

# 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 51

RIN 0581-AE32

[Doc. No. AMS-SC-23-0009]

#### Section 8e Import Inspection Fee Structure

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

**ACTION:** Proposed rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) proposes to revise the regulations governing the inspection and certification for fresh fruits, vegetables, and other products by amending certain fees charged for Section 8e import inspections from a per-carlot basis to a per-pound basis, reducing the fee for each additional subplot by 50 percent, and establishing a new fee calculation for lots less than a carlot. These revisions are necessary to recover, as nearly as practicable, the costs of performing inspection services on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937.

**DATES:** Comments must be submitted on or before August 19, 2024.

**ADDRESSES:** Interested persons are invited to submit comments to the Standardization Branch, Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, National Training and Development Center; 100 Riverside Parkway, Suite 101; Fredericksburg, Virginia 22406; fax: (540) 361-1199, or via the internet at: <https://www.regulations.gov>. Comments should reference the date and page numbers of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will become a part of the public record and be made available to the public, including any personal information

provided, at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Brian E. Griffin at the address above, or at phone (202) 748-2155; fax (540) 361-1199; or email [Brian.Griffin@usda.gov](mailto:Brian.Griffin@usda.gov).

**SUPPLEMENTARY INFORMATION:** This document would amend regulations at 7 CFR part 51 issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621-1627), as amended.

#### Executive Orders 12866, 13563, and 14094

The USDA is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This rule does not meet the criteria of a “significant regulatory action” under Executive Order 12866, as supplemented by Executive Order 13563 and updated by Executive Order 14094. Therefore, the Office of Management and Budget (OMB) has not reviewed this rule under those orders.

#### Executive Order 13175

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications.

AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed action is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Background

AMS is proposing to charge for certain Section 8e import inspections on a per-pound basis and make additional revisions to the fee structure of the Specialty Crop Inspection Division (Division). Accordingly, under this proposed rule, the fees for Section 8e import inspections for lots qualifying as a full carlot (or a whole lot) or for lots less than a full carlot would no longer be calculated on a per-carlot basis. Instead, those fees would be calculated on a per-pound rate basis. The proposed per-pound rate would be calculated by dividing the current inspection fee for a full carlot by the average weight by pound of a full carlot (40,000 pounds) (for example: the current inspection fee for a full carlot (\$242) divided by 40,000 would result in a per-pound rate of \$0.00605). The Division proposes to use 40,000 lbs. as the appropriate measurement for calculating the per-pound rate. AMS notes that 40,000 lbs. is generally recognized as the standard weight of the measurement used in USDA-AMS inspection practices when identifying a full carlot.

Additionally, AMS proposes to have two separate subplot fees: one for Section 8e sublots and one for non-Section 8e sublots. The term subplot is commonly used to describe additional lots of the same product. During an inspection, a subplot is generated when the product differs markedly, and such differences are associated with quality and/or condition, certain brands, varieties, sizes, or container markings. For an example, under this proposed rule, the fee for a Section 8e subplot would be reduced by 50 percent, from the current \$110 per subplot fee (the FY 2024 rate) to \$55 per subplot. All non-8e inspection fees would remain unchanged by this proposed rule. The proposed per-pound rate for a full carlot or for lots less than a full carlot, and the 8e subplot fee, would be subject to the annual updated Specialty Crops Program’s inspections fee schedule.

Under this proposed rule, for all Section 8e import inspections, AMS would apply the current lot separation and sampling rates at 7 CFR 51.2(d)(1–3). To calculate inspection fees for a full carlot, AMS would multiply the current per-pound rate, using the proposed calculation as noted above, by the total weight of the full carlot, plus any applicable subplot fees. To calculate the inspection fee for lots less than a carlot, AMS would multiply the current per-pound rate, using the proposed per-pound rate calculation as noted above, by the total weight of the lot, with a minimum charge equivalent to 2-hours computed at the current established hourly rate, whichever is greater, plus any subplot fee(s) as applicable.

Currently, fees for all terminal market inspections, including Section 8e import inspections, are charged on a carlot basis (7 CFR 51.37). The current single carlot fee structure charges per conveyance and does not account for sampling and inspection time required for today's larger conveyances

transporting larger volumes. The proposed per-pound fee structure will better ensure full recovery of inspection cost by AMS while mitigating the financial impact on applicants of additional subplot fees.

As shown in Table 1, applicants importing typical 40,000-pound loads comprising one lot will see no change in inspection fees under this proposed rule. Table 2 shows that larger size loads, which typically require increased sampling and inspection, will see a proportional increase in fees under this proposed rule. However, loads currently subject to additional subplot fees will see a significant decrease in fees per subplot under this proposed rule. The proposed fee calculation change will more accurately assess fees on inspected volume, better aligning the Division's ability to ensure cost recovery while significantly reducing additional subplot fees charged to applicants. The following comparison of the Section 8e fee structure is based on FY 2024 fees. Any increase or decrease to Section 8e

fees would be included in the annual fee structure package in subsequent years.

Columns 1 and 2 of Table 1 compare the currently scheduled FY 2024 fee structure to the proposed new fee structure for a standard 40,000-pound lot. As shown in row 1, column 1, the currently scheduled FY 2024 fee structure for one lot is \$242. Row 1, column 2 shows that under the proposed new fee structure, the fee for one lot would be unchanged at \$242 but would be expressed at the per pound rate of \$0.00605 (multiplied by 40,000 pounds).

Column 1 (rows 2 through 5) shows that without the proposed new fee structure, the inspection fee for each additional 40,000-pound increases by \$110. Column 2 shows that with the proposed new fee, the incremental cost per additional lot would be cut in half to \$55. Column 3 shows the cost savings for additional lots.

TABLE 1—SCI SEC. 8e INSPECTION FEES FOR STANDARD 40,000 POUND LOT: COMPARISON OF FY 2024 FEE TO PROPOSED NEW FEE, SHOWING REDUCED COST FOR ADDITIONAL LOTS

Number of lots	FY 2024 fee <sup>1</sup>	Proposed new fee <sup>2</sup>	Reduced cost to importer applicant
	(1)	(2)	(3)
1 .....	\$242 .....	\$242 .....	\$0.
2 .....	\$352 .....	\$297 .....	\$55.
3 .....	\$462 .....	\$352 .....	\$110.
4 .....	\$572 .....	\$407 .....	\$165.
5 .....	\$682 .....	\$462 .....	\$220.
Each additional subplot .....	Plus \$110 .....	Plus \$55 .....	\$55 savings per additional subplot.

<sup>1</sup> If the proposal in this rule does not go into effect, the FY 2024 inspection fee would be \$242 for one 40,000-pound lot plus \$110 for each additional lot. For FY 2023, the cost was \$225 for the first 40,000-pound lot and \$103 for each additional lot.

<sup>2</sup> The proposed fee for one standard lot under this rule would be \$242, unchanged from the FY 2024 fee, but would be expressed as the per-pound equivalent of \$0.00605. (\$242 inspection cost per 40,000-pound lot divided by 40,000 pounds equals \$0.00605 per pound). Each additional lot would cost an additional \$55, a 50% reduction from the FY 2024 incremental cost of \$110 that would be in place without this rule change.

Table 2 shows the proposed new fee structure for alternative lot sizes. Row 2 shows again that the 40,000-pound lot fee would be unchanged at \$242. Row 3 shows that for a 50,000-pound lot, the

\$302.50 inspection fee would be determined by multiplying the proposed per-pound rate (\$0.00605) by 50,000 pounds. Row 1 shows that for any lot weighing less than 40,000 pounds, the

applicable fee would be a 2-hour minimum charge at the currently established FY 2024 hourly inspection rate of \$116 (\$116 times 2 equals \$232).

TABLE 2—SCI SEC. 8e INSPECTION FEES FOR ALTERNATIVE LOT SIZES, PROPOSED INSPECTION RATE PER POUND

	Alternative lot sizes	Pounds per lot	Inspection fee per lot <sup>1 2</sup>
(1) .....	Less than full (standard) lot .....	( <sup>1</sup> )	\$232.00 minimum.
(2) .....	Standard Lot .....	40,000	\$242.00.
(3) .....	Lot 25% larger than standard .....	50,000	\$302.50.

<sup>1</sup> For lots less than a standard lot, the fees are computed by multiplying pounds per lot by rate per pound (\$0.00605) with a minimum charge equivalent to 2-hours applied at the current established FY 2024 hourly inspection rate of \$116.

<sup>2</sup> Inspection fee per lot for standard lot or larger [(2) and (3)] are computed by multiplying pounds per lot by rate per pound (\$0.00605).

Prior to developing proposed revisions to the Section 8e fee structure, AMS engaged in discussions with State

partners including Association of Fruit and Vegetable Inspection and Standardization Agencies (AFVISA)

members and the Texas Cooperative Inspection Program (TCIP), as well as industry stakeholders. The outcome of

these discussions was a positive perception of the fee changes as proposed.

A 60-day comment period is provided for interested persons to submit comments on this proposed rule. A 60-day comment period is deemed appropriate because any change in fee calculations, if adopted, should be in place as soon as possible to move the program towards an adequate reserve and financial stability.

**Initial Regulatory Flexibility Analysis**

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 provides 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 proposed 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.

This proposed rule would revise the regulations governing the inspection and certification for fresh fruits, vegetables, and other products by increasing certain fees charged for Section 8e import inspections on a per-pound basis. These revisions are necessary to recover, as nearly as practicable, the costs of performing inspection services on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937.

Since the inspection fees to be charged under the proposed new rate structure are proportional to size of lots, smaller businesses (importers) would not be unduly or disproportionately

burdened. This proposed new fee structure, for imports subject to Section 8e grading requirements, balances cost increases (for lots larger than 40,000 pounds) with cost decreases for additional sublots. The fee for a standard 40,000-pound lot would remain unchanged.

Tables 3 and 4 show the estimated impacts on the nine Section 8e commodities affected by this proposed rule, using data from USDA’s Compliance Enforcement Management System (CEMS) database, which lists the weight of each lot inspected over the three-year period FY 2021 through FY 2023. Table 3 puts the number of inspections into two categories: Column (1) shows the number of lots that weighed 40,000 pounds or less, and column (2) shows the number of lots that weighed more than 40,000 pounds. Column (3) presents the sum of columns (1) and (2). The last row of column (3) shows that the total number of inspections for the three-year period was 611,475.

**TABLE 3—SCI SEC. 8e COMMODITIES IMPORTED: NUMBER OF INSPECTIONS, CATEGORIZED BY SIZE OF LOT INSPECTED, USING 40,000-POUND STANDARD LOT SIZE THRESHOLD, FY2021–FY2023<sup>1</sup>**

	<=40,000 lbs. per lot	>40,000 lbs. per lot	Total inspections	Pct of total inspections	Cumulative percent
	(1)	(2)	(3)	(4)	(5)
AVOCADOS .....	395,812	64,139	459,951	75.2	75.2
ONIONS .....	17,026	51,918	68,944	11.3	86.5
GRAPES .....	35,434	5,445	40,879	6.7	93.2
ORANGES .....	9,955	8,219	18,174	3.0	96.2
KIWIFRUIT .....	8,208	7,358	15,566	2.5	98.7
TOMATOES .....	3,925	33	3,958	0.6	99.3
GRAPEFRUIT .....	2,314	1,051	3,365	0.6	99.90
FILBERTS .....	240	109	349	0.1	99.95
POTATOES .....	193	96	289	0.05	100.0
9 commodities .....	473,107	138,368	611,475	.....	.....

<sup>1</sup> Source: Compliance Enforcement Management System (CEMS) database, Market Development Division, Specialty Crops Program, Agricultural Marketing Service, USDA.

**TABLE 4—SCI SEC. 8e COMMODITIES IMPORTED: PERCENT OF INSPECTIONS, CATEGORIZED BY SIZE OF LOT INSPECTED, USING 40,000-POUND STANDARD LOT SIZE THRESHOLD, FY2021–FY2023**

	<=40,000 lbs. per lot (%)	>40,000 lbs. per lot (%)
AVOCADOS .....	86	14
ONIONS .....	25	75
GRAPES .....	87	13
ORANGES .....	55	45
KIWIFRUIT .....	53	47
TOMATOES .....	99	1
GRAPEFRUIT .....	69	31
FILBERTS .....	69	31
POTATOES .....	67	33
9 commodities .....	77	23

Table 4 shows that for all nine commodities combined, 77 percent of

the inspections would have had equal or lower fees charged if the new fee

structure had been in place. Twenty-three percent of the lots would have

been subject to higher fees. Looking at individual years (not shown), the percentage of inspections representing lots weighing 40,000 pounds or less for FY 2021, FY 2022 and FY 2023 was 73, 75, and 80 percent, respectively. Therefore, for a large majority of annual inspections, the cost per individual inspection would have been the same or lower than with the fee system currently in place.

The impacts of the proposed revised fee structure vary significantly by commodity. Table 4 shows that for six of the nine commodities, at least two thirds of the lots inspected would have had equal or lower fees (*i.e.*, lots weighing 40,000 pounds or less—avocados, grapes, tomatoes, grapefruit, filberts, potatoes) under the proposed fee structure. One commodity, onions, would have had the opposite result, with 25 percent of lots seeing lower fees, and 75 percent higher. This variation would be offset by the onion industry's prevalence of additional sublots in inspections. See Table 1—SCI 8e Inspection Fees for Standard 40,000 Pound Lot: Comparison of FY 2024 Fee to Proposed New Fee, Showing Reduced Cost for Additional Lots. For oranges and kiwifruit, the results were about even; slightly more than 50 percent of the lots weighed equal to or less than 40,000 pounds and, therefore, would have been subject to lower fees.

This analysis assumes that each lot is sampled and inspected independently. This may overstate the extent of higher fees because under the proposed new fee structure the cost declines for each additional subplot, as shown in Table 1. To the extent that the lots for which fees were charged in the CEMS database are actually sublots associated with an inspected lot from a particular importer, the value in Table 4, column (2) (*i.e.*, for lots more than 40,000 pounds) overstates the percentage of lots that would have been subject to a higher fee.

It is also important to note that certain commodities represented larger proportions of the lots inspected, as shown in columns (4) and (5) of Table 3. Just over 75 percent of the inspected lots were for avocados. Adding the next four commodities in terms of the magnitude of total inspections (onions, grapes, oranges, and kiwifruit) raises the cumulative percentage up to nearly 99 percent. Four commodities (tomatoes, grapefruit, filbert, and potatoes) represented about 1.3 percent of the total number of lots inspected.

This analysis shows that the fee impacts vary by commodity, with smaller fees per inspected lot expected for eight of the nine commodities, suggesting that for a large majority of

annual inspections the cost per individual inspection would be the same or lower than with the fee system that would otherwise be in place in FY 2024 and future years.

#### List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

For reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 51 as follows:

#### PART 51—FRESH FRUITS, VEGETABLES, AND OTHER PRODUCTS (INSPECTION, CERTIFICATION, AND STANDARDS)

- 1. The authority citation for part 51 continues to read as follows:

**Authority:** 7 U.S.C. 1621–1627.

- 2. Revise § 51.37 to read as follows:

##### § 51.37 Charges for fees, rates, and expenses.

For each carlot of product inspected, a fee or rate determined in accordance with §§ 51.38, 51.39, and 51.40, and expenses determined in accordance with § 51.41, shall be paid by the applicant.

- 3. Redesignate §§ 51.39 through 51.62 as §§ 51.40 through 51.63, respectively.
- 4. Add new § 51.39 to read as follows:

##### § 51.39 Charges for fees and rates for 8e import inspection.

(a) *8e import inspection fees charged on a per-pound basis*—(1) *Establishing the per-pound inspection rate.* To compute the per-pound inspection rate, divide the current per-lot inspection fee for a full carlot (whole lot) by 40,000 (the generally accepted weight by pound of a full carlot).

(2) *Applying the per-pound rate.* The per-pound inspection rate shall be applied to the following lot sizes as follows:

(i) For a full carlot, multiply the per-pound rate by the total weight of the full carlot plus any applicable fees for additional lots of the same product as described in paragraph (b) of this section.

(ii) For lots less than a full carlot, multiply the per-pound rate by the total weight of the lot with a minimum fee equivalent to a 2-hour charge computed at the current established hourly rate, whichever is greater, plus any applicable fees for additional lots of the same product as described in paragraph (b) of this section.

(b) *8e import inspection fees charged on additional lots of the same product.*

To compute the inspection fee for additional lots of the same product, multiply each additional lot by one-half of the current non-8e additional lot of the same product inspection fee.

Erin Morris.

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024–13371 Filed 6–18–24; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2024–1484; Project Identifier MCAI–2023–00968–A]

RIN 2120–AA64

#### Airworthiness Directives; Embraer S.A. Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Embraer S.A. (Embraer) Model EMB–505 airplanes. This proposed AD was prompted by analysis of the left-hand (LH) refreshment center and LH forward cabinet that identified the need for installing structural reinforcements. This proposed AD would require installing structural reinforcements as specified in an Agência Nacional de Aviação Civil (ANAC) AD, which is proposed for incorporation by reference. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this NPRM by August 5, 2024.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* (202) 493–2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*AD Docket:* You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1484; or in person at