

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

[Docket Number FV-95-306]

Fresh Fruits, Vegetables and Other Products (Inspection, Certification, and Standards)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document would revise the regulations governing inspection and certification for fresh fruits, vegetables and other products by increasing the 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.

DATES: Comments must be postmarked or courier dated on or before July 15, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Office of the Branch Chief, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049 South Building, Washington, DC 20090-6456. Comments should note the date and page number of this issue of the Federal Register and will be made available for public inspection in the office of the

Branch Chief during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Huttenlocker, at the above address or call, (202) 720-0297.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, and therefore has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12778, 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.

The Agricultural Marketing Service (AMS), has certified that this action will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601). The proposed rule reflects certain fee increases needed to recover the costs of inspection services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946.

The AMA 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 provides that reasonable fees be collected from the user of the program services to cover, as nearly as practicable, the costs of services rendered. This proposal would amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Employee salaries and benefits are major program costs that

account for approximately 86 percent of the total operating budget. A general and locality salary increase for Federal employees, ranging from 3.09 to 6.25 percent depending on locality, effective January 1995, has materially affected program costs. Another general and locality salary increase, ranging from 2.39 to 2.87 percent depending upon locality (amounting to approximately \$253,000), was effective January 1996; further standardization program costs must be paid for by user fees.

While a concerted effort to cut costs resulted in overhead savings of \$350,000 in FY 95 over FY 94, the last fee increase of June 1994 did not result in collection of enough revenue to cover all these increases and still maintain an adequate reserve balance (four months of costs) called for by Agency policy (AMS Directive 407.1) and prudent financial management. Currently the Fresh Products Branch (FPB) trust fund reserve balance for the market program is approximately \$1 mil. under the desired level of \$3.9 mil. Further action is necessary to meet rising costs and maintain adequate reserve balances. This action will assist in moving the FPB trust fund toward a more adequate level and will result in an estimated \$614,000 in additional revenues. Projected FY96 revenues for market inspection are \$12.555 mil with costs projected at \$11.594 mil and a reserve of \$3.093.

Based on the Agency's analysis of increased costs since 1994, AMS proposes to increase the fees for destination market inspection services. The following table compares current fees and charges with 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 charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of one to four 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	\$74	\$78.
Half carlot equivalent or less of each product	\$62	\$65.
For each additional lot of the same product	\$12	\$13.
Condition inspections of one to four 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	\$62	\$65.

Service	Current	Proposed
Half carlot equivalent or less of each product	\$57	\$60.
For each additional lot of the same product	\$12	\$13.
Inspections of five or more products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
For the first five products	\$264	\$277.
For each additional product	\$37	\$39.
For each additional lot of any of the same product	\$12	\$13.
Inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
For each product	\$37	\$39.
For each additional lot of any of the same product	\$12	\$13.
Dock-side inspections of an individual product unloaded directly from the same ship:		
For each package weighing less than 15 pounds	1 cent	No change.
For each package weighing 15 to 29 pounds	2 cents	No change.
For each package weighing 30 or more pounds	3 cents	No change.
For each additional lot of any of the same product	\$12	\$13.
Minimum charge per individual product	\$74	\$78.
Inspections performed for other purposes during the grader's regularly scheduled work week	\$37 per hour	\$39 per hour.
Overtime or holiday premium rate for all inspections performed outside the hourgrader's regularly scheduled work week.	\$18.50 per hour	\$19.50 per hour.

List of Subjects in 7 CFR Part 51

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

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR Part 51 is proposed to be amended as follows:

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) For products in quantities of 51 or more packages:

(i) Quality and condition inspection of 1 to 4 products unloaded from the same conveyance:

(A) \$78 for over a half carlot equivalent of an individual product.

(B) \$65 for a half carlot equivalent or less of an individual product.

(C) \$13 for each additional lot of the same product.

(ii) Condition only inspection of 1 to 4 products unloaded from the same conveyance:

(A) \$65 for over a half carlot equivalent of an individual product.

(B) \$60 for a half carlot equivalent or less of an individual product.

(C) \$13 for each additional lot of the same product.

(iii) Quality and condition inspection and/or condition only inspection of 5 or more products unloaded from the same conveyance:

(A) \$277 for the first 5 products.

(B) \$39 for each additional product.

(C) \$13 for each additional lot of any of the same product.

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

(i) \$39 for each individual product.

(ii) \$13 for each additional lot of any of the same product.

(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) For each package inspected according to the following rates:

(i) 1 cent per package weighing less than 15 pounds;

(ii) 2 cents per package weighing 15 to 29 pounds; and

(iii) 3 cents per package weighing 30 or more pounds.

(2) \$13 for each additional lot of any of the same product.

(3) A minimum charge of \$78 for each product inspected.

(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 dockside, the carlot fees in § 51.38(a) shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of \$39 an 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 \$19.50 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: May 8, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-12057 Filed 5-13-96; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM-72-3]

Fawn Shillinglaw; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Fawn Shillinglaw. The petition has been docketed by the Commission and has been assigned Docket No. PRM-72-3. The petitioner requests that the NRC amend its regulations which govern independent storage of spent nuclear fuel in dry storage casks to require that the safety analysis report for a cask design fully conforms with the associated NRC safety evaluation report and certificate of compliance before NRC certification of the cask design. The petitioner also requests that the revision date and number of a safety analysis report be specified whenever that report is referenced in documents. The petitioner believes that her proposal would eliminate confusion among licensees, vendors, fabricators, and others who often refer to only the safety analysis report as the relevant document when there may be revisions that must be included to ensure compliance with the NRC safety evaluation report and certificate of compliance. The petitioner also believes that the NRC must clarify the process for modification of a safety analysis report after a cask has been certified.

DATES: Submit comments by July 29, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For information regarding electronic submission of comments, see the language in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301-415-7163 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission received a petition for rulemaking submitted by Fawn Shillinglaw in the form of two letters addressed to Chairman Jackson dated December 9 and December 29, 1995. A determination by the Office of the General Counsel on March 5, 1996, specified that the issues presented would be treated as a petition for rulemaking. The petition was docketed as PRM-72-3 on March 14, 1996. The petitioner requests that the NRC amend its regulations in 10 CFR Part 72 entitled, "Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste."

Specifically, the petitioner requests that 10 CFR Part 72 be amended to require that the safety analysis report (SAR) for a spent fuel dry storage cask design fully conforms with the associated NRC safety evaluation report (SER) and certificate of compliance (COC) before NRC certification of the cask design. The petitioner also requests that 10 CFR Part 72 be amended to require that the revision date and number of an SAR be specified whenever that report is referenced in documents. The petitioner believes there is confusion among licensees, vendors, fabricators, and others who often refer to only the safety analysis report as if it is the only relevant document when there may be revisions that must be included to prevent discrepancies between versions of the SAR and the NRC SER and COC for a specific cask design.

The petitioner cites the VSC-24 cask, designed by Sierra Nuclear Corporation, as an example where revisions to the SAR occurred after the NRC SER and COC were issued. The petitioner believes that no procedures are currently in place to permit a cask vendor to make changes to its SAR after issuance of the NRC SER and COC. The

petitioner also believes that this situation creates confusion and the possibility that an SAR version is being used that directly contradicts SER and COC requirements. The petitioner asks for an explanation of the process that the NRC used for allowing changes to be made by the vendor to the VSC-24 cask after NRC certification, what were those changes, and how this was accomplished without rulemaking. The petitioner also recommends that the NRC make cask unloading procedures publicly available.

The NRC is soliciting public comment on the petition for rulemaking submitted by Fawn Shillinglaw that requests the changes to the regulations in 10 CFR Part 72 as discussed below.

Discussion of the Petition

The petitioner notes that the regulations in 10 CFR Part 72 establish requirements and criteria for the certification of spent fuel dry storage cask designs by the NRC. The petitioner is concerned that no process exists in the regulations for a cask vendor to make changes to a generically approved and certified dry storage cask design. The petitioner cites the VSC-24 cask as an example where NRC certification was issued for a design that was modified after the actual certification took place. The petitioner notes that NRC certified the design for the VSC-24 cask on May 7, 1993. The vendor of the VSC-24 cask, Sierra Nuclear Corporation (Sierra), agreed to submit a revision to its SAR (Rev. OA) for this cask in July 1993, about 3 months after NRC certification, because changes were necessary to meet requirements contained in the NRC SER and COC.

The petitioner states that this revision was never completed and cites an NRC letter to Sierra dated November 28, 1994, which indicated that the SAR still needed modification to eliminate contradictions and differences between the VSC-24 cask SAR and the NRC SER and COC. The petitioner cites a Sierra submittal dated June 5, 1995, as the first instance where a revision (Rev. 0AA) appears with the necessary changes. The petitioner also cites a letter from NRC to Sierra which states that Revs. O and OA insert material into the SAR that NRC asked Sierra to perform. However, the petitioner believes that the material appears in the licensing record but not in the SAR. The petitioner indicates that constant references to the SAR exist in various documents but is concerned that the references do not specify the revision number. The petitioner believes this creates confusion and the possibility that an SAR version is being