

market program by approximately \$1.8 million or 15 percent. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as "sublots," would be increased from \$14 to \$45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends. 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 requirements¹—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

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 (Public Law 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, kiwi fruit, 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.

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 costs 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 the Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, 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-03 are \$12.0 million with costs projected at \$18.3 million and an end-of-year reserve of \$14.8 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-07, 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 \$18.9 million during FY-04 and to approximately \$19.4 million during FY 05. 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).

This rule should increase user fee revenue generated under the destination market program by approximately \$1.8 million or 15 percent per year. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as "sublots," would be increased from \$14 to \$45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends.

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 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. 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. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to