

fiscal year that was posted in accordance with Equal Employment Opportunity Regulations at subpart G of title 29 of the Code of Federal Regulations (implementing section 301(c)(1)(B) of the No FEAR Act);

(5) Whether or not in connection with cases in Federal court, the number of employees in each fiscal year disciplined as defined in § 724.102 of subpart A of this part in accordance with any agency policy described in paragraph (a)(6) of this section. The specific nature, e.g., reprimand, etc., of the disciplinary actions taken must be identified.

(6) A detailed description of the agency's policy for taking disciplinary action against Federal employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Protection Laws or for conduct that constitutes another prohibited personnel practice revealed in connection with agency investigations of alleged violations of these laws;

(7) An analysis of the information provided in paragraphs (a)(1) through (6) of this section in conjunction with data provided to the Equal Employment Opportunity Commission in compliance with 29 CFR part 1614 subpart F of the Code of Federal Regulations. Such analysis must include:

(i) An examination of trends;

(ii) Causal analysis;

(iii) Practical knowledge gained through experience; and

(iv) Any actions planned or taken to improve complaint or civil rights programs of the agency with the goal of eliminating discrimination and retaliation in the workplace;

(8) For each fiscal year, any adjustment needed or made to the budget of the agency to comply with its Judgment Fund reimbursement obligation(s) incurred under § 724.103 of subpart A of this part; and

(9) The agency's written plan developed under § 724.203(a) of subpart B of this part to train its employees.

(b) The first report also must provide information for the data elements in paragraph (a) of this section for each of the five fiscal years preceding the fiscal year on which the first report is based to the extent that such data is available. Under the provisions of the No FEAR Act, the first report was due March 30, 2005 without regard to the status of the regulations. Thereafter, under the provisions of the No FEAR Act, agency reports are due annually on March 30th. Agencies that have submitted their reports before these regulations became final must ensure that they contain data elements 1 through 8 of paragraph (a) of

this section and provide any necessary supplemental reports by April 25, 2007. Future reports must include data elements 1 through 9 of paragraph (a) of this section.

(c) Agencies must provide copies of each report to the following:

- (1) Speaker of the U.S. House of Representatives;
- (2) President Pro Tempore of the U.S. Senate;
- (3) Committee on Governmental Affairs, U.S. Senate;
- (4) Committee on Government Reform, U.S. House of Representatives;
- (5) Each Committee of Congress with jurisdiction relating to the agency;
- (6) Chair, Equal Employment Opportunity Commission;
- (7) Attorney General; and
- (8) Director, U.S. Office of Personnel Management.

#### Subpart D—Best Practices

Sec.	
724.401	Purpose and scope.
724.402	Best practices study.
724.403	Advisory guidelines.
724.404	Agency obligations

#### Subpart D—Best Practices

##### § 724.401 Purpose and scope.

This subpart implements Title II of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 concerning the obligation of the President or his designee (OPM) to conduct a comprehensive study of best practices in the executive branch for taking disciplinary actions against employees for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws and the obligation to issue advisory guidelines for agencies to follow in taking appropriate disciplinary actions in such circumstances.

##### § 724.402 Best practices study.

(a) OPM will conduct a comprehensive study in the executive branch to identify best practices for taking appropriate disciplinary actions against Federal employees for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws.

(b) The comprehensive study will include a review of agencies' discussions of their policies for taking such disciplinary actions as reported under § 724.302 of subpart C of this part.

##### § 724.403 Advisory guidelines.

OPM will issue advisory guidelines to Federal agencies incorporating the best practices identified under § 724.402 that

agencies may follow to take appropriate disciplinary actions against employees for conduct that is inconsistent with Federal Antidiscrimination Laws and Whistleblower Laws.

##### § 724.404 Agency obligations.

(a) Within 30 working days of issuance of the advisory guidelines required by § 724.403, each agency must prepare a written statement describing in detail:

(1) Whether it has adopted the guidelines and if it will fully follow the guidelines;

(2) If such agency has not adopted the guidelines, the reasons for non-adoption; and

(3) If such agency will not fully follow the guidelines, the reasons for the decision not to do so and an explanation of the extent to which the agency will not follow the guidelines.

(b) Each agency's written statement must be provided within the time limit stated in paragraph (a) of this section to the following:

- (1) Speaker of the U.S. House of Representatives;
- (2) President Pro Tempore of the U.S. Senate;
- (3) Chair, Equal Employment Opportunity Commission;
- (4) Attorney General; and
- (5) Director, U.S. Office of Personnel Management.

[FR Doc. E6-22242 Filed 12-27-06; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. AMS-FV-06-0189; FV07-916/917-1 IFR]

#### Nectarines and Peaches Grown in California; Revision of Regulations on Production Districts, Committee Representation, and Nomination Procedures

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule revises the administrative rules and regulations that define production districts, allocate committee membership, and specify nomination procedures for the Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees). The committees are responsible for local administration of the Federal marketing

orders (orders) for fresh nectarines and peaches grown in California, respectively. This rule also revises the committees' mailing address. These revisions are necessary to bring the orders' administrative rules and regulations into conformance with the recently amended order provisions.

**DATES:** Effective January 1, 2007; comments received by February 26, 2007 will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Laurel May, Marketing Specialist, 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: [Laurel.May@usda.gov](mailto:Laurel.May@usda.gov); or Kurt Kimmel, Regional Manager, 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 E-mail: [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order Nos. 916 and 917 (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. This rule is not intended to have retroactive effect. 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. A 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 removes or revises obsolete language in the orders' administrative rules and regulations pertaining to the alignment of production districts; the allocation of committee membership; and the nomination processes for NAC, Shipper's Advisory Committee, PCC, and Control Committee members. This rule also changes the PCC's business address by removing reference to the Control Committee in order to reflect current committee operations. These changes are needed to bring the orders' administrative rules and regulations into conformity with amendments to the orders' provisions recently approved by nectarine and peach growers. These changes were unanimously recommended by the committees at their meetings on August 31, 2006.

#### **Production Districts and Committee Membership Allocation**

##### *Nectarine Administrative Committee*

Section 916.12 of the nectarine order establishes the nectarine production districts into which the state of California has been divided. Section 916.20 establishes the size of the NAC and the allocation of NAC membership to the districts defined in § 916.12. In addition, § 916.31 provides authority for the NAC to recommend changes to district boundaries and to reapportion

committee representation to reflect shifts in production within the state as necessary. The changes to district boundaries and membership reapportionment recommended by the NAC are reflected in §§ 916.105 and 916.107 of the order's administrative rules and regulations.

A final rule amending §§ 916.12 and 916.20 of the nectarine order was published in the **Federal Register** on July 21, 2006 (71 FR 41345). The amendments, which will become effective on January 1, 2007, redefine the nectarine production districts, increase the size of the NAC from eight to thirteen members, and reallocate committee membership among the new districts. On January 1, 2007, §§ 916.105 and 916.107 do not reflect the district boundaries and committee membership allocation as defined in the amended order. Therefore, the NAC recommended removing the obsolete sections when the amendments become effective. This rule removes those sections. Any subsequent changes to the production districts and reallocation of committee membership among new districts will be accomplished by notice and comment rulemaking as appropriate.

##### *Peach Commodity Committee*

Section 917.14 of the peach marketing order establishes the peach production districts into which the State of California has been divided. Section 917.20 establishes the size of the PCC and § 917.22 prescribes the allocation of PCC membership to the districts defined in § 917.14. Authority is provided in § 917.35 for the PCC to recommend changes to district boundaries and to reapportion committee representation to reflect shifts in production within the state as necessary. The changes to district boundaries and membership reapportionment recommended by the PCC are reflected in § 917.120 of the order's administrative rules and regulations.

A final rule amending §§ 917.14 and 917.22 of the peach order was published in the **Federal Register** on July 21, 2006 (71 FR 41345). The amendments, which will become effective on January 1, 2007, redefine the peach production districts and reallocate committee membership among the new districts. After January 1, 2007, § 917.120 does not reflect the district boundaries and committee membership allocation as defined in the amended order provisions. Therefore, the PCC recommended removing the obsolete section when the amendments become effective. This rule removes that section. Any subsequent changes to the

production districts and reallocation of committee membership among new districts will be accomplished by notice and comment rulemaking as appropriate.

### Committee Nomination Processes

#### *Nectarine Administrative Committee*

Section 916.22 of the nectarine marketing order specifies nomination procedures for members and alternate members of the NAC. Authority is provided in § 916.30 for the NAC to recommend and adopt rules and regulations regarding the nominations procedures. Furthermore, § 916.37 establishes the nectarine Shippers' Advisory Committee and authorizes the NAC to prescribe nominations procedures for that committee. Section 916.102 was added to the order's administrative rules and regulations to provide specific details regarding the nomination meeting procedures for the NAC and the Shippers' Advisory Committee.

A final rule amending § 916.22 was published in the **Federal Register** on July 21, 2006. The amendment will allow the NAC to conduct nominations through mail balloting. The final rule also removes § 916.37 regarding the Shippers' Advisory Committee, which has not been active for over 30 years and is no longer a necessary component of the nectarine marketing program. These changes will become effective on January 1, 2007.

After January 1, 2007, § 916.102 will no longer be consistent with the amended NAC nomination process, and references to the Shippers' Advisory Committee will be obsolete. Therefore, the NAC recommended that the section be removed from the nectarine order's administrative rules and regulations. This rule removes § 916.102.

#### *Peach Commodity Committee*

Section 917.24 of the peach marketing order specifies the nomination procedures for members and alternate members of the PCC. Authority is provided in § 917.35 for the PCC to recommend and adopt rules and regulations regarding the nomination procedures. Section 917.119 was added to the order's administrative rules and regulations to provide specific details regarding the nomination meeting procedures for the PCC and the Pear Commodity Committee. Order provisions pertaining to the Pear Commodity Committee have been suspended since 1994, and the Pear Commodity Committee is not currently active.

A final rule published in the **Federal Register** on July 21, 2006, amends § 917.24 to allow the PCC to conduct nominations through mail balloting. The amendment will become effective on January 1, 2007. After that date, § 917.119, which contains language pertaining to the nomination processes for both the Peach and Pear Commodity Committees, will be inconsistent with the amendments that will allow the PCC to conduct nominations through mail balloting. Therefore, the PCC recommended revising the section to specify which language therein pertains to each commodity committee's nomination procedures. This rule revises § 917.119 to include a new paragraph that specifies which procedures apply to both the Peach and Pear Commodity Committees, and which apply only to Pears.

### Committee Business Address

The Control Committee, doing business as the California Tree Fruit Agreement (CTFA), functions as the joint administrative body for the commodity committees under Part 917. The Control Committee, or CTFA, is the designated recipient of all the handlers' reports and other business communications. Section 917.110 provides the business address for the Control Committee.

The final rule published in the **Federal Register** on July 21, 2006, mentioned above, included amendments to § 917.18 that allow the duties of the Control Committee to shift to the remaining commodity committee when order provisions pertaining to one commodity committee are terminated or suspended. The provisions pertaining to the Pear Commodity Committee have been suspended since 1994. Therefore, when the amendments become effective on January 1, 2007, the duties of the Control Committee will shift to the PCC, which will continue to conduct business as the CTFA. In order to conform to the amended order provisions, the PCC recommended revising the address listed in § 917.110 by eliminating the name of the Control Committee from the CTFA's business address. This rule makes that conforming change.

### Initial 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 action on small entities. Accordingly, AMS has prepared this initial 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 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 150 California nectarine and peach handlers subject to regulation under the orders and about 800 growers of these fruits in the regulated area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$6,500,000. Small agricultural growers are defined as those having annual receipts of less than \$750,000. A majority of these handlers and growers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2005 season, the committees' staff estimated that the average handler price received was \$10.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 600,000 containers to have annual receipts of \$6,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2005 season, the committees' staff estimates that small handlers represent approximately 86 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 10 percent of the growers in the industry could be defined as other than small entities. For the 2005 season, the committees' staff estimated the average grower price received was \$5.25 per container or container equivalent for nectarines and peaches. A grower would have to produce at least 142,858 containers of nectarines and peaches to have annual receipts of \$750,000. Given data maintained by the committees' staff and the average grower price received during the 2005 season, the committees' staff estimates that small growers represent more than 90 percent of the growers within the industry.

With an average grower price of \$5.25 per container or container equivalent, and a combined packout of nectarines and peaches of approximately 38,776,500 containers, the value of the 2005 packout is estimated to be \$203,576,600. Dividing this total estimated grower revenue figure by the estimated number of growers (800)

yields an estimated average revenue per grower of about \$254,471 from the sales of peaches and nectarines.

Amendments to the orders were recently approved by a nectarine and peach growers. The amendments were implemented in a final rule that was published in the **Federal Register** on July 21, 2006, and most will become effective on January 1, 2007.

This rule removes or revises certain sections of the orders' administrative rules and regulations to conform to the amended order provisions.

Sections 916.105 and 916.107 of the nectarine order, and 917.120 of the peach order, which specify production district boundaries and committee membership allocations, are no longer applicable because the orders' provisions have been updated to include revised production districts and committee member apportionment. These obsolete sections are being removed. Any subsequent changes to the production districts and reallocation of committee membership among new districts will be accomplished by notice and comment rulemaking as appropriate.

Section 916.102 of the nectarine marketing order, which specifies nomination meeting procedures for the NAC and the Shippers' Advisory Committee, is being removed because the nectarine order has been amended to allow mail balloting for NAC membership, and because the Shippers' Advisory Committee has been eliminated. Section 917.119 of the peach marketing order, which specifies nomination meeting procedures for the PCC and Pear Commodity Committee, is being revised because the order provisions pertaining to the PCC have been amended to allow mail balloting. A new paragraph is being added to that section to clarify which procedures pertain to both the Peach and Pear Commodity Committees, and which pertain only to the Pear Commodity Committee.

Finally, § 917.110 of the peach marketing order is being revised by removing the Control Committee's name from the address to which industry reports and business correspondence should be addressed to conform with recent amendments to the order.

These changes are necessary to bring the orders' rules and regulations into conformance with the amended order provisions.

This rule will not impose any 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.

The 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.

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

Further, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested persons were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the August 31, 2006, meetings were public meetings and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: <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.

This rule invites comments on changes to the administrative rules and regulations currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final 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, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible, since amendments to the orders will be effective on January 1, 2007, and conforming changes to the administrative rules and regulations should be in place at the same time; (2) the committees met and unanimously

recommended these changes at public meetings, and interested persons had the opportunity to provide input at those meetings; and (3) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

#### 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**

§ 916.102 [Removed]

■ 2. Remove § 916.102.

§ 916.105 [Removed]

■ 3. Remove § 916.105.

§ 916.107 [Removed]

■ 4. Remove § 916.107.

#### **PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA**

§ 917.110 [Amended]

■ 5. Amend § 917.110 by removing the words "Control Committee," from the address at the end of the paragraph.

■ 6. In § 917.119, redesignate paragraphs (a) through (d) as (b) through (e) and add a new paragraph (a) to read as follows:

#### **§ 917.119 Procedure for nominating members for various Commodity Committees; meetings.**

(a) The nomination procedures that appear in paragraphs (b) and (c) of this section apply to both the Peach and Pear Commodity Committees, and the voting procedures that appear in paragraphs (d) and (e) of this section apply only to the Pear Commodity Committee.

\* \* \* \* \*

§ 916.120 [Removed]

■ 7. Remove § 917.120.

Dated: December 21, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6-22234 Filed 12-27-06; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. AMS-FV-06-0190; FV07-916/917-2 IFR]

#### Nectarines and Peaches Grown in California; Temporary Suspension of Provisions Regarding Continuance Referenda Under the Nectarine and Peach Marketing Orders

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule temporarily suspends order provisions that require continuance referenda to be conducted for the nectarine and peach marketing orders during winter 2006-07. The suspensions will enable the Department of Agriculture (USDA) to postpone conducting the continuance referenda until the industry has had sufficient time to evaluate the effects of recent amendments to the marketing orders. Temporary suspension of the continuance referenda should also minimize confusion during the upcoming committee nomination period, which overlaps with the scheduled referenda period.

**DATES:** Effective December 29, 2006; comments must be received by January 29, 2007.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Laurel May, Marketing Order

Administration Branch, F&V, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 205-2830, Fax: (202) 720-8938, or E-mail: [Laurel.May@usda.gov](mailto:Laurel.May@usda.gov); or Kurt Kimmel, Regional Manager, 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 E-mail: [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order Nos. 916 and 917 (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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule suspends the requirement that continuance referenda be conducted during 2006-07. 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. A 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 date of the entry of the ruling.

This action temporarily suspends the provisions in §§ 916.64(e) and 917.61(e) of the orders, which specify when continuance referenda should be conducted to determine whether growers favor continuance of the orders. Temporary suspension of the provisions for continuance referenda will provide growers with more time to evaluate the effects of recent amendments to the orders before voting on continuance of the marketing programs. Suspension of the referenda requirements will also diminish the confusion likely to occur if the referenda are held during upcoming committee nominations. These actions were unanimously recommended by the Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees) at their August 31, 2006, meetings.

#### Nectarines

Section 916.64(e) of the nectarine marketing order currently provides that USDA shall conduct a continuance referendum between December 1 and February 15 of every fourth fiscal period since winter 1974-75 to ascertain whether continuance of the order is favored by nectarine growers. A continuance referendum is, therefore, scheduled to be conducted between December 1, 2006, and February 15, 2007. Authorization to suspend the continuance referendum requirement is provided in § 916.64(b).

The NAC recommended that the provision requiring the winter 2006-07 continuance referendum be temporarily suspended to allow the industry time to fully realize the impact of recent amendments to the marketing order. Amendments to the order were approved by nectarine growers in a referendum held in March 2006. The majority of the amendments will not be implemented until January 1, 2007. The continuance referendum cycle will resume as provided in § 916.64(e) in the period between December 1, 2010, and February 15, 2011. A referendum can be held in the interim if deemed appropriate by USDA.

Among the recent amendments to the order are revisions to the NAC's nomination procedures, which require a transition to mail balloting. Ballots for the 2007-09 term of office must be mailed to growers in January 2007. The NAC believes that receiving both the nomination ballots and the continuance referenda ballots during this transitional period would confuse growers, who would then be less likely to return any of the ballots. The committees expect