

received timely comments from Curt Maberry of Curt Maberry Farm, Inc., Lynden, Washington; and Frozen Potato Products Institute (FPPI), McLean, Virginia.

Mr. Maberry and FPPI strongly support AMS' proposal to extend the coverage of the PACA to include fresh and frozen fruits and vegetables that are coated or battered.

In his favorable comment, Mr. Maberry stated that he unequivocally recommends expanding the coverage of the PACA given that markets are ever-evolving, and AMS' proposal to allow fresh and frozen fruits to be coated or battered and still remain covered under the PACA is the correct and proper thing to do. Mr. Maberry applauded AMS for progressively taking care of the farmer.

FPPI fully supports the proposed changes, which grants the request made by FPPI in its petition seeking precisely that AMS codify its existing agency policy that the coating or battering of fruits and vegetables are not processes that are considered to change a perishable agricultural commodity into a food of a different kind or character. In its comment, FPPI requested that AMS include in the preamble to the final rule a statement that it is amending the list of processes in the regulations to codify AMS' historical opinion that coated or battered frozen potato products are perishable agricultural commodities.

AMS received no comments opposing the proposed regulation, and therefore is making no changes to the final rule.

#### Executive Orders 12866 and 12988

This final rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et seq.*), 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 (OMB).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This final 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 that must be exhausted prior to any judicial challenge to the provisions of this rule.

#### Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this final rule on small entities. 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. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. There are approximately 15,700 firms licensed under the PACA, many of which could be classified as small entities.

AMS recognizes that frozen potato products represent the largest single frozen commodity in the United States. PACA coverage of such commodities will affect countless growers, shippers, processors, and distributors who deal in the commodities, most of which are small businesses. To exclude over 26 percent of frozen potato products from coverage of the PACA, however, is inconsistent with the intent of Congress in enacting the PACA to protect producers and dealers of fresh and frozen fruits and vegetables.

This final rule is being issued in response to the frozen food industry's request that AMS codify its opinion that the coating or battering of fruits and vegetables is an operation that does not change a perishable agricultural commodity into a food of a different kind or character. Producers and distributors of coated and battered produce will benefit since they will have the same rights as those afforded other processors and suppliers whose products may be indistinguishable in appearance or texture, but not coated or battered. AMS believes that this final rule will help reduce litigation time and expenses for small produce businesses that seek to enforce their trust rights in federal district courts.

Given the preceding discussion, AMS has determined that the provisions of this final rule will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104-13), the information collection and recordkeeping requirements that are covered by this final rule were approved under OMB number 0581-0031 on September 30, 2001, and expire on September 30, 2004.

#### List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 46 is amended as follows:

#### PART 46—[AMENDED]

■ 1. The authority citation for part 46 continues to read as follows:

**Authority:** Sec. 15, 46 Stat. 537; 7 U.S.C. 499o

■ 2. In § 46.2, paragraph (u) is revised to read as follows:

#### § 46.2 Definitions.

\* \* \* \* \*

(u) *Fresh fruits and fresh vegetables* include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a commodity into a food of a different kind or character: Water, steam, or oil blanching, battering, coating, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seed, pits, stems, calyx, husk, pods rind, skin, peel, et cetera; polishing, precooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruit or vegetables for packaging in any type of containers; or comparable methods of preparation.

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Dated: April 28, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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#### DEPARTMENT OF AGRICULTURE

#### Agricultural Marketing Service

#### 7 CFR Part 932

[Docket No. FV03-932-1 FR]

#### Olives Grown in California; Increased Assessment Rate

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

**ACTION:** Final rule.