

**Subpart C—[Reserved]**

**Subpart D—Responsibilities of Agency Awarding Officials**

2339.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

**Subpart E—Violations of this Part and Consequences**

2339.500 Who in the Social Security Administration determines that a recipient other than an individual violated the requirements of this part?

**Subpart F—[Reserved]**

**Authority:** 41 U.S.C. 701–707.

**§ 2339.10 What does this part do?**

This part requires that the award and administration of Social Security Administration (SSA) grants and

cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as “the Act”) that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (subparts A through F of 2 CFR part 182) for SSA’s grants and cooperative agreements; and

(b) Establishes SSA’s policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government-wide implementing regulations.

**§ 2339.20 Does this part apply to me?**

This part and, through this part, pertinent portions of the OMB guidance

in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are—

- (a) A recipient of an SSA grant or cooperative agreement; or
- (b) An SSA awarding official.

**§ 2339.30 What policies and procedures must I follow?**

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table.

Section of OMB guidance in 2 CFR	Section in this part where supplemented, 2 CFR	What the supplementation clarifies
(1) 182.225(a) .....	§ 2339.225	Who in SSA a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.
(2) 182.300(b) .....	§ 2339.300	Who in SSA 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) 182.500 .....	§ 2339.500	Who in SSA 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) 182.505 .....	§ 2339.505	Who in SSA 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.* Our policies and procedures are the same as those in the OMB guidance for any section not included in the table in paragraph (b) of this section.

**Subpart A—[Reserved.]**

**Subpart B—Requirements for Recipients Other Than Individuals**

**§ 2339.225 Who in the Social Security Administration 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 Commissioner of Social Security or designee.

**Subpart C—[Reserved.]**

**Subpart D—Responsibilities of Agency Awarding Officials**

**§ 2339.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?**

You must include the following term or condition in the award:

*Drug-free workplace.* You, as the recipient, must comply with drug-free workplace requirements in Subpart B, 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**

**§ 2339.500 Who in the Social Security Administration determines that a recipient other than an individual violated the requirements of this part?**

The Commissioner of Social Security or designee will make the determination.

**Subpart F—[Reserved]**

**Title 20—Employees’ Benefits**

**Chapter III—Social Security Administration**

**PART 439—[REMOVED]**

■ 2. Remove Part 439.

[FR Doc. 2010–13093 Filed 6–2–10; 8:45 am]

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 916 and 917**

[Doc. No. AMS–FV–09–0091; FV10–916/917–2 FR]

**Nectarines and Peaches Grown in California; Increased Assessment Rates**

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) for the 2010–11 and subsequent fiscal periods from \$0.0175 to \$0.0280 per 25-pound container or container equivalent of nectarines handled, and from \$0.0025 to \$0.026 per 25-pound container or container equivalent of peaches handled. The Committees locally administer the marketing orders which regulate the handling of nectarines and peaches grown in California. Assessments upon nectarine and peach handlers are used by the Committees to fund reasonable and necessary expenses of the programs. The fiscal periods run from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* June 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Simmons, Marketing Specialist, or Kurt 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: [Jerry.Simmons@ams.usda.gov](mailto:Jerry.Simmons@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto: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](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the “orders.” The orders are 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 orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be

applicable to all assessable nectarines and peaches beginning on March 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 rates established for the Nectarine Administrative Committee (NAC) for the 2010–11 and subsequent fiscal periods from \$0.0175 to \$0.0280 per 25-pound container or container equivalent of nectarines and for the Peach Commodity Committee (PCC) for the 2010–11 and subsequent fiscal periods from \$0.0025 to \$0.026 per 25-pound container or container equivalent of peaches.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of NAC and PCC are producers of California nectarines and peaches, respectively. They are familiar with the Committees’ needs, and with the costs for goods and services in their local area and are, therefore, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

#### **NAC Assessment and Expenses**

For the 2009–10 and subsequent fiscal periods, the NAC recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The NAC met on December 10, 2009, and unanimously recommended 2010–11 expenditures of \$1,448,101 and an assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines. In comparison, the budgeted expenditures for the 2010–11 fiscal period were \$1,797,290. The assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines is \$0.0105 higher than the rate currently in effect. The NAC recommended a higher assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors.

The major expenditures recommended by the NAC for the 2010–11 fiscal period include \$291,377 for administration, \$157,016 for production research, and \$999,708 for domestic and international programs. In comparison, budgeted expenses for these items in 2008–09 were \$319,965.32 for administration, \$349,447.55 for production research, and \$1,127,877.33 for domestic and international programs.

The assessment rate recommended by the NAC was derived after considering anticipated fiscal year expenses; estimated assessable nectarines of 16,200,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the NAC into the 2011–12 fiscal period. Therefore, the NAC recommended an assessment rate of \$0.0280 per 25-pound container or container equivalent.

Combining expected assessment revenue of \$453,600 with the \$641,840 carryover available from the 2009–10 fiscal period and other income such as interest should be adequate to meet Committee needs. The assessment rate is also likely to provide a \$116,486 reserve, which may be used to cover administrative expenses prior to the beginning of the 2011–12 shipping season as provided in the order (§ 916.42).

#### **PCC Assessment and Expenses**

For the 2009–10 and subsequent fiscal periods, the PCC recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The PCC met on December 10, 2009, and recommended 2010–11 expenditures of \$1,839,651 and an assessment rate of \$0.026 per 25-pound container or container equivalent of

peaches. In comparison, budgeted expenditures for the 2009–10 fiscal period were \$1,885,250. The assessment rate of \$0.026 per 25-pound container or container equivalent of peaches is \$0.0235 higher than the rate currently in effect. The PCC recommended a higher assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors.

The major expenditures recommended by the PCC for the 2010–11 fiscal period include \$368,756 for administration, \$199,662 for production research, and \$1,271,233 for domestic and international programs. In comparison, budgeted expenses for these items in 2009–10 were \$334,058 for administration, \$366,920 for production research, and \$1,184,272 for domestic and international programs.

The assessment rate recommended by the PCC was derived after considering anticipated fiscal year expenses; estimated assessable peaches of 20,600,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the PCC into the 2011–12 fiscal period. Therefore, the PCC recommended an assessment rate of \$0.026 per 25-pound container or container equivalent.

Combining expected assessment revenues of \$535,600 with the \$854,699 carryover available from the 2009–10 fiscal period and other income such as interest should be adequate to meet Committee needs. The assessment rate is also likely to provide a \$147,502 reserve, which may be used to cover administrative expenses prior to the beginning of the 2011–12 shipping season as provided in the order (§ 917.38).

#### **Continuance of Assessment Rates**

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

Although these assessment rates will be in effect for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees' Web site at <http://www.eatcaliforniafruit.com> or USDA. Committee meetings are open to the public and interested persons may

express their views at these meetings. USDA will evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rate for each Committee is needed. Further rulemaking will be undertaken as necessary. The Committees' 2010–11 fiscal period budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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.

There are approximately 101 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 475 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000. A majority of these handlers and producers may be classified as small entities.

The Committees' staff has estimated that there are fewer than 50 handlers in the industry who would not be considered small entities. For the 2009 season, the committees' staff estimated that the average handler price received was \$11.50 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 608,696 containers to have annual receipts of \$7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2009 season, the Committees' staff estimates that small handlers represent approximately 50 percent of all the handlers within the industry.

The Committees' staff has also estimated that fewer than 50 producers

in the industry would not be considered small entities. For the 2009 season, the Committees estimated the average producer price received was \$6.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 115,385 containers of nectarines and peaches to have annual receipts of \$750,000. Given data maintained by the Committees' staff and the average producer price received during the 2009 season, the Committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

With an average producer price of \$6.50 per container or container equivalent, and a combined packout of nectarines and peaches of 37,263,343 containers, the value of the 2009 packout is estimated to be \$242,211,730. Dividing this total estimated grower revenue figure by the estimated number of producers (475) yields an estimate of average revenue per producer of about \$509,919 from the sales of peaches and nectarines.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively.

This rule increases the assessment rates established for the NAC for the 2010–11 and subsequent fiscal periods from \$0.0175 to \$0.0280 per 25-pound container or container equivalent of nectarines and for the PCC for the 2010–11 and subsequent fiscal periods from \$0.0025 to \$0.026 per 25-pound container or container equivalent of peaches.

The NAC recommended 2010–11 fiscal period expenditures of \$1,448,101 for nectarines and an assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines. The assessment rate of \$0.0280 is \$0.0105 higher than the rate currently in effect. The PCC recommended 2010–11 fiscal period expenditures of \$1,839,651 for peaches and an assessment rate of \$0.026 per 25-pound container or container equivalent of peaches. The assessment rate of \$0.026 is \$0.0235 higher than the rate currently in effect.

#### **Analysis of NAC Budget**

The quantity of assessable nectarines for the 2010–11 fiscal period is estimated at 16,200,000 25-pound containers or container equivalents. Thus, the \$0.0280 rate should provide \$453,600 in assessment income. Income

derived from handler assessments, along with income from other sources and funds from the NAC's reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the NAC for the 2010–11 year include \$291,377 for administration, \$157,016 for production research, and \$999,708 for domestic and international programs. Budgeted expenses in 2009–10 were \$319,965.32 for administration, \$349,447.55 for production research, and \$1,127,877.33 for domestic and international programs.

The NAC recommended an increased 2010–11 fiscal period assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors. Income generated from the higher assessment rate combined with reserve funds should be adequate to cover anticipated 2010–11 expenses.

#### Analysis of PCC Budget

The quantity of assessable peaches for the 2010–11 fiscal year is estimated at 20,600,000 25-pound containers or container equivalents. Thus, the \$0.026 rate should provide \$535,600 in assessment income.

The major expenditures recommended by PCC for the 2010–11 year include \$368,756 for administration, \$199,662 for production research, and \$1,271,233 for domestic and international programs. Budgeted expenses in 2009–10 were \$334,058 for administration, \$366,920 for production research, and \$1,184,272 for domestic and international programs.

The PCC recommended an increased 2010–11 fiscal period assessment rate because the 2009 crop was lower than expected due to a large number of tree pullouts and other economic factors. Income generated from the higher assessment rate combined with reserve funds should be adequate to cover anticipated 2010–11 expenses.

#### Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the Committees considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the orders.

Each of the Committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income, prior to recommending a final assessment rate. The NAC decided that an assessment rate of \$0.0280 per 25-pound

container or container equivalent will allow it to meet its 2010–11 fiscal period expenses and carryover an operating reserve of about \$116,486 which is in line with the Committee's financial needs. The PCC decided that an assessment rate of \$0.026 per 25-pound container or container equivalent will allow it to meet its 2010–11 fiscal period expenses and carryover an operating reserve of \$147,502. These assessment rates would allow them to meet their 2010–11 fiscal period expenses and carryover necessary reserves to finance operations before 2011–12 fiscal period assessments are collected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for nectarines and peaches for the 2010–11 season could range between \$6.00 and \$8.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2010–11 fiscal period as a percentage of total grower revenue could range between 0.33 and 0.47 percent.

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 will be offset by the benefits derived by the operation of the marketing order. In addition, the Committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and were encouraged to participate in the Committees' deliberations on all issues. Like all Committee meetings, the December 10, 2009, meetings were public meetings and entities of all sizes were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying 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.

A proposed rule concerning this action was published in the **Federal Register** on April 5, 2010 (75 FR 17072). Copies of the proposed rule were also mailed or sent via facsimile to all nectarine and peach handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 5, 2010, 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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter 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 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: (1) The 2010–11 fiscal period begins March 1, 2010, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (2) the Committees need to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Committees at public meetings and is similar to other assessment rate actions issued in past years.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### **PART 916—NECTARINES GROWN IN CALIFORNIA**

■ 2. Section 916.234 is revised to read as follows:

##### **§ 916.234 Assessment rate.**

On and after March 1, 2010, an assessment rate of \$0.0280 per 25-pound container or container equivalent of nectarines is established for California nectarines.

#### **PART 917—PEACHES GROWN IN CALIFORNIA**

■ 3. Section 917.258 is revised to read as follows:

##### **§ 917.258 Assessment rate.**

On and after March 1, 2010, an assessment rate of \$0.026 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: May 27, 2010.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–13333 Filed 6–2–10; 8:45 am]

**BILLING CODE 3410–02–P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Part 1218**

[Document Number AMS–FV–09–0022; FV–09–705]

#### **Blueberry Promotion, Research, and Information Order; Increase Membership**

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

**ACTION:** Final rule.

**SUMMARY:** This rule adds two importer members and their alternates to the U.S. Highbush Blueberry Council (Council) to reflect changes in the quantity of highbush blueberry imports in the past three years. The change was proposed by the Council in accordance with the provisions of the Blueberry Promotion, Research, and Information Order (Order) which is authorized by the Commodity Promotion, Research, and Information Act of 1996 (Act). The Order requires that the Council review the geographical distribution of the United States production and the quantity of imports of highbush blueberries at least every

five years. As a result of these changes, the total Council membership will increase from 14 to 16 members and their alternates. In addition, this rule increases the quorum minimum from seven to nine members.

**DATES:** *Effective Date:* June 4, 2010.

#### **FOR FURTHER INFORMATION CONTACT:**

Jeanette Palmer, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, U.S. Department of Agriculture, Stop 0244, 1400 Independence Avenue, SW., Room 0632–S, Washington, DC 20250–0244; *telephone:* (888) 720–9917; *facsimile:* (202) 205–2800; *or electronic mail:* [Jeanette.Palmer@ams.usda.gov](mailto:Jeanette.Palmer@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Blueberry Promotion, Research, and Information Order [7 CFR part 1218]. 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 (OMB) 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 retroactive effect. Section 524 of the Act provides that the Act shall 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 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. 601–612], AMS has considered the economic impact of this action on the small

producers, first handlers, importers, and exporters that would be affected by this rule. The purpose of the RFA is to fit regulatory action to scale on businesses subject to such action so that small businesses will not be 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 those having annual receipts of no more than \$7 million. There are approximately 2,000 producers, 200 first handlers, 50 importers, and 4 exporters of highbush blueberries subject to the program. Most of the producers will be classified as small businesses under the criteria established by the Small Business Administration. Most importers, first handlers, and exporters will not be classified as small businesses. Producers who produce less than 2,000 pounds of highbush blueberries annually are exempt from this program. Importers who import less than 2,000 pounds of fresh and frozen highbush blueberries annually are also exempt from this program.

The Department's National Agricultural Statistics Service (NASS) data for the 2008 crop year shows that about 5,790 pounds of highbush blueberries were produced per acre. The 2008 average grower price for highbush blueberries published by NASS was \$1.54 per pound. Thus, the value of highbush blueberry production per acre in 2008 averaged about \$8,917 (5,790 pounds multiplied by \$1.54). At that average value, a producer would have to farm over 84 acres to receive an annual income from highbush blueberries of \$750,000 (\$750,000 divided by \$8,916 per acre equals 84). Accordingly, as previously noted, a majority of the producers of highbush blueberries will be classified as small businesses.

According to the Council, assessments received in 2008 reached \$2.4 million. Of the total, the Council received \$830,222 from import assessment collections which is approximately 35 percent of the Council's total budget. For 2009, the Council received \$3.03 million from assessment collections. Of the total, the Council received approximately \$1 million from import assessment collections which is approximately 34 percent of the Council's total budget. The Council projected import assessment collections at \$1 million for the 2010 budget year.

According to the Council's World Blueberry Acreage and Production Report, highbush blueberry acreage in North America increased from 71,075 acres in 2005 to an estimated 95,607