

Hollow Road; then north on Dark Hollow Road to Tennessee Highway 30; then northeast on Tennessee Highway 30 to the Warren/Van Buren County line.

\* \* \* \* \*

*Williamson County.* That portion of the county lying northeast of a line beginning at the intersection of the Davidson/Williamson County line and U.S. Highway 31; then southwest on U.S. Highway 31 to U.S. Highway Business 431; then southeast on U.S. Highway Business 431 to Mack Hatcher Parkway; then north on Mack Hatcher Parkway to South Royal Oaks Boulevard; then northeast on South Royal Oaks Boulevard to Tennessee Highway 96; then east on Tennessee Highway 96 to Clovercroft Road; then northeast on Clovercroft Road to Wilson Pike; then north on Wilson Pike to Clovercroft Road; then northeast on Clovercroft Road to Rocky Fork Road; then east on Rocky Fork Road to the Rutherford/Williamson County line. Also, that portion of the county enclosed by a line beginning at the intersection of the Maury/Williamson County line and Tennessee Highway 246; then north on Tennessee Highway 246 to Thompson Station Road West; then east on Thompson Station Road West to Thompson Station Road East; then east on Thompson Station Road East to Interstate 65; then south on Interstate 65 to the Williamson/Maury County line.

\* \* \* \* \*

Done in Washington, DC, this 19th day of October 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-21003 Filed 10-24-07; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. APHIS-2006-0133]

RIN 0579-AC20

#### Importation of Unshu Oranges From the Republic of Korea Into Alaska

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations governing the importation of citrus fruit to allow fresh Unshu oranges from the Republic of Korea to be

imported into the State of Alaska under certain conditions. As a condition of entry, the oranges will have to be prepared for shipping using packinghouse procedures that include culling of damaged or diseased fruit and cleaning with high-pressure air or water in combination with brushing. In addition, the oranges will have to be accompanied by a phytosanitary certificate with an additional declaration stating that the oranges were inspected and found free from *Xanthomonas axonopodis* pv. *citri* and *Unaspis yanonensis*. The individual cartons or boxes in which the Unshu oranges are shipped will also have to be marked with a statement restricting their importation and distribution to the State of Alaska. This action will allow for the importation of Unshu oranges from the Republic of Korea into Alaska while continuing to provide protection against the introduction of quarantine pests.

**DATES:** Effective Date: November 26, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operations, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1231; (301) 734-8765.

#### SUPPLEMENTARY INFORMATION:

##### Background

Citrus canker is a disease that affects citrus and is caused by the infectious bacterium *Xanthomonas axonopodis* pv. *citri* (also known as *Xanthomonas campestris* pv. *citri* and *Xanthomonas citri*). Currently, the regulations in 7 CFR 319.28 (referred to below as the regulations) allow the importation of Unshu oranges (*Citrus reticulata* var. *unshu*) from certain areas in the Republic of Korea (South Korea) into certain areas of the United States under a permit and after the specified safeguards of a preclearance program have been met to prevent the introduction of citrus canker. However, the importation of Unshu oranges from South Korea was administratively suspended in 2002 due to the increased number of interceptions of the causal agent of citrus canker at various packinghouses in South Korea.

In 2005, the national plant protection organization (NPPO) of South Korea requested that the Animal and Plant Health Inspection Service (APHIS) allow the shipment of Unshu oranges into the State of Alaska until the pest risk of citrus canker from South Korea could be adequately mitigated for the rest of the United States.

On December 4, 2006, we published in the **Federal Register** (71 FR 70330-70335, Docket No. APHIS-2006-0133) a proposal<sup>1</sup> to allow the importation of fresh Unshu oranges from the Republic of Korea into the State of Alaska under certain conditions. As a condition of entry, we proposed that the oranges would have to be prepared for shipping using packinghouse procedures that include culling of damaged or diseased fruit and washing in a water bath. In addition, we proposed that the oranges would have to be accompanied by a phytosanitary certificate with an additional declaration stating that the oranges were inspected and found free from *Xanthomonas axonopodis* pv. *citri* and *Unaspis yanonensis*. The individual cartons or boxes in which the Unshu oranges are shipped would also have to be marked with a statement restricting their importation and distribution to the State of Alaska. This action was intended to allow for the importation of Unshu oranges from the Republic of Korea into Alaska while continuing to provide protection against the introduction of quarantine pests.

We solicited comments concerning our proposal for 60 days ending February 2, 2007. We received two comments by that date, both from domestic citrus industry groups. One of the commenters expressed concern that a pesticide not approved for use in the United States could be imported on fruit from South Korea. While the United States does not have direct control over pesticides that are used on food commodities such as Unshu oranges in other countries, there are regulations in the United States concerning the importation of food to ensure that commodities do not enter the United States containing illegal pesticide residues. Through section 408 of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) has the authority to establish, change, or cancel tolerances for food commodities. These tolerances are the maximum levels of pesticide residues that have been determined, through comprehensive safety evaluations, to be safe for human consumption. Tolerances apply to both food commodities that are grown in the United States and food commodities that are grown in other countries and imported into the United States. While EPA has no authority in a foreign country, the tolerance levels are enforced once the commodity enters the

<sup>1</sup> To view the proposed rule and the comments we received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0133>.

United States. Chemicals such as DDT that are banned in the United States do not have tolerances on food commodities. Federal Government food inspectors are responsible for monitoring food commodities that enter the United States to confirm that tolerance levels are not exceeded and that residues of pesticide chemicals that are banned in the United States are not present on the commodities. Tolerance levels for all chemicals that are acceptable for use on Unshu oranges may be found in EPA's regulations in 40 CFR 180.101 through 180.2020. Tolerance information can also be obtained at <http://www.epa.gov/pesticides/food/viewtols.htm>.

Both commenters expressed concern that the systems approach developed by South Korea was not stringent enough, given the difficulty of eradicating *X. axonopodis* pv. *citri* (citrus canker) and the potential risks from asymptomatic fruit. Concerns included the lack of requirements for worker training, equipment sanitation, and establishment of buffer zones. In particular, the commenters were concerned that the proposed rule did not mention inspection or sampling rates for citrus canker. As stated in the proposed rule, shipments of Unshu oranges to Alaska present minimal risk of introducing or disseminating citrus canker due to the lack of host material within Alaska and the lack of a suitable climate for establishment of the disease. For those reasons, and because visibly infected fruit will be culled at the packinghouse, we are not requiring a sampling regime for Unshu oranges within South Korea. In addition, fruit exposed to, but asymptomatic for, citrus canker is unlikely to have sufficient levels of viable bacteria to cause infection. However, a standard port of entry inspection rate of 2 percent would apply. APHIS has successfully operated similar programs of low risk for tropical fruit commodities imported into Alaska, such as sand pears and apples from Japan, avocados from Mexico, and sand pears from South Korea.

Both commenters also stated that, despite labeling restricting distribution of the fruit to Alaska, it may accidentally be redirected or sent through first-class mail to a citrus-producing State. As stated in the risk

management document, in the past 10 years, over 24 million Unshu oranges from South Korea have been imported and only one air shipment of misdirected fruit ended up in a citrus-producing State. That shipment was immediately redirected to a non-citrus-producing State. In order for the fruit to leave Alaska by ground transport, it would have to travel by truck or car via highway, and all agricultural shipments are inspected at the U.S.-Canada border. As citrus fruit is not grown in Canada or Alaska, import restrictions for non-U.S. citrus fruit would apply. Further, we consider the volume of fruit shipped in first-class mail to be too small to present a potential pest risk. The probability of potentially infected citrus fruit reaching areas where any disease could spread is very low.

Both commenters further expressed concern regarding the lack of a requirement for sodium hypochlorite or sodium orthophenyl phenol in the required water bath and concern that the water bath could contribute to the spread of citrus canker. As stated above, we believe shipments of Unshu oranges to Alaska present a minimal risk of introducing or disseminating citrus canker due to the lack of host material and the lack of a suitable climate for establishment of the disease; therefore requiring the use of a disinfectant wash is not necessary. In addition, because the water bath requirement is actually a combination high-pressure water spray and brushing intended to remove external insect pests, there is no standing water that can serve as a medium for transmitting infection. Alternately, forced air cleaning and brushing may be used in place of the water spray. We have amended the regulatory text in § 319.28(c)(1) to make that clear.

Finally, both commenters stated that U.S. inspectors should be present to oversee all aspects of South Korea's citrus export program. In a preclearance program, U.S. inspectors are required to be onsite in the country of export to oversee shipments to the United States. However, the program for importing Unshu oranges to Alaska from South Korea is not a preclearance program. Therefore, the presence of U.S. inspectors to oversee the program is not required and, based on the reasons

given in the proposed rule, is not necessary.

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 change discussed in this document.

#### Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

The United States is not a commercial producer of Unshu oranges (*Citrus reticulata* var. *unshui*). The United States does produce other mandarin varieties of *Citrus reticulata*, such as tangerines and Satsuma mandarins. Effects of the final rule on U.S. entities will depend on (1) the substitutability in Alaska of Unshu oranges for these other mandarin varieties, and (2) Alaska's share of the U.S. supply of the other mandarin varieties. We address these overriding issues before discussing small entities that may be affected.

Unshu orange prices are higher than the prices of U.S.-grown mandarin varieties, indicating that they are not close substitutes. Retail prices of Unshu oranges are approximately \$1.20 per pound, whereas other mandarin varieties, such as Satsuma, range from \$0.60 to \$1 per pound depending on the time of year.<sup>2</sup>

Clearly, the effects of the final rule with respect to Alaska's broadly defined demand for all mandarin varieties are most likely to be very limited. Rather, we expect reestablished imports from South Korea to compete for a share of Alaska's Unshu orange market.

Prior to the administrative suspension in 2002, South Korea and Japan were principal suppliers of Unshu oranges to the United States. It is estimated that Alaska consumes approximately 30 percent of the Unshu oranges imported from Japan. Quantities of Unshu oranges imported from South Korea and Japan, 1995 to 2005, are shown in table 1.

<sup>2</sup> Information on retail prices of Unshu oranges provided by Jerry Kraft of The Oppenheimer Group, the sole importer of Unshu oranges from Japan.

TABLE 1.—UNSHU ORANGE IMPORTS BY THE UNITED STATES FROM SOUTH KOREA AND JAPAN, 1995–2005

Year	South Korea	Japan
	Metric tons	
1995	50	231
1996	220	160
1997	1,190	143
1998	40	223
1999	380	342
2000	240	106
2001	1,434	291
2002	1,601	( <sup>1</sup> )
2003	.....	275
2004	.....	271
2005	.....	256

Source: USDA, APHIS, International Services.

<sup>1</sup> In 2002, we amended the regulations to allow Unshu oranges from Honshu Island, Japan, to be imported into the previously prohibited citrus-producing States of Arizona, California, Florida, Hawaii, Louisiana, and Texas. That same rule imposed a fumigation requirement for all Unshu oranges from Honshu Island, which seriously curtailed the market for that fruit in non-citrus producing States. As a result, there were no exports of Unshu oranges from Japan to the United States in 2002. We subsequently amended the regulations to apply the fumigation requirement only to fruit bound for citrus-producing States, and exports resumed in 2003.

Unshu orange imports from Japan between 1995 and 2005 averaged 238 metric tons per year.<sup>3</sup> Average imports of Unshu oranges from South Korea between 1995 and 2002 were 644 metric tons per year, with significant year-to-year fluctuations and the average for 2001 and 2002 jumping to 1,518 metric tons. Imports of Unshu oranges from Japan have maintained a more steady supply, even in the more recent years during which Unshu oranges from South Korea have been administratively suspended. From this data, it is not apparent that South Korean supplies will significantly displace Unshu orange imports from Japan.

According to the pest risk assessment prepared for this rulemaking, the quantity of Unshu oranges that will be imported from South Korea into Alaska each year is estimated to be between 200 and 2,000 metric tons (440,925 and 4,409,245 pounds), based on projected imports of between 10 and 100 standard 40-foot containers.<sup>4</sup> The lower end of this range of imports will be comparable to recent import levels from Japan.

<sup>3</sup> This average does not include 2002, since it is likely that Japan would have exported Unshu oranges to the United States in that year if the fumigation requirement described in footnote 1 of table 1 had not been in place.

<sup>4</sup> USDA, APHIS, PPQ-CHPST, "A Qualitative Pest Risk Analysis for the Importation of Fresh Unshu Orange Fruit (*Citrus reticulata* Blanco var. *unshu* Swingle) from the Republic of Korea," May 25, 2006, pg 33.

Based upon the past shipments detailed in table 1, we anticipate that imports of Unshu oranges from South Korea will not exceed 75 containers (1,500 metric tons) per annum. The historical import data detailed in table 1 suggest that South Korean supplies will not significantly displace Japanese Unshu oranges on the Alaskan market.

Our expectation is that the final rule will have little effect on U.S. producers of mandarin varieties such as tangerines and Satsumas. Any impact for these producers will be small, given that the various mandarin varieties do not appear to be close substitutes for Unshu oranges. Moreover, only sales to Alaska will be affected. However, recognizing that our information for determining possible effects of the final rule is incomplete, we present here data on U.S. tangerine trade and production.

The United States is a net importer of mandarins (including Satsumas and tangerines). In 2005, the United States imported 209.4 million pounds of mandarins (including Satsumas and tangerines) with approximately 91 percent arriving from Spain. In that same year, the United States exported approximately 48.1 million pounds of mandarins (including Satsumas and tangerines). Canada is the largest importer of U.S. fresh mandarins, accounting for 52 percent of U.S. exports. The second and third largest importers of U.S. mandarins are South Korea and Japan, accounting for

approximately 38 and 6 percent of exports, respectively.<sup>5</sup> U.S. imports of tangerines experienced an average increase of 17.8 percent annually over the last decade while exports have increased an average of 5.9 percent.<sup>6</sup> Domestic production accounted for approximately 80 percent of domestic fresh consumption in 2005.<sup>7</sup> The United States relies on imports of mandarins to supplement domestic production in satisfying domestic demand. Fresh utilization of U.S. mandarin and tangerine production only accounts, on average, for 70 percent of total utilized production annually.<sup>8</sup> U.S. grower revenue from fresh tangerine production in 2004–05 was approximately \$107.4 million.<sup>9</sup>

U.S. tangerine production, imports, and domestic supplies are shown in table 2. Net imports were 20 percent of domestic supply in 2004 to 2005.

<sup>5</sup> Source: Global Trade Atlas.

<sup>6</sup> Source: USDA, FAS, PS&D Online. "Fresh Tangerines: Production, Supply and Distribution in selected Countries," <http://www.fas.usda.gov/psdonline/psdDownload.aspx>.

<sup>7</sup> The proportion of domestic fresh consumption attributed to U.S. production is production less exports and processed utilization. Data Source: USDA ERS Briefing Room, Fruit and Tree Nut Yearbook, 2005.

<sup>8</sup> USDA, ERS Briefing Room, *Fruit and Tree Nut Yearbook*, 2005.

<sup>9</sup> Florida Agricultural Statistics Service (FASS), National Agricultural Statistics Service (NASS), USDA, "Citrus Summary 2004–05," February 2006.

TABLE 2.—U.S. FRESH TANGERINE PRODUCTION AND IMPORTATION, SEASONS 1999–2000 THROUGH 2004–05

Year	Production <sup>a</sup>	Net imports <sup>b</sup>	Supply <sup>c</sup>
	Metric tons		
1999–00 .....	298,464	68,185	366,649
2000–01 .....	266,712	85,728	352,440
2001–02 .....	296,649	37,261	333,910
2002–03 .....	289,392	69,164	358,556
2003–04 .....	295,742	72,753	368,495
2004–05 .....	254,919	63,944	318,863

Data Source: USDA/ERS Briefing Room, *Fruit and Tree Nut Yearbook*, 2005.

<sup>a</sup> Excludes processed fruit.

<sup>b</sup> Net imports are imports minus exports.

<sup>c</sup> U.S. production (excluding processed utilization) plus net imports.

The small business size standard for tangerine groves, as identified by the Small Business Administration (SBA) based upon the North American Industry Classification System (NAICS) code 111320, is \$750,000 or less in annual receipts.<sup>10</sup>

While available data do not provide the size distribution of U.S. tangerine farms by annual receipts, it is reasonable to assume that the majority of the operations are small businesses by SBA standards.<sup>11</sup> According to the 2002 Census of Agriculture data, there were a total of 1,731 tangerine operations in the United States in 2002.<sup>12</sup> It is estimated that approximately 93 percent of all citrus-producing farms had annual sales in 2002 of \$500,000 or less.

If Unshu oranges and U.S.-grown mandarin varieties were close substitutes, then U.S. entities could be affected to the extent that Unshu orange imports from South Korea would displace sales in Alaska of the U.S.-grown mandarin varieties. Small entities would be affected, since they comprise a substantial number of the producers of mandarin varieties, as indicated by the data on tangerine operations. However, even if all Unshu orange imports from South Korea were to directly replace consumption of U.S.-grown tangerines in Alaska, the effect on U.S. producers will be very minor. Under such a scenario, annual imports of Unshu oranges from South Korea of 2,000 metric tons (the upper limit of the projected range of imports) will displace less than 1 percent of fresh tangerines produced by U.S. operations in 2004–05. We emphasize that even a small

impact for U.S. producers such as this is highly unlikely.

We expect that any product displacement that may occur as a result of the changes will be borne by other foreign suppliers of Unshu oranges, in particular Japan’s exporters. However, we do not expect any significant product displacement as a result of South Korean supplies. Alaska’s Unshu orange consumers may benefit to the extent that the competition results in price declines.

An alternative to this final rule was to continue with the 2002 administrative suspension of the importation of Unshu oranges from South Korea into all parts of the United States, including Alaska. Continuing the suspension of South Korean Unshu orange imports into Alaska is not a satisfactory alternative to the final rule. The final rule’s specified mitigation measures will ensure a low risk of introduction of citrus canker and *Diaspidid* scale into the United States. Resumption of imports will reestablish competition with Japanese suppliers, benefitting U.S. consumers but with little if any expected effect on U.S. producers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12988**

This final rule allows fresh Unshu oranges to be imported into the State of Alaska from South Korea. State and local laws and regulations regarding Unshu oranges 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 0579–0314.

**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) 734–7477.

**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 319.28 is amended as follows:

- a. By redesignating paragraphs (c) through (i) as paragraphs (d) through (j), respectively.
- b. By adding a new paragraph (c) to read as set forth below.
- c. By revising newly redesignated paragraph (f) to read as set forth below.

<sup>10</sup> Based upon 2002 Census of Agriculture, State Data and the “Small Business Size Standards by NAICS Industry,” Code of Federal Regulations, Title 13, Chapter 1.

<sup>11</sup> Based upon 2002 Census of Agriculture, State Data.

<sup>12</sup> The number of tangerine farms in the United States, as reported by the 2002 Census of Agriculture, includes operations that produced tangerines for processed utilization.

**§ 319.28 Notice of quarantine.**

\* \* \* \* \*

(c) The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, Swingle [*Citrus unshiu* Marcovitch, Tanaka]), also known as Satsuma mandarin, grown in the Republic of Korea and imported under permit into the State of Alaska under the following conditions:

(1) The Unshu oranges must be prepared for shipping using packinghouse procedures that include culling damaged or diseased fruit and cleaning the fruit with high-pressure air or water spray in combination with brushing.

(2) Each shipment of Unshu oranges must be accompanied by a phytosanitary certificate from the national plant protection organization of the Republic of Korea bearing the following additional declaration: "These oranges were inspected and are considered to be free from citrus canker (*Xanthomonas axonopodis* pv. *citri*) and arrowhead scale (*Unaspis yanonensis*).

(3) The individual boxes in which the oranges are shipped must be marked with the following: "These oranges may not be shipped to or distributed in any State other than Alaska."

\* \* \* \* \*

(f) Importations allowed in paragraphs (b), (c), (d), and (e) of this section shall be subject to the permit and other requirements under the regulations in Subpart-Fruits and Vegetables of this part.

\* \* \* \* \*

(Approved by the Office of Management and Budget under control number 0579-0314)

Done in Washington, DC, this 19th day of October, 2007.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E7-21007 Filed 10-24-07; 8:45 am]

**BILLING CODE 3410-34-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1206**

[Docket No.: AMS-FV-07-0042; FV-07-702 FR]

**Mango Promotion, Research, and Information Order; Amendment to Term of Office Provision**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a

final rule, without change, an interim final rule that modifies the term of office provision of the Mango Promotion, Research, and Information Order (Order) so that the term of office and term limit for the two wholesaler and/or retailer positions of the National Mango Board (Board) be the same as that of other members. Specifically, the amendment modifies the term of office from one year to three years, and modifies the term limit for these positions from a maximum of three consecutive one-year terms to a maximum of two consecutive three-year terms in order to conform to the requirements of the Commodity Promotion, Research, and Information Act of 1996 (Act).

**DATES:** *Effective Date:* October 26, 2007.

**FOR FURTHER INFORMATION CONTACT:**

Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244-Room 0634-S, Washington, DC 20250-0244; telephone (202) 720-9915 or (888) 720-9917 (toll free); or e-mail: [kimberly.coy@usda.gov](mailto:kimberly.coy@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Mango Promotion, Research, and Information Order [7 CFR Part 1206]. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411-7425].

**Executive Order 12866**

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is not intended to have a retroactive effect and will not affect or preempt any other State or Federal law authorizing promotion or research relating to an agricultural commodity.

The Act provides that any person subject to an order may file a written petition with the Department of Agriculture (Department) if they believe that the order, any provision of the order, or any obligation imposed in connection with the order, is not established in accordance with law. In any petition, the person may request a modification of the order or an exemption from the order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the petitioner resides or conducts business shall have the

jurisdiction to review the Department's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

**Regulatory Flexibility Analysis and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities and has prepared this final regulatory impact analysis on a substantial number of small entities. 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.

The Small Business Administration defines, in 13 CFR Part 121, small agricultural producers as those having annual receipts of no more than \$750,000 and small agricultural service firms as having receipts of no more than \$6.5 million. First handlers, importers, wholesalers, and retailers would be considered agricultural service firms. There are approximately 5 first handlers and 55 importers subject to and assessed under the Order. The majority of these first handlers and importers would be considered small businesses while wholesalers and retailers would not.

First handlers and importers who market or import less than 500,000 pounds of mangos annually are exempt from the Order. Mangos that are exported out of the United States also are exempt from assessment. In addition, domestic producers, foreign producers, wholesalers, and retailers are not subject to or assessed under the Order, but such individuals are eligible to serve on the Board along with importers and first handlers.

The Mango Promotion, Research, and Information Order, which became effective November 4, 2004, is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) [7 U.S.C. 7411-7425]. Pursuant to Section 515(b) of the Act, the Order provides for the establishment of a Board comprised of eight importers, one first handler, two domestic producers, seven foreign producers, and two non-voting wholesalers and/or retailers. The Board is responsible for carrying out promotion, research, and information activities intended to develop, maintain, and increase the demand of mangos in the United States. Appointments to the Board are made by the Secretary of Agriculture from a slate of nominated candidates.

Section 515(b)(5) of the Act provides that members and alternates of a board