

| Section of OMB guidance | Section in this part where supplemented | What the supplementation clarifies |
|---------------------------|---|--|
| (2) 2 CFR 182.300(b) | § 2245.300 | Whom in the Corporation a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity. |
| (3) 2 CFR 182.500 | § 2245.500 | Who in the Corporation is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |
| (4) 2 CFR 182.505 | § 2245.505 | Who in the Corporation is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part. |

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, the Corporation's policies and procedures are the same as those in the OMB guidance.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 2245.225 Whom in the Corporation does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify the Corporation's awarding official or other designee.

Subpart C—Requirements for Recipients Who Are Individuals

§ 2245.300 Whom in the Corporation does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify the Corporation's awarding official or other designee.

Subpart D—Responsibilities of Agency Awarding Officials

§ 2245.400 What method do I use as an Agency Awarding Official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must obtain each recipient's agreement, as a condition of the award, to comply with the requirements in subpart B (or subpart C, if the recipient is an individual) of 2245, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988

(Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 2245.500 Who in the Corporation determines that a recipient other than an individual violated the requirements of this part?

The Corporation's Chief Executive Officer or designee is authorized to make the determination under 2 CFR 182.500.

§ 2245.505 Who in the Corporation determines that a recipient who is an individual violated the requirements of this part?

The Corporation's Chief Executive Officer or designee is authorized to make the determination under 2 CFR 182.500.

Subpart F—[Reserved]

Title 45—Public Welfare

Chapter XXV—Corporation for National and Community Service

PART 2545—[REMOVED]

■ 2. Under the authority of 5 U.S.C. 301, and 42 U.S.C. 12651c(c), remove part 2545.

Dated: April 14, 2010.

Frank R. Trinity,
General Counsel.

[FR Doc. 2010-8989 Filed 4-27-10; 8:45 am]

BILLING CODE 6050-SS-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2008-0050]

RIN 0579-AC95

Importation of Papayas From Colombia and Ecuador

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow, under certain conditions, the importation of commercial shipments of fresh papayas from Colombia and Ecuador into the continental United States. The conditions for the importation of papayas from Colombia and Ecuador include requirements for field sanitation, hot water treatment, and fruit fly trapping in papaya production areas. This action allows for the importation of papayas from Colombia and Ecuador while continuing to provide protection against the introduction of injurious plant pests into the continental United States.

DATES: *Effective Date:* May 28, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Dorothy C. Wayson, Regulatory Coordination Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-0772.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56 through 319.56-50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On April 21, 2009, we published in the **Federal Register** (74 FR 18161-18166, Docket No. APHIS-2008-0050) a proposal¹ to amend the regulations in § 319.56-25 to allow the importation of commercial consignments of fresh papayas from Colombia and Ecuador subject to a systems approach. Section 319.56-25 currently sets out conditions for the importation of papayas from Central America and Brazil; we

¹ To view the proposed rule and the comments we received, go to (<http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0050>).

proposed to add Colombia and Ecuador to this systems approach. The proposed systems approach required that the papayas be produced and packed in approved areas of Colombia and Ecuador, that they be packed using packing procedures designed to exclude quarantine pests, and that fruit fly trapping, field sanitation, and hot water treatment be employed to remove pests of concern from the pathway.

We solicited comments concerning our proposal for 60 days ending June 22, 2009. We received six comments by that date. They were from State agricultural agencies, a domestic produce wholesaler, and Ecuador's Agency for Agricultural Product Quality Assurance. The comments are discussed below.

We proposed to require that the fields where papayas in Colombia and Ecuador are grown be kept free of papayas that are one-half or more ripe and that all culled and fallen fruits be buried, destroyed, or removed from the farm at least twice a week. One commenter stated that removing fallen fruit and fruit that is more than half ripe will be difficult and subject to interpretation, and therefore will increase pest infestation risks. The commenter asked how this practice will be carried out.

We disagree with the commenter's concerns about fruit removal. The national plant protection organizations (NPPOs) of Colombia and Ecuador will be responsible for ensuring that field sanitation, such as removing fallen and half ripe fruit is conducted. However, APHIS will conduct periodic reviews to ensure compliance with the regulations. The removal of fallen and half-ripe fruit is already a requirement for the importation of papayas from Central America and Brazil. To date, we have not received reports of any difficulties associated with this requirement.

One commenter asked if studies have been done to determine when papayas in Colombia and Ecuador are susceptible to fruit flies. The commenter also asked what fruit fly lures will be used.

Although research regarding when papayas are susceptible to fruit flies has not been conducted specifically for papayas from Colombia and Ecuador, the pest risk assessments (PRAs) that accompanied the proposed rule summarized the research on that topic that already exists and that was conducted for the currently approved program for importation of papayas from Central America and Brazil. Based on the findings of these PRAs, a risk management document (RMD) was drafted to identify measures to address the risks of the two fruit flies within

Colombia and Ecuador, *Anastrepha fraterculus* (South American fruit fly) and *Ceratitis capitata* (Mediterranean fruit fly, or Medfly), and the fungal pest (*Phoma caricae-papayae*) within Ecuador, identified as quarantine pests in the PRAs. As stated in the RMD, papayas that are less than half ripe, or "green," are poor hosts for the two fruit flies.

Both Jackson and McPhail traps will be used for fruit fly trapping. Baits to be used will be specified APHIS-approved protein baits such as Nu-Lure or Torula yeast pellets.

In order to mitigate the potential pest risk posed by fruit flies laying eggs in papayas immediately before harvest, we proposed to, among other things, require the treatment of papayas with a hot water dip. The dip requires that papayas from Colombia and Ecuador be held for 20 minutes in hot water at 48 °C (118.4 °F).

One commenter expressed concern regarding this hot water dip treatment, stating that we removed the requirement for hot water treatment from the regulations in 7 CFR part 318 20 years ago in favor of vapor heat or forced air treatment. In addition, the commenter stated that field sanitation, trapping, and treatment with a hot water dip is not a probit 9 method of treating papaya for fruit flies. Therefore, the commenter stated that papayas should be prohibited from importation from Colombia and Ecuador and all other countries from which papaya are not treated with a probit 9 treatment.

The hot water dip treatment that the commenter referred to was used as the sole mitigation measure for papayas moved interstate from Hawaii to the mainland United States. The treatment, which we removed from the regulations in part 318 in 1991, consisted of immersion in water at a temperature of between 41 °C and 43 °C for a period of 40 minutes followed by a second immersion in water at a temperature of between 48 °C and 50 °C for a period of 20 minutes. The treatment failed due to a blossom end defect within the papayas that allowed mature fruit flies to enter the fruit rather than to a flaw in the treatment itself. The treatment was designed to treat fruit fly eggs and larvae near the surface of the fruit rather than fruit fly larvae within the seed cavity of the fruit where heat from the hot water treatment could not penetrate. We removed the treatment for Hawaii because we determined that we could not ensure that all papayas with the blossom end defect would be successfully culled at the packinghouse. Unlike the hot water dip that we used in Hawaii, the hot water dip we

proposed for papayas from Colombia and Ecuador is part of a systems approach rather than a sole mitigation measure.

Probit 9 is a treatment standard that requires a pest mortality rate of greater than 99 percent. Although the hot water dip is not considered a probit 9 treatment, the systems approach we proposed uses methods in addition to treatment to mitigate the risk associated with fruit flies. These methods include removing papayas that are one-half or more ripe as well as culled or fallen papayas from fields where papayas are grown, allowing the exportation of only green papayas, and trapping for fruit flies at a rate of 1 trap per hectare with required mitigation measures or suspension of exports if fruit fly populations reach certain levels. As stated previously, the current systems approach has been used successfully to mitigate the risks associated with papayas from Central America and Brazil. To date, no interceptions of fruit flies have been found on papayas entering the United States from these countries.

Two commenters asked what regulatory oversight is in place to ensure that the elements of the systems approach will be followed. One of these commenters asked whether a site visit has been conducted and whether periodic reviews of the program will be carried out.

APHIS has conducted a site visit and will be conducting annual reviews to ensure compliance with the regulations. In addition, the NPPOs of Colombia and Ecuador are responsible for monitoring fruit fly traps on a weekly basis and maintaining records of such reviews, and supervising and directing compliance with the requirements of the rule.

One commenter stated that there is no objective means of assessing the risk associated with the importation of papayas from Colombia and Ecuador under the proposed systems approach or for the countries already approved to ship papayas under that systems approach.

We disagree with the commenter. As we noted above, the systems approach has been used in Central America and Brazil and no fruit flies have been intercepted on papayas imported from those regions. This real-world experience, along with our PRAs, our RMD, and our knowledge of the conditions in Colombia and Ecuador, provide an adequate basis for regulatory decisionmaking.

Under the current regulations in § 319.56-25(f), papayas from Central America and Brazil must be packed in

cartons stamped "Not for importation into or distribution in Hawaii" due to the presence in these areas of the papaya fruit fly (*Toxotrypana curvicauda*). This pest does not occur in Hawaii, where the majority of U.S. commercial papaya production takes place. However, in the proposed rule, we proposed to remove this box marking requirement for Central America and Brazil; we determined that our permitting process would allow us to effectively implement the distribution limitations. Likewise, we did not propose to require that boxes containing papayas from Colombia or Ecuador be marked.

One commenter stated that we should retain the requirement for marking all shipments of papaya from Central America and Brazil with a statement that they may not be imported into or distributed within Hawaii and that we should apply the requirement to shipments of papayas from Colombia and Ecuador, or the protection for Hawaii could be lost.

We disagree with the commenter. Currently, no papayas from foreign countries are allowed to enter into Hawaii. In addition, because papaya fruit fly occurs in Florida and other mainland papaya-producing areas, papayas from the continental United States are also prohibited from entering Hawaii, meaning that papayas from Colombia and Ecuador imported into the continental United States would not be allowed to be moved to Hawaii even if the papayas had entered domestic commerce. As stated in the proposed rule, our permitting process will allow us to effectively implement the distribution limitation, as it currently does for many other commodities that are not allowed to be imported into Hawaii. Therefore, we have determined that the box marking is not necessary.

We proposed to allow imports of papayas only from certain areas within Colombia and Ecuador, which we proposed to list in § 319.56-25(b). One commenter stated that, since the pest risk analysis for Ecuador analyzed the risk from papaya imports on a national level, there is no technical reason for the rule to refer to specific areas of production.

In the proposed rule, we stated that restricting imports of papayas to those produced in approved areas of Colombia and Ecuador would ensure that papayas intended for the continental United States are grown and packed in papaya production and packing areas of Colombia and Ecuador where fruit fly traps are maintained and where the other elements of the systems approach are in place. In addition, we stated that

grower registration would allow for traceback and removal from the export program of production sites with confirmed pest problems, and the papaya orchards would be monitored by the NPPO to ensure that pest and disease-excluding sanitary procedures are employed.

Since the publication of the proposed rule, however, we have determined that, as long as the risk mitigation measures we proposed are adhered to, there is no technical reason to restrict the importation of commercial shipments of papaya to those produced in specific areas within Ecuador. Likewise, there is no technical reason to restrict the importation of commercial shipments of papaya to those produced in specific areas within Colombia. We are retaining the grower registration requirement for both countries, which will allow the foreign NPPOs and APHIS to monitor compliance with fruit fly trapping and the other elements of the systems approach. Therefore, we are removing the origin restrictions for these countries, as grower registration makes limiting imports to specific production areas unnecessary.

In § 319.56-25(b), we proposed to require that papayas from Colombia and Ecuador be grown by growers registered with the NPPO of the exporting country. One commenter asked why the proposed rule required that papaya growers in Colombia and Ecuador be registered with the NPPO of the exporting country when this is not required for papaya growers in other countries producing papayas for export to the United States under the same program.

Based upon our experience with pest exclusion programs and activities since the existing papaya program was put into place, we have determined it would be prudent and, indeed, necessary, to increase our focus on traceback capabilities. Therefore, we are requiring grower registration for all new fruit and vegetable imports, including the importation of papayas from Colombia and Ecuador. We did not have a policy requiring grower registration at the time the existing papaya program was put into place. However, the origin restrictions on papayas from Brazil and Central America function in the same manner as grower registration, allowing APHIS to monitor compliance with the regulations in approved growing areas in those countries.

We also proposed to allow only the "Solo" type of papayas to be imported into the United States from Colombia and Ecuador. One commenter stated that there is no reason to restrict papaya imports to the cultivar Solo as other

cultivars are already available in the United States, and these cultivars are also produced within Ecuador.

The pest risk assessment only evaluated the risks associated with the importation of papayas weighing 2 kilograms or less, which are considered "Solo" papayas. The size limitation was put in place because the hot water dip treatment has not been tested on larger papayas. If Colombia or Ecuador desires to export other papaya varieties, they may propose to do so, and we will analyze the risks associated with the importation of such varieties.

One commenter expressed concern regarding the potential financial impact of the rule on U.S. papaya growers.

As explained in the proposed rule, we expect that papayas supplied by Colombia and Ecuador would largely compete against imports from Mexico and elsewhere. In addition, given that the U.S. market for fresh papaya is already dominated by imports, the addition of Colombia and Ecuador is unlikely to significantly affect sales by U.S. producers.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

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

We have prepared a Final Regulatory Flexibility analysis in accordance with Section 604 of the Regulatory Flexibility Act for this action. The analysis identifies papaya producers, importers, and wholesalers; fresh fruit and vegetable wholesalers; grocery stores; warehouse clubs and superstores; and fruit and vegetable markets as the small entities most likely to be affected by this action and considers the effects on domestic papaya production associated with the importation of papaya from Colombia and Ecuador. Based on the information presented in the analysis, the Administrator has certified that this action will not have a significant economic impact on a substantial number of small entities. The Final Regulatory Flexibility analysis may be viewed on the Regulations.gov Web site (see footnote 1 for instructions for accessing Regulations.gov). Copies of the Final Regulatory Flexibility analysis are also available from the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12988

This final rule allows fresh papayas to be imported into the continental United States from Colombia and Ecuador. State and local laws and regulations regarding papayas imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579-0358.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851-2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56-25 is revised to read as follows:

§ 319.56-25 Papayas from Central America and South America.

Commercial consignments of the Solo type of papaya may be imported into the

United States only in accordance with this section and all other applicable provisions of this subpart.

(a) The papayas were grown and packed for shipment to the continental United States (including Alaska), Puerto Rico, and the U.S. Virgin Islands in one of the following locations:

(1) *Brazil:* State of Espirito Santo; all areas in the State of Bahia that are between the Jequitinhonha River and the border with the State of Espirito Santo and all areas in the State of Rio Grande del Norte that contain the following municipalities: Touros, Pureza, Rio do Fogo, Barra de Maxaranguape, Taipu, Ceara Mirim, Extremoz, Ielmon Marinho, Sao Goncalo do Amarante, Natal, Maciaba, Parnamirim, Veracruz, Sao Jose de Mipibu, Nizia Floresta, Monte Aletre, Areas, Senador Georgino Avelino, Espirito Santo, Goianinha, Tibau do Sul, Vila Flor, and Canguaretama e Baia Formosa.

(2) *Costa Rica:* Provinces of Guanacaste, Puntarenas, San Jose.

(3) *El Salvador:* Departments of La Libertad, La Paz, and San Vicente.

(4) *Guatemala:* Departments of Escuintla, Retalhuleu, Santa Rosa, and Suchitupéquez.

(5) *Honduras:* Departments of Comayagua, Cortés, and Santa Bárbara.

(6) *Nicaragua:* Departments of Carazo, Granada, Leon, Managua, Masaya, and Rivas.

(7) *Panama:* Provinces of Coclé, Herrera, and Los Santos; Districts of Aleanje, David, and Dolega in the Province of Chiriqui; and all areas in the Province of Panama that are west of the Panama Canal; or

(b) The papayas were grown by a grower registered with the national plant protection organization (NPPO) of the exporting country and packed for shipment to the continental United States (including Alaska) in Colombia or Ecuador.

(c) Beginning at least 30 days before harvest began and continuing through the completion of harvest, all trees in the field where the papayas were grown were kept free of papayas that were one-half or more ripe (more than one-fourth of the shell surface yellow), and all culled and fallen fruits were buried, destroyed, or removed from the farm at least twice a week.

(d) The papayas were held for 20 minutes in hot water at 48 °C (118.4 °F).

(e) When packed, the papayas were less than one-half ripe (the shell surface was no more than one-fourth yellow, surrounded by light green), and appeared to be free of all injurious insect pests.

(f) The papayas were safeguarded from exposure to fruit flies from harvest to export, including being packaged so as to prevent access by fruit flies and other injurious insect pests. The package containing the papayas does not contain any other fruit, including papayas not qualified for importation into the United States.

(g) Beginning at least 1 year before harvest begins and continuing through the completion of harvest, fruit fly traps were maintained in the field where the papayas were grown. The traps were placed at a rate of 1 trap per hectare and were checked for fruit flies at least once weekly by plant health officials of the NPPO. Fifty percent of the traps were of the McPhail type and 50 percent of the traps were of the Jackson type. The NPPO kept records of fruit fly finds for each trap, updated the records each time the traps were checked, and made the records available to APHIS inspectors upon request. The records were maintained for at least 1 year.

(1) If the average Jackson fruit fly trap catch was greater than seven Mediterranean fruit flies (*Ceratitis capitata*) (Medfly) per trap per week, measures were taken to control the Medfly population in the production area. If the average Jackson fruit fly trap catch exceeds 14 Medflies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer Medflies per trap per week.

(2) In Colombia, Ecuador, or the State of Espirito Santo, Brazil, if the average McPhail trap catch was greater than seven South American fruit flies (*Anastrepha fraterculus*) per trap per week, measures were taken to control the South American fruit fly population in the production area. If the average McPhail fruit fly trap catch exceeds 14 South American fruit flies per trap per week, importations of papayas from that production area must be halted until the rate of capture drops to an average of 7 or fewer South American fruit flies per trap per week.

(h) All activities described in paragraphs (a) through (g) of this section were carried out under the supervision and direction of plant health officials of the NPPO.

(i) All consignments must be accompanied by a phytosanitary certificate issued by the NPPO of the exporting country stating that the papayas were grown, packed, and shipped in accordance with the provisions of this section.

(Approved by the Office of Management and Budget under control numbers 0579-0128 and 0579-0358)

Done in Washington, DC, this 31st day of March 2010.

Gregory Parham

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2010-9779 Filed 4-27-10; 8:45 am]

BILLING CODE 3410-34-S

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS-FV-09-0089; FV10-932-1 FR]

Olives Grown in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the California Olive Committee (Committee) for the 2010 and subsequent fiscal years from \$28.63 to \$44.72 per assessable ton of olives handled. The Committee locally administers the marketing order, which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* April 29, 2010.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Smutny, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or E-mail: Jeffrey.Smutny@ams.usda.gov or Kurt.Kimmel@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the

Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning on January 1, 2010, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2010 and subsequent fiscal years from \$28.63 to \$44.72 per ton of olives handled.

The California olive marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2009 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal

year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 15, 2009, and unanimously recommended 2010 fiscal year expenditures of \$929,923 and an assessment rate of \$44.72 per ton of olives. In comparison, last year's budgeted expenditures were \$1,482,349. The assessment rate of \$44.72 is \$16.09 higher than the rate currently in effect. The Committee recommended the higher assessment rate because the 2009-10 assessable olive receipts as reported by the California Agricultural Statistics Service (CASS) are only 22,150 tons, which compares to 49,067 tons in 2008-09. Unusual weather conditions, including untimely temperatures that fell below freezing, contributed to a substantially smaller crop. The Committee also plans to use available reserve funds to help meet its 2010 expenses.

The major expenditures recommended by the Committee for the 2010 fiscal year include \$300,000 for research, \$255,000 for marketing activities, and \$324,923 for administration. Budgeted expenses for these items in 2009 were \$495,000, \$627,800, and \$359,549, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2009-10 crop year, and additional pertinent factors. Actual assessable tonnage for the 2010 fiscal year is expected to be lower than the 2009-10 crop receipts of 22,150 tons reported by the CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order of approximately one fiscal year's expenses (\$ 932.40).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The