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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[Docket No. FV–98–327]

Processed Fruits and Vegetables

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing inspection and certification for processed fruits, vegetables, and processed products made from them by increasing by approximately three to seven percent fees charged for the inspection services. 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. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Act of 1937 is also affected. This rule also incorporates miscellaneous changes to revise a citation number and revise a statement in a footnote in regards to sample size.

EFFECTIVE DATE: October 4, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Rodeheaver, Branch Chief, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, PO Box 96456, Room 0709 South Building, Washington, DC 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined not significant for purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the required analysis is set forth below. The purpose of the Regulatory Flexibility Act (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.

AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover lot, and year round and less than year round inspection program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projection for work in regards to these inspection programs during FY 1998 is $11.7 million with costs projected at $13.1 million and an end-of-year reserve balance of $3.9 million. The PPB trust fund reserve balance for these programs will be approximately $0.5 million under the four-month level of approximately $4.4 million, which is called for by Agency policy. Further, PPB's cost of operating the user fee financed programs are expected to increase to approximately $13.5 million during FY 1999 and to approximately $13.9 million in FY 2000. These cost increases will result from inflationary increases with regard to current PPB operations and services.

The Processed Products Branch (PPB) estimates that without a fee increase the trust fund reserve as called for by Agency policy (four-months) will significantly decrease, that will result in an operating reserve balance of approximately $3.0 million in FY 1999 and $2.6 million in FY 2000. This relates to only 2.9 months and 2.3 months of operating reserve for the respective years.

Employee salaries and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 7.11 percent depending on locality, effective January 1997, significantly increased program costs. Another locality salary increase ranging from 2.30 to 7.27 percent depending on locality, effective January 1998, also increased program costs. These increases have increased PPB's cost of operating these programs by $400,000 per year.

This final rule will increase user fee revenue generated under the lot inspection program, and the year round and less than year round inspection programs by approximately $500,000 (3 to 7 percent) annually to enable the PPB to cover its costs and re-establish program reserves (current operating reserves are being maintained at a level below that provided for by Agency policy). This action is authorized under the AMA of 1946 [see 7 U.S.C. 1622(h)] which states 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 * * *''. The final rule will also incorporate miscellaneous changes to revise a citation number and to revise a statement in a footnote in regards to sample size.

There are more than 1239 users of PPB's lot, and less than year round and 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 121.601). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this rule. PPB has not identified any other federal rules which may duplicate, overlap or conflict with this final rule.

Inasmuch as the inspection services are voluntary (except when required for imported commodities), and since the fees charged to users of these services vary with usage, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is small

[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 under 7 CFR Parts 944 and 999.

(three to seven percent) and should not significantly affect these entities. Finally, except for those applicants who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and therefore, any decision to discontinue the use of the services should not prevent them from marketing their products.

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.

Final Action

The AMA authorizes official inspection, grading and certification for processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This rule will 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 and incorporates miscellaneous changes to revise a citation number and to revise a statement in a footnote in regards to sample size.

AMS regularly reviews its user fee programs to determine if the fees are adequate. While PPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover lot, and less than year round and year round inspection program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). The current revenue projection for work in regards to these inspection programs during FY 1998 is $11.7 million with cost projected at $13.1 million and an end-of-year reserve of $3.9 million. This will result in a decrease of PPB's trust fund balance of approximately $0.5 million under the four-month level ($4.4 million) called for by Agency policy. Further, PPB's cost of operating these inspection programs is expected to increase to approximately $13.5 million during FY 1999 and to approximately $13.9 million in FY 2000, resulting in a decrease of the trust fund balance to approximately $3.0 in FY 1999, and to approximately $2.6 million in FY 2000. These cost increases result from inflationary increases with regard to current PPB operations and services.

Employee salaries and benefits are major program costs that account for approximately 85 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 7.11 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase ranging from 2.30 to 7.27 percent depending on locality, effective January 1998, also increased program costs. These increases will increase PPB's costs of operating these inspection programs by approximately $400,000 per year. Therefore, the salary increases necessitate additional funding under the program. This fee increase of approximately 3 to 7 percent should result in an estimated additional revenue of $500,000 per year, and should enable PPB to cover the costs of doing business and re-establish program reserves (current operating reserves are at a level below that provided for by Agency policy). In order to reach and maintain a four-month reserve, a further increase in fees may be likely in future years.

Based on the aforementioned analysis of increasing program costs, AMS is increasing the fees relating to lot inspection service and the fees for less than year round and year round inspection services. 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.

Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees in § 52.42 is $43.00/hour.

Charges for travel and other expenses as found in § 52.50 will be $43.00/hour.

Charges for year-round in-plant inspection services on a contract basis as found in § 52.51(c) will be:

(1) For inspector assigned on a year-round basis—$35.00/hour.

(2) For inspector assigned on less than a year-round basis—$45.00/hour.

Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis as found in § 52.52(d) will be each inspector—$45.00/hour.

Also, AMS revised §§ 52.21 and 52.38 (Table II, footnote number 2) to make editorial changes.

In § 52.21, § 52.50 is referenced as providing information regarding the purchase of additional copies of certificates. This will be revised to read § 52.49.

In § 52.38, Table II, footnote number 2, the statement that describes the sample size for Group 3 containers that weigh over 10 pounds is omitted. Table II, footnote number 2 is revised to include the sample size for Group 3 containers that are over 10 pounds.

A notice of proposed rulemaking was published in the **Federal Register** (63 FR 35544) on June 30, 1998, with a thirty day comment period. The comment period closed on July 30, 1998. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. No comments were received regarding this proposed rule.

After consideration of all relevant matter presented, this action makes final the changes as proposed on June 30, 1998. The changes are made effective on October 4, 1998.

List of Subjects in 7 CFR Part 52

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

For the reasons set forth in the preamble, 7 CFR Part 52 is amended to read as follows:

PART 52—[AMENDED]

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

Authority: 7 U.S.C. 1621—1627.

§ 52.21 [Amended]

2. In § 52.21, the word ''§ 52.50'' is revised to read ''§ 52.49''.

§ 52.42 [Amended]

3. In § 52.42, the figure ''$41.00'' is revised to read ''$43.00''.

§ 52.50 [Amended]

4. In § 52.50, the figure ''$41.00'' is revised to read ''$43.00''.

§ 52.51 [Amended]

5. In § 52.51, paragraph (c)(1), the figure ''$34.00'' is revised to read ''$35.00'', in paragraph (c)(2), the figure ''$42.00'' is revised to read ''$45.00'', and in paragraph (d)(1), the figure ''$42.00'' is revised to read ''$45.00''.

6. In § 52.38, footnote number 2 immediately following Table II is revised to read as follows:

§ 52.38 Sampling plans and procedures for determining lot compliance.

* * * * *

[2] When a standard sample size is not specified in the U.S. grade standards, the sample units for the various container size groups are as follows: Groups 1 and 2—1 container and its entire contents. Group 3 containers up to 10 pounds—1 container and its entire contents. Group 3 containers over 10 pounds—approximately three pounds of product. When determined by the inspector that a 3-pound sample unit is inadequate, a larger sample unit or 1 or more containers and their entire contents may be substituted for 1 or more sample units of 3 pounds''.

Dated: September 17, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–25368 Filed 9–22–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 96–016–32]

RIN 0579–AA83

Karnal Bunt; Movement From Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations to allow, under certain conditions, commercial lots of seed to move from restricted areas for seed. We are also amending the testing requirements for regulated articles other than seed, removing certain articles from the list of articles regulated because of Karnal bunt, clarifying the terms ''used mechanized harvesting equipment'' and ''used seed conditioning equipment'', and clarifying requirements for soil movement with vegetables. These changes relieve restrictions on the movement of articles from areas regulated because of Karnal bunt. We are also requiring the moist heat treatment of millfeed produced from grain that tests positive for Karnal bunt, adding a moisture condition to the methyl bromide treatment of soil, and removing the methyl bromide treatment alternative for decorative articles. We are also amending the description of surveillance areas to more clearly distinguish between surveillance areas and restricted areas. In addition, we are amending the regulations governing the importation of wheat into the United States to make the definition of the term ''Karnal bunt'' consistent with the definition of that term in the Karnal bunt regulations.

EFFECTIVE DATE: September 23, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt in the United States are set forth in 7 CFR 301.89–1 through 301.89–14.

On January 28, 1998, we published in the **Federal Register** (63 FR 4198–4204, Docket No. 96–016–22) a proposal to amend the regulations by allowing, under certain conditions, commercial lots of seed to move from restricted areas for seed; amending the testing requirements for regulated articles other than seed; removing certain articles from the list of articles regulated because of Karnal bunt; clarifying the terms ''used mechanized harvesting equipment'' and ''used seed conditioning equipment''; clarifying requirements for soil movement with vegetables; requiring the moist heat treatment of millfeed produced from grain that tests positive for Karnal bunt; adding a moisture condition to the methyl bromide treatment of soil; removing the methyl bromide treatment alternative for decorative articles; and amending the description of surveillance areas. We also proposed to amend the regulations governing the importation of wheat into the United States to make the definition of the term ''Karnal bunt'' consistent with the definition of that term in the Karnal bunt regulations.

We solicited comments concerning our proposal for 60 days ending March 30, 1998. We received nine comments by that date. They were from representatives of industry in, and State governments of, States with areas regulated because of Karnal bunt. Two commenters supported the proposed rule as written. The remaining commenters expressed concerns about certain portions of the proposed rule. Their concerns are discussed below by issue.

Movement of Commercial Lots of Seed

Comment: One of the proposed conditions for the movement of commercial lots of seed from a regulated area is that the most recent previous Karnal bunt host crop grown in the field or fields where the seed intended for movement was grown must have tested negative for Karnal bunt (spores and bunted kernels). We suggest, as an alternative, that commercial lots of seed also be eligible for movement if the field or fields where the seed was grown were not used for any Karnal bunt host crops during the past 5 years.

Response: We agree that a field that has not been planted with Karnal bunt host crops for the past 5 years should be eligible to produce seed for movement in commercial lots from a regulated area. Five years of non-host status would verify a production area's freedom from Karnal bunt. Therefore, in response to this comment, this final rule provides that the seed may come either from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt (spores and bunted kernels) or where Karnal bunt host crops have not been grown during the past 5 years.

Comment: The treatment proposed for commercial lots of seed moving from a regulated area is the same treatment currently required at § 301.89–13(e) for seed used as germplasm or for research. This protocol is too strict. The proposed chlorine wash will be extremely difficult, if not impossible, to use on large quantities of commercial seed, and the double fungicide treatment will significantly affect the germination of the seed. We feel that the other proposed conditions for the movement of commercial lots of seed from a regulated area are sufficient to assure that any seed moving from a regulated area will be at lower risk of containing Karnal bunt (spores and bunted kernels) than any wheat seed in the world not so tested.

Response: We proposed that, to be eligible for movement as seed under certificate, commercial lots of seed grown in a restricted area for seed must:

- originate from a field or fields that are not part of a restricted area for regulated articles other than seed or a surveillance area;
- originate from a field or fields where the most recent previous Karnal bunt host crop tested negative for Karnal bunt;
- test negative for Karnal bunt; and
- be treated in accordance with § 301.89–13(e).

Under § 301.89–13(e), seed to be moved from a regulated area for use as germplasm or for research purposes