-style green olives), onions, oranges, potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR parts 944, 980, 996, and 999.

Service	Current	Proposed
Quality and condition inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$99.00	$114.00
—Half carlot equivalent or less of each product	83.00	95.00
—For each additional lot of the same product	45.00	52.00
Condition only inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	83.00	95.00
—Half carlot equivalent or less of each product	76.00	87.00
—For each additional lot of the same product	45.00	52.00
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	45.00	52.00
—For each additional lot of any of the same product	45.00	52.00
Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot		
Dock side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing less than 30 pounds	2.5 cents	2.9 cents
—For each package weighing 30 or more pounds	3.8 cents	4.4 cents
—Minimum charge per individual product	99.00	114.00
—Minimum charge for each additional lot of the same product	45.00	52.00
Hourly rate for inspections performed for other purposes during the grader's regularly scheduled work week:		
—Hourly rate for other work performed during the grader's regularly scheduled work week will be charged at a reasonable rate.	49.00	56.00
Audit based services:		75.00
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	25.00	29.00
Hourly rate for inspections performed under 40 hour contracts during the grader's regularly scheduled work week.	49.00	56.00
Rate for billable mileage, per mile	1.00	1.00

A notice of proposed rulemaking was published in the **Federal Register** on August 25, 2005 (70 FR 49882). FPB received three comments during this period.

The first comment was received from Western Growers in support of the proposed rule to increase fees by approximately 15 percent for the inspection of products at destination markets. In addition, Western Growers urged the department to utilize an efficient business model to help infuse and enhance the program. Western Growers recognized that cost saving opportunities had been sought and asked that efforts continue to achieve an efficient business model and generate sufficient savings.

The second comment was received from the United Fresh Fruit & Vegetable Association (United) in support of the fee increase. However, United also requested that other funding options be explored before additional fee increases are considered in subsequent years.

The final comments were received from the North American Perishable Agricultural Receivers (NAPAR). NAPAR expressed concern regarding the fee increase, stating that a 15 percent increase seems excessive compared to inspection fees in Canada. It is difficult to compare the USDA fee structure with the Canadian fee structure since both operationally and logistically, the programs are different. NAPAR also commented on the validity of fees charged on multi-lot inspections. We reviewed the charges assessed in the example given and noted that the fee was calculated correctly. NAPAR also commented on the Fresh Electronic Inspection Reporting/Resource System (FEIRS). First, identifying early functionally concerns. Second, noting FEIRS improvements and third, recommending that funds from any increase in fees be used for continued FEIRS development. Appropriate funding for the FEIRS program has been included in the user fee calculations. NAPAR also requested a two week extension to allow their members an opportunity to file comments, which was granted on October 20, 2005, and ended on November 4, 2005. No additional comments from NAPAR members were received during the extension period.

However, during the extended period for comments, two additional comments were received. A comment from Frahm Fresh Produce, Inc., urged that fees not be increased. The State of Washington Potato Committee expressed understanding for the need to increase fees and cited their anticipation of greater efficiencies. In addition, we received a comment concerning FEIRS noting that the program was appreciated at terminal markets and encouraged implementation at shipping point. However, the State of Washington Potato Committee does not support an increase in fees to maintain FEIRS. Finally, the comment stated that the Washington potato industry is feeling funding pressure and has no choice but to opt-out of the inspection process. We do note that there has been a decline in shipping point inspections.

Each of the five comments received was carefully considered. Nevertheless, FPB's current fees are not adequate and an increase in fees is necessary. At the same time, FPB has and continues to realize cost savings to the terminal market program by re-assessing hours of service and staffing, improved management of overtime charged and travel and supply purchases.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and record keeping requirements, Trees, Vegetables.

■ For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) Quality and condition inspections of products in quantities of 51 or more packages and unloaded from the same air or land conveyance:

(i) $114 for over a half carlot equivalent of an individual product;

(ii) $95 for a half carlot equivalent or less of an individual product;

(iii) $52 for each additional lot of the same product.

(2) Condition only inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $95 for over a half carlot equivalent of an individual product;

(ii) $87 for a half carlot equivalent or less of an individual product;

(iii) $52 for each additional lot of the same product.

(3) For quality and condition inspections and condition only inspections of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $52 for each individual product:

(ii) $52 for each additional lot of any of the same product. Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) Dock side inspections of an individual product unloaded directly from the same ship:

(i) 2.9 cents per package weighing less than 30 pounds;

(ii) 4.4 cents per package weighing 30 or more pounds;

(iii) Minimum charge of $114 per individual product;

(iv) Minimum charge of $52 for each additional lot of the same product.

(2) [Reserved]

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dock-side, the carlot fees in (a) of this section shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in paragraphs (a) through (c) of this section, including weight-only and freezing-only inspections, fees for inspections shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $56 per hour: *Provided,* that:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections;

(3) When weight certification is provided in addition to quality and/or condition inspections, a one hour charge shall be added to the carlot fee;

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $29.00 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: November 16, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–24338 Filed 12–27–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 510, 546, 559, 560, 561, and 567

[No. 2005–57]

Technical Amendments

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to incorporate a number of technical and conforming amendments. They include clarifications and corrections of typographical errors.

EFFECTIVE DATE: December 28, 2005.

FOR FURTHER INFORMATION CONTACT: Sandra E. Evans, Legal Information Assistant (Regulations), (202) 906–6076, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS is amending its regulations to incorporate a number of technical and conforming amendments. OTS is making the following miscellaneous changes:

- *Part 510—Miscellaneous Organizational Regulations.* The final rule revises OTS' regulation on waiver or relaxation of regulatory provisions with respect to disaster or emergency areas in § 510.2(b). The revision indicates that OTS will make such waivers by ''order,'' rather than by ''resolution.'' This update in terminology better reflects the usual method of operation of OTS, as compared to that of its predecessor, the Federal Home Loan Bank Board.
- *Part 546—Federal Mutual Savings Associations—Merger, Dissolution, Reorganization, and Conversion.* The final rule removes the name of an office that is no longer in existence and corrects a grammatical error.
- *Part 559—Subordinate Organizations.* The final rule adds investments in rural business investment companies (RBICs) to the list of preapproved activities for federal savings association service corporations. This addition reflects the statutory authority of savings associations to make such investments under 7 U.S.C. 2009cc–9. It is consistent with the inclusion of investments in small business investment companies and new market venture capital companies on the list of preapproved activities under the current rule.
- *Part 560—Lending and Investment.* The final rule adds investments in RBICs to the lending and investment powers chart. This addition reflects the statutory authority of savings associations to establish and invest in such entities, or any entity established to invest solely in RBICs, up to five percent of total capital and surplus under 7 U.S.C. 2009cc–9.
- *Part 561—Definitions for Regulations Affecting All Savings Associations.* The final rule revises the definition of ''demand accounts'' in § 561.16 to delete paragraph (b), remove the designation for paragraph (a), and make a grammatical change to the text that was formerly designated as