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.

* * * * *

Dated: April 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–10819 Filed 5–1–03; 8:45 am]

BILLING CODE 3410–02–P

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.

SUMMARY: This rule increases the assessment rate established for the California Olive Committee (committee) for the 2003 and subsequent fiscal years from $10.09 to $13.89 per ton of olives handled. The committee locally administers the marketing order regulating the handling of olives grown in California. Authorization to assess olive handlers enables the committee to incur expenses that are reasonable and necessary to administer 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.

EFFECTIVE DATE: May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Assistant, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: *Jay.Guerber@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 fixed herein will be applicable to all assessable olives beginning on January 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 2003 and subsequent fiscal years from $10.09 per ton to $13.89 per ton of olives.

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 the 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 2002 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 11, 2002, and unanimously recommended fiscal year 2003 expenditures of $1,230,590 and an assessment rate of $13.89 per ton of olives. In comparison, last year's budgeted expenditures were $1,428,585. The assessment rate of $13.89 is $3.80 higher than the $10.09 rate currently in effect.

Expenditures recommended by the committee for the 2003 fiscal year include $633,500 for marketing development, $347,090 for administration, and $250,000 for research. Budgeted expenses for these items in 2002 were $811,935 for marketing development, $339,650 for administration, and $250,000 for research.

The assessment rate recommended by the committee was derived by considering anticipated expenses, actual olive tonnage received by handlers, and additional pertinent factors. The California Agricultural Statistics Service (CASS) reported olive receipts for the 2002–03 crop year at 89,006 tons, which compares to 123,439 for the 2001–02 crop year. The reduction in the crop size for the 2002–03 crop year, due in large part to the alternate-bearing characteristics of olives, made it necessary for the committee to recommend an increase in the assessment rate from the current $10.09 per assessable ton to $13.89 per assessable ton, an increase of $3.80 per ton. Income derived from handler assessments, interest, and utilization of reserve funds will 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 assessable tonnage for the 2003 fiscal year is expected to be less than the receipts of 89,006 tons reported by CASS, because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. The quantity of olives that is expected to be diverted cannot be published in this document. The olive industry consists of only three handlers, two of which are much larger than the third, and the confidentiality of this handler information must be maintained to protect the proprietary business positions of each of the handlers.

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 dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether

modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2003 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,200 producers of olives in the production area and 3 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities. One of the handlers may be classified as a small entity, but the majority of the handlers may be classified as large entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2003 and subsequent fiscal years from $10.09 per ton to $13.89 per ton of olives. The committee unanimously recommended 2003 expenditures of $1,230,590 and an assessment rate of $13.89 per ton. The assessment rate of $13.89 per ton is $3.80 per ton higher than the 2002 rate. The quantity of olive receipts for the 2002–03 crop year was reported by CASS to be 89,006 tons, but the actual assessable tonnage for the 2003 fiscal year is expected to be lower. This is because some of the receipts are expected to be diverted by handlers to exempt outlets on which assessments are not paid. The amount of assessable tonnage cannot be reported in this document. The amount of the exempt tonnage must be kept confidential so the business position of each of the three olive handlers is not revealed. The $13.89 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income. Funds in the reserve will be kept within the maximum permitted by the order of about one fiscal year's expenses (§ 932.40).

Expenditures recommended by the committee for the 2003 fiscal year include $633,500 for marketing development, $347,090 for administration, and $250,000 for research. Budgeted expenses for these items in 2002 were $811,935 for marketing development, $339,650 for administration, and $250,000 for research.

Last year's olive receipts totaled 123,439 tons compared to this year's tonnage of 89,006. Although the committee decreased 2003 expenses, the significant decrease in olive production makes the higher assessment rate necessary.

The research expenditures will fund studies to develop chemical and scientific defenses to counteract a threat from the olive fruit fly in the California production area. Market development expenditures are lower because the committee's marketing program for 2003 is limited to consumer and nutritionist activities. The committee reviewed and unanimously recommended 2003 expenditures of $1,230,590, which reflects decreases in the research, market development, and administrative budgets.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive Subcommittee and the Market Development Subcommittee. Alternate spending levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry and the anticipated olive production. The assessment rate of $13.89 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, and additional pertinent factors.

A review of historical and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 2002–03 crop year is estimated to be approximately $672 per ton for canning fruit and $306 per ton for limited-use size fruit. Approximately 85 percent of a ton of olives are canning fruit sizes and 10 percent are limited-use sizes, leaving the balance as unusable cull fruit. Total grower revenue on 89,006 tons would then be $53,563,811 given the percentage of canning and limited-use sizes and current grower prices for those sizes. An assessment rate of $13.89 will generate estimated assessment revenue of approximately 2.3 percent of total grower revenue.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 11, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on March 10, 2003 (68 FR 11340). Copies of the proposed rule were also mailed or sent via facsimile to all olive handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending April 9, 2003, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the marketing order requires

that the rate of assessment for each fiscal year apply to all assessable olives handled during such period. The 2003 fiscal year began on January 1, 2003, and the committee needs sufficient funds to pay its authorized expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2003, an assessment rate of $13.89 per ton is established for California olives.

Dated: April 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–10818 Filed 5–1–03; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 740

Accuracy of Advertising and Notice of Insured Status

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is revising its rule governing advertising and the requirements for use of the official sign and official advertising statement regarding insured status. The revision modernizes and streamlines the rule for ease of reference and addresses the growing use of the Internet for member transactions and the use of trade names in advertising.

EFFECTIVE DATE: This rule is effective July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Dianne M. Salva, Staff Attorney, Division of Operations, Office of General Counsel, at the National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia, 22314, or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

On September 19, 2002, the NCUA Board (the Board) approved the publication of a proposal to update and streamline Part 740, NCUA's regulation requiring accuracy and honesty in insured credit union (CU) advertising and governing a CU's use of the official sign and official advertising statement to inform members of federal share insurance coverage. 67 FR 60604 (September 26, 2002).

The Official Sign: The regulation requires CUs to display the official sign, which sets out in large type ''NCUA'' and in smaller type states, ''Your savings federally insured to $100,000,'' at each teller station or window where insured account funds or deposits are normally received. The purpose of the rule is to ensure that, at the time they deposit funds or transact business with an insured CU, members are informed of the fact that federal share insurance applies to their accounts.

The Official Advertising Statement: The regulation, although containing various exemptions, also requires a CU to include the official advertising statement in any advertising including marketing materials in print, radio or television. The official advertising statement must state in substance, ''This credit union is federally insured by the National Credit Union Administration.'' Alternatively, the CU may use the short form advertising statement, ''Federally insured by NCUA'' with a reproduction of the official sign described above.

The proposal clarified the rule's application to Internet advertisements and member transactions on CU Web sites. It also incorporated legal interpretations permitting CUs to use trade or other names in advertisements and made other minor changes, including rewording it in a plain English style and placing the provisions regarding advertising excess insurance in a separate subsection.

II. Comments

NCUA received fourteen comments from the public. Seven commenters expressed their support for the amendment permitting the use of trade names in advertising. The proposal stated that, while CUs may use trade or other names in advertising, they must use their official charter name in all official or legal documents. The proposal did not include share certificates among the official or legal documents in which CUs must identify themselves with their official charter name. This was an inadvertent omission that has been corrected in the final rule. The purpose in excluding the use of trade names in official or legal documents is to ensure that members do not misinterpret the level of share insurance available to them. The Board agrees with a commenter who suggested that if a CU used the full charter name the first time it appears in a legal document and an acronym later in the same document members would be sufficiently informed about the identity of the CU and the availability of share insurance.

Thirteen commenters supported the requirement to use the official sign and official advertising statement on Internet Web sites, with five stating that the revised rule offered CUs flexibility and would not impose a significant burden. One commenter emphasized that the benefit to consumers would far outweigh any cost incurred by the credit union. Two state leagues stated that most of their credit unions were already in compliance.

Six commenters, while supportive of the proposal, suggested that NCUA permit CUs to alter the official sign's color and font sizes to ensure it is legible and visually prominent on an Internet screen. Although the proposed rule did not suggest any changes to the color or font size of the official sign, the Board agrees that the official sign must be legible to fulfill the purpose of the rule. The Board believes that additional flexibility may be helpful given the size constraints of an Internet screen and the rule's requirement that the sign appear on the same page where other information will also appear. For that reason, the Board is including in the final rule a provision that CUs may vary the font size of the text within the official sign to ensure the text is legible. The Board also recognizes that CUs may find the requirement in the current rule that the official sign appear in blue with white lettering to be unduly restrictive. Many CUs devote significant resources to the design and aesthetics of their Web sites, with a focus on attracting both new and existing members to view the information and transact business. Some commenters were concerned that the traditional colors might be less visible or contrast with CU Web site designs. The Board is most concerned that the message of the official sign is conveyed clearly. The Board also does not want CUs to be unnecessarily restricted in the color or design of their Web sites by the