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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket #AMS–FV–07–0099; FV–06–308]

RIN 0581–AC63

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule would revise the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing certain fees charged for the inspection of these products at destination markets for the next two fiscal years (FY–2007 and FY–2008) by approximately 15 percent each fiscal year. This rule would increase fees 30 days after publication in FY–2007 and again in March 2008. 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 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 Date:* August 31, 2007.

FOR FURTHER CONTACT INFORMATION: Rita Bibbs-Booth, 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 proposes 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 for: (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. FPB has reduced costs by approximately $2 million. 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. Revenue projections for FPB's destination market inspection work during FY–2006 are $15.3 million with costs projected at $20.4 million and an end-of-year reserve balance of approximately $12.7 million. However, this reserve balance is due in part, 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 $21.6 million during FY–2007 and $22.5 million during FY–2008. Revenues are projected to be $15.3 million for end of the fiscal year. The reserve balance for FY–2007 and FY–2008, will fall below the Agency's mandated four-month reserve level. The reserve balance is projected to be approximately $6.5 million for FY–2007 (3.6 months) and approximately negative $600,000 for FY–2008 (−0.3 months).

This fee increase should result in an estimated average of $2.4 million in additional revenues per year (effective in FY–2007, if the fees were implemented by October 1, 2006). However, fees would not be increased until later in FY–2007. Further, as a result, the next fee increase is delayed until March 2008 instead of the start of FY–2008. These increases 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–2008 will be needed to sustain the program in the future. However, we will continue to reduce costs, wherever possible.

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 2.87 to 5.62 percent depending on locality, effective January 2006, has significantly increased program costs and will continue to increase costs at a similar rate in future years. 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. 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 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. FPB has also begun to cover the costs associated with the Training and Development Center (TDC) in Fredericksburg, VA. A portion of the appropriated funds received in October 2001, were for infrastructure improvements including the development and maintenance of the inspector TDC. With appropriated funding now depleted, FPB is now obligated to support the TDC under revenues from the terminal market user fee inspection program.

This rule should increase user fee revenue generated under the destination market program by approximately 15 percent each fiscal year. 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 proposed 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. The impact on all businesses, including small entities, is very similar. However, 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. Further, even though fees will be raised, the increase is not excessive and should not significantly affect these entities.

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.

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. FPB has reduced costs by approximately $2 million. 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. Revenue projections for FPB's destination market inspection work during FY–2006 are $15.3 million with costs projected at $20.4 million and an end-of-year reserve balance of approximately $12.7 million. However, this reserve balance is due in part, 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 $21.6 million during FY–2007 and $22.5 million during FY–2008. Revenues are projected to be $15.3 million for end of the fiscal year. The reserve balance for FY–2007 and FY–2008, will fall below the Agency's mandated four-month reserve level. The reserve balance is projected to be approximately $6.5 million for FY–2007 (3.6 months) and a negative $584,000 for FY–2008 (−0.3 months).

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 2.87 to 5.62 percent depending on locality, effective January 2006, has significantly increased program costs, and will continue to increase costs at a similar rate in future years. 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. In addition, inflation also impacts FPB's non-costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional revenues 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 appropriated 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. FPB has also begun to cover the costs associated with the TDC in Fredericksburg, VA. A portion of the appropriated funds received in October 2001, were for infrastructure improvements including the development and maintenance of the inspector TDC. With appropriated funding now depleted, FPB is now obligated to support the TDC under revenues from the terminal market user fee inspection program.

Based on the aforementioned analysis of this program's increasing costs, AMS

[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 marketing 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.

will 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 inspection as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the changes in the schedule of fees as found in § 51.38 are:

Service	Current	2007	2008
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	$114.00	$131.00	$151.00
• Half carlot equivalent or less of each product	95.00	109.00	125.00
• For each additional lot of the same product	52.00	60.00	69.00
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	95.00	109.00	125.00
• Half carlot equivalent or less of each product	87.00	100.00	115.00
• For each additional lot of the same product	52.00	60.00	69.00
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	52.00	60.00	69.00
• For each additional lot of any of the same product	52.00	60.00	69.00
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	[1]2.9	[1]3.3	[1]3.8
• For each package weighing 30 or more pounds	[1]4.4	[1]5.1	[1]5.9
• Minimum charge per individual product	114.00	131.00	151.00
• Minimum charge for each additional lot of the same product	52.00	60.00	69.00
Hourly rate for inspections performed for other purposes during the grader's regularly scheduled work week:			
• Hourly rate for non-carlot equivalent inspections such as count, size, temperature, container, etc. or work associated with inspections such as digital image services will be charged at a rate that reflects the cost of providing the service	56.00	64.00	74.00
Overtime rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week	29.00	33.00	38.00
Holiday pay	29.00	66.00	74.00
Hourly rate for inspections performed under 40 hour contracts during the grader's regularly scheduled work week	56.00	64.00	74.00
Rate for billable mileage	1.00	1.15	1.32

[1]In cents.

A notice of proposed rulemaking was published in the **Federal Register** on December 1, 2006, (71 FR 69497). FPB received one comment after the comment period closed.

As previously stated, because the FY–2007 fee increase in effect in the latter part of the fiscal year, AMS is changing the effective date of the FY–2008 fee increase to March 1, 2008, to provide a sufficient amount of time between the two fee increases. Finally, the regulatory text in the proposed section 51.38(e) is corrected to reflect separate fees for overtime and holiday note that appeared in the supplementary information section of the proposed rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping 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) $131 ($151, on or after March 1, 2008) for over a half carlot equivalent of an individual product;

(ii) $109 ($125, on or after March 1, 2008) for a half carlot equivalent or less of an individual product;

(iii) $60 ($69, on or after March 1, 2008) for each additional lot of the same product.

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

(i) $109 ($125, on or after March 1, 2008) for over a half carlot equivalent of an individual product;

(ii) $100 ($115, on or after March 1, 2008) for a half carlot equivalent or less of an individual product;

(iii) $60 ($69, on or after March 1, 2008) for each additional lot of the same product.

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

(i) $60 ($69, on or after March 1, 2008) for each individual product:

(ii) $60 ($69, on or after March 1, 2008) 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) 3.3 (3.8, on or after March 1, 2008) cents per package weighing less than 30 pounds;

(ii) 5.1 (5.9, on or after March 1, 2008) cents per package weighing 30 or more pounds;

(iii) Minimum charge of $131 ($151, on or after March 1, 2008) per individual product;

(iv) Minimum charge of $60 ($69, on or after March l, 2008) 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 $64 ($74, on or after March 1, 2008) 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 inspection, 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 $33 for overtime and $66 for holiday work ($38 for overtime and $74 for holiday work, on or after March 1, 2008) 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: July 26, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–14826 Filed 7–31–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

8 CFR Part 103

[CIS No. 2415–07; Docket No. USCIS–2007–0039]

RIN 1615–AB60

Temporary Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule for Certain Adjustment of Status and Related Applications

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: This rule temporarily amends the applicable fees for employment-based Forms I–485, ''Application to Register Permanent Residence or Adjust Status,'' and applications for derivative benefits associated with such Forms I–485 filed pursuant to the Department of State's July Visa Bulletin No. 107, dated June 12, 2007. The fees for all other petitions and applications administered by U.S. Citizenship and Immigration Services will continue in force as effective on July 30, 2007.

DATES: *Effective Date:* This rule is effective July 30, 2007, at 12:02 a.m. EST.

FOR FURTHER INFORMATION CONTACT: Efren Hernandez III, Business and Trade Services, Service Center Operations (Business and Trade Services), U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, Suite 3000, Washington, DC 20001, telephone (202) 272–8400.

SUPPLEMENTARY INFORMATION:

I. Background

1. USCIS Fee Schedule

On May 30, 2007, USCIS published the final rule, effective July 30, 2007, ''Adjustment of the Immigration and Naturalization Benefit Application and Petition Fee Schedule,'' amending 8 CFR part 103 to prescribe new fees to fund the cost of processing applications and petitions for immigration and naturalization benefits and services, and USCIS' associated operating costs pursuant to section 286(m) of the Immigration and Nationality Act (INA), 8 U.S.C. 1356(m). 72 FR 29851. That rule provides that applications that are submitted to USCIS with the incorrect fee will be rejected. For the reasons described below, USCIS, through this rule, is amending the fees again on a temporary basis for certain applications. This rule will become effective immediately after the final fee rule published on May 30, 2007, and makes only temporary modifications to that rule to respond to the events described below. The rule provides limited relief for specific applicants from the final fee rule published on May 30, 2007. The effect of this rule is limited to those applications filed before August 18, 2007. For applications filed on or after August 18, 2007, the fees set forth in the final rule published on May 30, 2007, will be required. USCIS will remove this regulation by another rule to be published in **Federal Register** on or about August 17, 2007, to be effective August 18, 2007.

2. Visa Availability—Summary

The INA establishes formulas and numerical limits for regulating persons immigrating to the United States for permanent residence, to include defining the employment-based immigrant visa classifications. INA sec. 201 *et seq.*, 8 U.S.C. 1151 *et seq.* The INA provides an annual world-wide numerical limit on the number of aliens who may immigrate to the United States, as well as an annual per-country numerical limit on the number of aliens who may emigrate from a particular country. INA sections 201(d) and 202(a)(2), 8 U.S.C. 1151(d) and 1152(a)(2). In addition, the INA allocates the total number of world-wide visas among five employment-based categories or preferences. INA sec. 203(b), 8 U.S.C. 1153(b). Taken together, the total number of visas, the country from which an alien emigrates, and the allocation of visas among the preference categories, determines whether a particular alien may immigrate to the United States at a certain date.

The Department of State (DOS) determines the availability of immigrant visa numbers. *See* INA sections 203(e) and (g), 8 U.S.C. 1153(e) and (g). DOS also controls individual allocation of employment-based immigrant visas. 22 CFR 42.32. DOS publishes a ''Visa