

# Rules and Regulations

Federal Register

Vol. 71, No. 140

Friday, July 21, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. AO-90-A7; FV05-916-1]

#### Nectarines and Peaches Grown in California; Order Amending Marketing Order Nos. 916 and 917

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends Marketing Orders Nos. 916 and 917 (orders), which regulate the handling of nectarines and peaches grown in California. The amendments are based on those proposed by the Nectarine Administrative Committee (NAC), the Peach Commodity Committee (PCC), and the Control Committee (part of M.O. No. 917) (Committees), which are responsible for local administration of orders 916 and 917. The amendments to order 917 only apply to peaches. The amendments would: update definitions for “handle”, “grower”, and add a definition for “pure grower” to both orders; increase committee membership of the NAC from eight to thirteen members and modify sections of order 916 to conform to the increased membership; eliminate the Shippers Advisory Committee in order 916; allow the Control Committee under order 917 to be suspended if the provisions of one commodity are suspended and transfer applicable duties and responsibilities to the remaining Commodity Committee; authorize interest and late payment charges on assessments paid late in both orders; and other related amendments. With the exception of the proposal to allow the Peach Commodity Committee to borrow funds, all of the proposals were favored by nectarine and peach growers in a mail referendum, held March 6 through 24, 2006. The

amendments are intended to streamline and improve the administration, operation, and functioning of the orders.

**DATES:** Effective January 1, 2007, the suspension of the regulatory text for §§ 917.4, 917.18, and 917.25 that were suspended effective April 4, 1994, at 59 FR 10055, March 3 1994, is lifted.

This rule is effective August 21, 2006, for §§ 916.15 and 916.41 of Marketing Order 916 and §§ 917.29, 917.35, and 917.37 of Marketing Order 917. For §§ 916.5, 916.9, 916.11, 916.12, 916.16, 916.20, 916.22, 916.25 and 916.32 of Marketing Order 916, and §§ 917.4, 917.5, 917.6, 917.8, 917.14, 917.18, 917.22, 917.24 and 917.25 of Marketing Order 917, this rule is effective January 1, 2007.

Effective January 1, 2007, certain regulatory text of §§ 917.4, 917.18, and 917.25 are suspended.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Post Office Box 1035, Moab, UT 84532, telephone: (435) 259-7988, fax: (435) 259-4945; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on this proceeding 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.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on January 25, 2005 and published in the January 28, 2005 issue of the **Federal Register** (70 FR 4041); Recommended Decision and Opportunity to File Written Exceptions issued on November 18, 2005, and published in the November 29, 2005, issue of the **Federal Register** (70 FR 71734); and Secretary's Decision and Referendum Order issued on February 15, 2006, and published in the February 22, 2006 issue of the **Federal Register** (71 FR 8994).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is

therefore excluded from the requirements of Executive Order 12866.

#### Preliminary Statement

This final rule was formulated on the record of a public hearing held on February 15 and 16, 2005, in Fresno, California. Notice of this hearing was issued January 25, 2005 and published in the **Federal Register** on January 28, 2005 (70 FR 4041). The hearing was held to consider the proposed amendment of Marketing Orders 916 and 917, hereinafter referred to the “orders.”

The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the “Act,” and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The notice of hearing contained numerous order changes jointly proposed by the Nectarine Administrative Committee, the Peach Commodity Committee, and the Control Committee (order 917), which are responsible for local administration of orders 916 and 917. Marketing order 917 regulates both California pears and peaches. However, the amendments to order 917 only apply to peaches. The pear provisions of the order have been suspended since 1994. Because the Pear Commodity Committee and the pear provisions are suspended, the Pear Commodity Committee did not participate in any amendment discussions.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on November 18, 2005, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by December 19, 2005.

One exception was filed on behalf of the proponents during the exception period. The exception expressed general support for the proposals, including modifications to those proposals recommended by USDA in its Recommended Decision.

A Secretary's Decision and Referendum Order was issued on February 15, 2006, directing that a referendum be conducted during the period March 6 through March 24, 2006, among peach and nectarine growers to

determine whether they favored the proposed amendments to the orders. To become effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of peaches or nectarines represented by voters voting in the referendum. Voters voting in the referendum favored all but one of the amendments proposed by the Committees.

The amendments favored by voters and included in this order will:

1. Allow hybrid fruit that exhibits the characteristics of nectarines or peaches and is subject to cultural practices common to such fruit be subject to marketing order regulations under both orders.

2. Specify that the act of packing be considered a handling function under both orders.

3. Change the marketing season for nectarines from May 1 through November 30 to April 1 through November 30.

4. Allow the duties and responsibilities of the Control Committee under order 917 to be transferred to one Commodity Committee if the provisions for the other commodity are suspended.

5. Increase membership on the NAC from eight to thirteen members and revise the procedures that constitute quorum and voting requirements to conform to the increased committee size. The proposal would also add to both orders that the Committees may vote by facsimile and set forth voting requirements for video conferencing.

6. Eliminate the Shippers' Advisory Committee under the nectarine order.

7. Modify the definition of grower under both orders to clarify that officers of grower corporations are eligible to serve as committee grower members.

8. Add a definition of "pure grower" for purposes of eligibility for membership on the Committees. This proposal would also allow alternative methods to conduct nominations, change the date for holding nominations, authorize positions for pure growers and add tenure requirements for Committee members.

9. Authorize nominees to state their willingness to serve on the Committees prior to the selection.

10. Change the district boundaries under the nectarine order and redefine the peach districts.

11. Change the names and the composition of the districts of the Peach Commodity Committee.

12. Allow for interest and/or late payments for assessments not paid timely under both orders.

13. Clarify that subcommittees may be established by the Peach Commodity Committee.

The proposal to authorize the Peach Commodity Committee to borrow money failed to obtain the requisite number of votes needed, in number or in volume, to pass.

AMS also proposed to allow such changes as may be necessary to the orders so that all of the orders' provisions conform to the effectuated amendments. None were deemed necessary.

The amended marketing agreement was subsequently mailed to all peach and nectarine handlers in the production area for their approval. The marketing agreements were not approved by handlers representing at least 50 percent of the volume of peaches or nectarines handled by all handlers during the representative period of March 1, 2005, through February 28, 2006.

#### Small Business Consideration

Pursuant to the 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural growers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers regulated under the order, were defined at the time of the hearing as those with annual receipts of less than \$5,000,000. The definition of small agricultural service firm has subsequently changed to one with annual receipts of \$6,500,000.

According to the record, there are approximately 207 California nectarine and peach handlers (combined) and approximately 1,500 growers (combined nectarines and peaches) in the production area, the State of California. A majority of these handlers and growers may be classified as small entities.

Based on calculations made by the Peach and Nectarine Committees' staff,

witnesses indicated that about 26 handlers (13 percent) would qualify as large business entities under the SBA definition of a large agricultural service firm (\$5,000,000). For the 2004 season, it was estimated that the average handler price received was 8 dollars per container or container equivalent of nectarines or peaches. Thus, a handler would have to ship at least 625,000 containers to have annual receipts of 5 million dollars. Given data on shipments presented at the hearing and the estimated 8 dollar average handler price received during the 2004 season, small handlers represented approximately 87 percent of all the handlers within the industry. Under the 6.5 million dollar definition, more than 87 percent of handlers would qualify as small handler entities.

Record evidence also indicated that less than 20 percent of the combined number of California nectarine and peach growers could be defined as other than small entities. The Committees estimated that the average 2004 grower price received for nectarines and peaches was 5 dollars per container or a container equivalent. A grower would have to produce at least 150,000 containers of nectarines and peaches to have annual receipts of 750,000 dollars. Given data maintained by the Committees' staff and the 5 dollar estimated average grower price received during the 2004 season, the staff estimates that more than 80 percent of growers can be classified as small growers.

Evidence presented at the hearing indicates an average 2004 grower price of 5 dollars per container or container equivalent for both nectarines and peaches, and a combined pack-out of approximately 40,422,900 containers. Thus, the value of the 2004 pack-out is estimated to be \$202,114,500. Dividing this total estimated grower revenue by the estimated number of combined nectarine and peach growers (1,500) yields an estimate of 2004 average revenue per grower of about \$134,743. Because many growers produce both commodities, industry nectarine and peach production statistics were presented at the hearing as combined totals.

National Agricultural Statistical Service (NASS) data presented at the hearing provides the following production profile for California nectarines and peaches, respectively (all numbers are two-year averages for the 2003 crop year and preliminary data for 2004): bearing acres, 36,500 of nectarines and 37,000 of peaches; yield per acre of utilized production, 7.19 tons and 10.84 tons, respectively;

annual utilized production, 262,500 tons and 401,000 tons, respectively. Utilized production of both nectarines and peaches was less than total production in 2004; utilized production data was therefore used in the computation. Two-year (2003 and 2004) average grower prices per ton for nectarines and peaches were \$391 and \$309.50 respectively. However, \$309.50 is the peach price per ton for both fresh and processed uses. Approximately one third of California freestone peaches are sold for processing at a price lower than growers receive for fresh market sales. Therefore, a better estimate of the price per ton for fresh peach sales is derived by using the U.S. estimated grower price for fresh peaches of 27 cents per pound (\$540 per ton) for 2003, the most recent year for which a U.S. fresh peach price was available from the Economic Research Service of the USDA.

This NASS and ERS data is used to compute an additional estimate of average annual sales revenue per producer. By assuming that growers of nectarines are also growers of peaches, the 2004 average acreage for these crops (dividing the sum of nectarine and peach bearing acres by 2) is equal to 36,750 acres. Dividing this number by the number of combined peach and nectarine growers reported by CTFA (1,500) yields an estimate of 24.5 acres as the average size of a sample nectarine or peach farm in 2004. If the sample farm's acreage was split evenly between nectarines and peaches (12.5 acres of each fruit) and production yields equal to the statewide average (reported above), that farm would have produced and sold 89.88 tons of nectarines and 134.42 tons of peaches. The value of production for that sample farm would have been \$35,143 for nectarines and \$72,587 for peaches, or \$107,730 total. This figure is lower than the \$134,743 estimate using industry data. However, both computations confirm that the average nectarine or peach grower qualifies as a small grower under the SBA definition.

The amendments will: Update definitions and districts in both orders; increase membership of the Nectarine Administrative Committee from 8 to 13 members and modify sections of the order to conform to the increased membership; eliminate the Shippers Advisory Committee (M.O. No. 916); allow the Control Committee under M.O. No. 917 to be suspended if the provisions of one commodity are suspended and transfer applicable duties and responsibilities to the remaining Commodity Committee; and authorize interest and late payment

charges on assessments that are paid late.

All of the amendments are intended to streamline and improve the administration, operation, and functioning of the programs. Many of the amendments will update the language of these two orders, thus better representing, and conforming with, current practices in these industries. The amendments are not expected to result in any significant cost increases for growers or handlers. More efficient administration of program activities may result in cost savings for the Peach and Nectarine Committees.

Proposal 1 will amend the order to allow hybrid fruit that exhibits the characteristics of nectarines or peaches and is subject to cultural practices common to nectarines and peaches to be subject to marketing order regulations. This amendment provides a procedure for the Committees to recommend to USDA the specific hybrids to be included under the definitions and subject to order provisions.

The cultivation of hybrid fruit has been a practice of the nectarine and peach industries. The improvement in breeding technology provides for the development of fruit and fruit trees with more favorable characteristics, such as disease resistance. As breeding technology becomes more sophisticated, it is anticipated that nectarines and peaches will be crossbred with other tree fruit, such as apricots and plums.

The proposal will require that all hybrids for which regulation is contemplated will need to be recommended to USDA by the Committees. The Committees will identify hybrids currently in production that have characteristics of nectarines or peaches. The characteristics of the fruit will help determine whether the hybrid should be regulated. The Committees will also consider the cultural practices used on that specific hybrid, as cultural practices differ among various fruit trees. USDA would then proceed with rulemaking, as appropriate, as to what hybrids would be included under the order.

The amendment will provide flexibility in including hybrids as they are developed and provides sufficient safeguards to ensure compliance of order provisions. Incorporating specific reference to hybrid fruit into the definitions of "nectarine" and "peach" is not expected to result in any significant increase in costs to growers or handlers. There may be slight increases in the administration costs of the nectarine and peach orders in terms of program oversight, but it is expected that any increases would be offset by the

benefits of including hybrids under the orders' provisions.

Proposal 2 will specify that the act of "packing" nectarines and peaches is a handling function under the orders. Most packers already assume all of the responsibilities of a handler, except the selling of the fruit and thus, this amendment is not expected to result in any significant increases in costs and will likely result in efficiencies that will benefit the administration of marketing orders 916 and 917.

Proposal 3 will extend the marketing season for nectarines to more accurately reflect the nectarine industry's current production and marketing season and will conform to current handling regulations. The amendment will change the current marketing season from May 1 through November 30 to April 1 through November 30. According to record evidence, aligning the marketing year with current production will not result in any increases in costs.

Proposal 4 will allow for the temporary suspension of the Control Committee, the oversight committee for peaches and pears under marketing order 917, when one of the commodity programs is suspended. Since the pear program has been suspended, the duties of the Control Committee have been lessened, as there is only one Commodity Committee that is active under the marketing order program. In the Pear Commodity Committee's absence, the Peach Commodity Committee has continued to operate in conjunction with the Control Committee. The amendment will also allow the Control Committee to become active again if both commodity groups were to become active under the order. This amendment is not expected to result in any increases in costs to growers or handlers.

Proposal 5 will increase the membership on the NAC from eight to thirteen members and revise quorum requirements. Proposal 5 will also provide for voting by facsimile and holding meetings via video teleconference for both the Nectarine and Peach Commodity Committees. Record evidence indicated that these amendments were necessary in order to update the business practices of the Nectarine and Peach Committees to include current day technology. The increase in Committee members from 8 to 13 will allow for greater industry participation and will provide for a larger pool of committee members to attend meetings and meet quorum requirements. This amendment is not expected to result in any significant

increases in costs to growers or handlers.

Regarding the increase in committee membership, this proposal will benefit growers by allowing more growers to be appointed to the Committee, thereby increasing industry participation in the marketing order program functions.

Regarding the use of facsimile and video teleconference, this provision will allow both the Nectarine and Peach Committees to take advantage of technology that is available currently, but was not known when the orders were promulgated. Amendments under this material issue are not expected to result in any significant increases in costs to growers or handlers.

Proposal 6 will eliminate the Shipper's Advisory Committee under the nectarine marketing order and bring the language of the order into conformance with current day operations of the program. Record evidence indicates that the Shipper's Advisory Committee has not been active for over 30 years and, while it once served a function under the marketing order program, it is no longer necessary. This amendment is not expected to result in any increases in costs to growers or handlers.

Proposal 7 will modify the definition of grower to specify that both employees of growers and corporate officers of growers are eligible to serve on the Nectarine and Peach Committees in grower positions. This amendment will be a clarifying change and will bring the language of the order into conformance with current-day operations of the program. This amendment is not expected to result in any increases in costs to growers or handlers.

Proposal 8 will add a definition for pure grower to both the nectarine and peach orders. When implemented, pure growers will be defined as growers that grow their own product (and are not employees or officers of a packing business) or, that grow and pack primarily their own product. If they do pack for other growers, the total production packed from other growers cannot exceed 25 percent of the total production packed for that marketing season for that pure grower's packing facility. Pure growers, who only pack a limited amount of fruit for other growers, are still primarily dependent on their own production, which is the essential component of being a pure grower.

Proposal 8 will modify the current nomination procedures for the Committees, as well as modify the deadline for conducting the nominations, add a 50-percent pure grower membership requirement for the

Committees and establish tenure requirements for members. According to the hearing record, nomination procedures will be modified to provide for mailings of ballots and will change the beginning date of the nomination period from February 15 to January 31. The change in the beginning date is necessary in order to provide extra time for the mailing of ballots.

While some increases in administration costs could arise as a result of the mailing of ballots, record evidence indicates that the benefit of increased industry participation would merit that expense.

Proposal 9 will modify the current acceptance procedure for persons nominated to serve on the Nectarine and Peach Committees. Currently, the acceptance procedure for persons nominated and selected to serve on the Committees involves a two-step process. When implemented, the two steps will be combined into one, thus resulting in less paperwork, a shorter acceptance procedure and improved efficiency in the acceptance process. This amendment is not expected to result in any increases in costs to growers or handlers.

Proposal 10 will modify the Fresno and Tulare districts under the peach marketing order by moving Kings County from the Fresno district to the Tulare district and by including all of Tulare County in the Tulare district, and will also modify district boundaries under the nectarine order. This change will also serve as the basis for modifying committee representation for the Tulare district under the peach order, as discussed under Proposal 11. These amendments are not expected to result in any significant increases in costs to growers or handlers.

Proposal 11 will modify the names of the peach producing districts under that marketing order and change district representation on the Peach Commodity Committee to reflect the modified districts discussed under Proposal 10. This amendment will provide for more accurate representation of current-day peach production. This amendment is not expected to result in any significant increases in costs to growers or handlers.

Proposal 12 will provide for interest and penalty provisions for late payment of assessments to be added to both the nectarine and peach orders. This amendment will strengthen the assessment collection functions of the orders. The implementation of interest and late payments will serve as an incentive for handlers to pay their assessments in a timely manner. While this amendment is expected to result in

some costs under the marketing orders, the more timely assessment payments are expected to benefit the industries.

Lastly, Proposal 14 will clarify that "other committees" established by the Peach Committee would be referred to as "subcommittees." This amendment is not expected to result in any increases in costs to growers or handlers.

The proposals put forth at the hearing will streamline program operations, but are not expected to result in a significant change in industry production, handling or distribution activities. In discussing the impacts of the amendments on growers and handlers, record evidence indicates that the changes are expected to be positive because the administration of the programs will be more efficient, and therefore more effective, in executing Committee duties and responsibilities. There will be no significant cost impact on either small or large growers or handlers.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the amendments to the order on small entities. The record evidence is that the amendments are designed to increase efficiency in the functioning of the orders.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. These amendments are designed to enhance the administration and functioning of marketing orders 916 and 917 to benefit the California nectarine and peach industries.

Committee meetings regarding these amendments as well as the hearing dates were widely publicized throughout the peach and nectarine industries, and all interested persons were invited to attend the meetings and the hearing and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

#### **Paperwork Reduction Act**

Current information collection requirements for Parts 916 and 917 have been previously approved by the Office of Management and Budget (OMB) under OMB number 0581-0189, "Generic Fruit Crops." The changes would have an insignificant impact on total burden hours currently approved under this information collection.

Specifically, the amendment to increase the Nectarine Administrative Committee (committee) from 8 to 13 members would require an additional 5 members and 5 alternates to complete

existing confidential background and acceptance statements every 2 years. Increasing committee members from 16 (8 members and 8 alternates) to 26 (13 members and 13 alternates) would result in an increase of .43 burden hours, or 26 minutes. In addition, because the Shipper's Advisory Committee is being recommended to be abolished, form FV-75, "Confidential California Tree Fruit Agreement Questionnaire", which is currently approved under OMB No. 0581-0189 for 1.99 burden hours, would no longer be needed. Removing this form would result in an overall decrease of 1.56 burden hours.

Also, the amendment will authorize nominees under the nectarine order to state their willingness to serve on the committee prior to their selection, which would result in the combining of Confidential Background statement and the acceptance statement, which are already approved by OMB. There would be no change in the burden hours by combining these forms.

The amendment to allow the duties and responsibilities of the Control Committee, under marketing order 917, to be transferred to one commodity committee if the provisions of the other commodity committee are suspended will also result in minimal changes to paperwork requirements under this program. If this authority is effectuated, and the Peach Commodity Committee was to assume the duties and responsibilities of the Control Committee, some forms used by the Control Committee would require a modification in the name of the committee using those forms. However, the functioning of the forms and the current burden would remain the same.

In addition, any changes to forms, or increased burden generated in nominating and selecting pure growers on the Committees would be submitted to OMB for approval prior to implementation.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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. Witnesses stated that existing forms could be adequately modified to serve the needs of the Nectarine and Peach Commodity Committees.

### Civil Justice Reform

The amendments to Marketing Orders 916 and 917 stated herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. The amendments will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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.

### Order Amending the Orders Regulating Peaches and Nectarines Grown in California

#### *Findings and Determinations*

The findings and determinations set forth hereinafter are supplementary and in addition to the findings and determination previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*) and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917), regulating the handling of peaches and nectarines grown in California.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The marketing orders, as amended, and as hereby further amended, and all of the terms and conditions thereof, will

tend to effectuate the declared policy of the Act;

(2) The marketing orders, as amended, and as hereby further amended, regulate the handling of peaches and nectarines grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing orders, as amended, and as hereby further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivision of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing orders, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of peaches and nectarines grown in the production area; and

(5) All handling of peaches and nectarines grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* The effective date for amendments to sections 916.15, 916.32(b), 916.37 (removal of provision) and 916.41, of Marketing Order 916, and §§ 917.29, 917.35, and 917.37 of Marketing Order 917, shall be 30 days after publication in the **Federal Register**.

The amendments to §§ 916.5, 916.9, 916.11, 916.12, 916.16, 916.20, 916.22, 916.25 and 916.32(a) of Marketing Order 916, and §§ 917.4, 917.5, 917.6, 917.8, 917.14, 917.18, 917.22, 917.24 and 917.25 of Marketing Order 917, shall be effective on January 1, 2007. These sections contain provisions for incorporating hybrids into the definition of peach and nectarine, including the act of packing as part of handling functions, and nominating and seating committee members. The amendments to these sections should be implemented to coincide with the beginning of a new crop year.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping peaches or nectarines covered by the orders as hereby amended) who, during the period March 1, 2005, through February 28, 2006, handled 50 percent or more of the volume of such

peaches or nectarines covered by said orders, as hereby amended, have not signed an amended marketing agreement; and,

(2) The issuance of this amendatory order, further amending the aforesaid orders, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of March 1, 2005, through February 28, 2006 (which has been deemed to be a representative period), have been engaged within the production area in the production of such peaches or nectarines, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of peaches and nectarines in the production area.

**Order Relative to Handling of Peaches and Nectarines Grown in California**

*It is therefore ordered,* That on and after the effective dates hereof, all handling of peaches and nectarines grown in California shall be in conformity to, and in compliance with, the terms and conditions of the said orders as hereby amended as follows:

The provisions of the proposed order amending the order contained in the Recommended Decision issued by the Administrator on November 18, 2005, and published in the **Federal Register** on November 29, 2005, (70 FR 71733) shall be and are the terms and provisions of this order amending the order and set forth in full herein.

**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, Title 7 of Chapter XI of the Code of Federal Regulations is amended by revising parts 916 and 917 to read as follows:

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

**Authority:** 7 U.S.C. 601–674.

**PART 916—NECTARINES GROWN IN CALIFORNIA**

■ 2. Revise § 916.5 to read as follows:

**§916.5 Nectarines.**

*Nectarines means:* (a) All varieties of nectarines grown in the production area; and

(b) Hybrids grown in the production area that exhibit the characteristics of a nectarine and are subject to cultural practices common to nectarines, as recommended by the committee and approved by the Secretary.

■ 3. Revise § 916.9 to read as follows:

**§916.9 Grower.**

*Grower* is synonymous with producer and means any person who produces nectarines for market in fresh form, and who has a proprietary interest therein. Employees of growers and officers of corporations actively engaged in growing nectarines are eligible to serve in grower positions on the committee.

■ 4. Revise § 916.11 to read as follows:

**§916.11 Handle.**

*Handle* and ship are synonymous and mean to pack, sell, consign, deliver, or transport nectarines, or to cause nectarines to be packed, sold, consigned, delivered, or transported, between the production area and any point outside thereof, or within the production area: *Provided,* That the term handle shall not include the sale of nectarines on the tree, the transportation within the production area of nectarines from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such nectarines to such packing facility for such preparation.

■ 5. Revise paragraphs (a) and (b) of § 916.12 to read as follows:

**§916.12 District.**

\* \* \* \* \*

(a) *District 1* shall include the counties of Madera and Fresno.

(b) *District 2* shall include the counties of Kings and Tulare.

\* \* \* \* \*

■ 6. Revise § 916.15 to read as follows:

**§916.15 Marketing season.**

*Marketing season* means the period beginning on April 1 and ending on November 30 of any year.

■ 7. Add a new § 916.16 to read as follows:

**§916.16 Pure Grower or Pure Producer.**

(a) *Pure grower* means any grower: (1) Who produces his or her own product (and is not an employee or officer of a packing business); or

(2) Who produces and handles his or her own product; *Provided,* That a pure grower can pack the production of other growers as long as the production packed does not exceed 25 percent of the total production packed for that marketing year for that pure grower's packing facility. Pure grower is synonymous with pure producer.

(b) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

■ 8. Revise § 916.20 to read as follows:

**§916.20 Establishment and membership.**

There is hereby established a Nectarine Administrative Committee consisting of thirteen members, each of whom shall have an alternate who shall have the same qualifications as the member for whom he/she is an alternate. The members and their alternates shall be growers or authorized employees of growers. Six of the members and their respective alternates shall be growers of nectarines in District 1. Four members and their respective alternates shall be growers of nectarines in District 2; two of the members and their respective alternates shall be growers of nectarines in District 3; and one member and his/her alternate shall be growers of nectarines in District 4; *Provided,* That at least 50% of the nominees from each representation area shall be pure growers. Furthermore, no person shall serve more than three consecutive two-year terms of office or a total of six consecutive years; *Provided further,* That an appointment to fill less than a two year term of office, or serving one term as an alternate, shall not be included in determining the three consecutive terms of office; *Provided further,* That time served prior to the effective date of this section shall not be counted toward consecutive term limits.

■ 9. Revise paragraph (b) of § 916.22 to read as follows:

**§916.22 Nomination.**

\* \* \* \* \*

(b) *Successor members.* (1) The committee shall appoint a nominating committee, which will hold or cause to be held, not later than January 31 of each odd numbered year, a nomination procedure or a meeting or meetings of growers in each district for the purpose of designating nominees for successor members and alternate members of the committee. Meetings may be supervised by the nominating committee that shall prescribe such procedure as shall be reasonable and fair to all persons concerned. After the nomination procedure or meetings have concluded, the nominating committee by February

15 will verify consent to place the nominee's name on the ballot and will cause a ballot listing all of the nominees for a given district to be mailed to all growers within the district. Members and their alternates will be chosen based on a descending ranking of votes received. Once ballots have been tabulated, the Nectarine Administrative Committee will announce to the growers the nominees that have been selected and recommended to the Secretary.

(2) Nominations may only be by growers, or by duly authorized employees. At meetings, only growers who are present at such nomination meetings may participate in the nomination of nominees for members and their alternates. All known growers will then receive a ballot for the nominees in the district in which they produce and are entitled to vote accordingly. A grower who produces in multiple districts is allowed to vote only in one district, and may exchange his/her ballot for that of the nominees in another district provided the grower is producing in the district for which he/she wants to participate. Employees of such grower shall be eligible for membership as principal or alternate to fill only one position on the committee.

(3) A particular grower, including authorized employees of such grower, shall be eligible for membership as principal or alternate to fill only one position on the committee.

■ 10. Revise § 916.25 to read as follows:

**§ 916.25 Acceptance.**

Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

■ 11. Revise § 916.32 to read as follows:

**§ 916.32 Procedure.**

(a) Nine members of the committee, or alternates acting for members, shall constitute a quorum and any action of the committee shall require the concurring vote of the majority of those present: *Provided*, That actions of the committee with respect to expenses and assessments, or recommendations for regulations pursuant to §§ 916.50 to 916.55, shall require at least nine concurring votes.

(b) The committee may vote by telephone, telegraph, or other means of communication, such as facsimile, and any votes so cast shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person. A videoconference shall be considered an

assembled meeting and all votes shall be considered as cast in person.

■ 12. Remove § 916.37.

■ 13. Add three new sentences at the end of paragraph (b) of § 916.41 to read as follows:

**§ 916.41 Assessments.**

\* \* \* \* \*

(b) \* \* \* Furthermore, any assessment not paid by a handler within a period of time prescribed by the committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest and late payment charge shall be as recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

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

■ 14. The authority citation for part 917 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 15. In § 917.4, the suspension of March 3, 1994 (59 FR 10055), is lifted effective January 1, 2007.

■ 16. Revise § 917.4 to read as follows:

**§ 917.4 Fruit.**

Fruit means the edible product of the following kinds of trees:

(a) All varieties of peaches grown in the production area;

(b) All hybrids grown in the production area exhibiting the characteristics of a peach and subject to cultural practices common to peaches as recommended by the committee and approved by the Secretary; and

(c) All varieties of pears except Beurre Hardy, Beurre D'Anjou, Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau.

■ 17. In § 917.4, the words “and (c) All varieties of pears except Beurre Hardy, Beurre D'Anjou, Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau” are suspended effective January 1, 2007.

■ 18. Revise § 917.5 to read as follows:

**§ 917.5 Grower.**

*Grower* is synonymous with producer and means any person who produces fruit for market in fresh form, and who has a proprietary interest therein. Employees of growers and officers of corporations actively engaged in growing peaches are eligible to serve in grower positions on the committee.

■ 19. Revise § 917.6 to read as follows:

**§ 917.6 Handle.**

*Handle* and ship are synonymous and mean to sell, consign, deliver or transport fruit or to cause fruit to be sold, consigned, delivered or transported between the production area and any point outside thereof, or within the production area: *Provided*, That for peaches, packing or causing the fruit to be packed also constitutes handling; *Provided further*, That the term handle shall not include the sale of fruit on the tree, the transportation within the production area of fruit from the orchard where grown to a packing facility located within such area for preparation for market, or the delivery of such fruit to such packing facility for such preparation.

■ 20. Add a new § 917.8 to read as follows:

**§ 917.8 Pure Grower or Pure Producer.**

(a) For peaches, *pure grower* means any grower:

(1) Who produces his or her own product (and is not an employee or officer of a packing business); or

(2) Who produces and handles his or her own product; *Provided*, That a pure producer can pack the production of other growers as long as the production packed does not exceed 25 percent of the total production packed for that marketing year by that pure grower's packing facility. *Pure grower* is synonymous with pure producer.

(b) The committee may establish, with the approval of the Secretary, rules and regulations for the implementation and operation of this section.

■ 21. In § 917.14, paragraphs (n) and (o) are revised to read as follows:

**§ 917.14 District.**

\* \* \* \* \*

(n) *Fresno District* includes and consists of Madera County, Fresno County, and Mono County.

(o) *Tulare District* includes and consists of Tulare County and Kings County.

\* \* \* \* \*

■ 22. In § 917.18, the suspension of March 3, 1994 (59 FR 10055), is lifted effective January 1, 2007.

■ 23. Section 917.18 is amended by revising the fourth and sixth sentences of paragraph (a), and revising paragraph (b) to read as follows:

**§ 917.18 Nomination of commodity committee members of the Control Committee.**

\* \* \* \* \*

(a) \* \* \* In the event provisions of this part are terminated or suspended as to any fruit, nominations of members to the Control Committee shall be

composed of representatives of any remaining fruit. \* \* \* In the event provisions of this part are terminated or suspended as to any fruit, the members of the commodity committee of the remaining fruit shall have all the powers, duties, and functions given to the Control Committee under this part and sections of this part pertaining to the designation of the Control Committee shall be terminated or suspended.

(b) A person nominated by any commodity committee for membership on the Control Committee shall be an individual person who is a member or alternate member of the commodity committee that nominates him/her. Each member of each commodity committee shall have only one vote in the selection of nominees for membership on the Control Committee.

■ 24. In § 917.18, paragraph (a), the words “The number of remaining members which each respective commodity committee shall be entitled to nominate shall be based upon the proportion that the previous three fiscal periods’ shipments of the respective fruit is of the total shipments of all fruit to which this part is applicable during such periods. In the event provisions of this part are terminated or suspended as to any fruit, nominations of members to the Control Committee shall be composed of representatives of any remaining fruit. The apportionment shall be determined as aforesaid. In the event provisions of this part are terminated or suspended as to any fruit, the members of the commodity committee of the remaining fruit shall have all the powers, duties, and functions given to the Control Committee under this part and sections of this part pertaining to the designation of the Control Committee shall be terminated or suspended.” are suspended effective January 1, 2007.

■ 25. Revise § 917.22 to read as follows:

**§ 917.22 Nomination of Peach Commodity Committee members.**

Nominations for membership on the Peach Commodity Committee shall be made by growers of peaches in the respective representation areas, as follows:

(a) *District 1* composed of the Fresno District: seven nominees.

(b) *District 2* composed of the Tulare District: three nominees.

(c) *District 3* composed of the Tehachapi District and Kern District: one nominee.

(d) *District 5* composed of the South Coast District and Southern California District: one nominee.

(e) *District 4* composed of the Stanislaus District, Stockton District and all of the production area not included in paragraphs (a) through (d) of this section: one nominee.

■ 26. Section 917.24 is amended as follows:

■ a. Amend the first sentence of paragraph (a) by removing the phrase “February 15” and adding in its place the phrase “January 31 for peaches and not later than February 15 for pears”;

■ b. Amend paragraph (b) by adding the phrase “and alternates” to the end of the first sentence after the phrase “commodity committee members” and adding three new sentences at the end of the paragraph to read as follows;

■ c. Amend paragraph (c) by adding a new sentence at the end of the paragraph to read as follows; and

■ d. Add a new paragraph (d) to read as follows:

**§ 917.24 Procedure for nominating members of various commodity committees.**

(a) \* \* \*

(b) \* \* \* All peach growers, or authorized employees, will receive a ballot for the nominees in the district in which they produce and are entitled to vote accordingly. A peach grower who produces in multiple districts is allowed to vote only in one district, and may exchange his/her ballot for that of nominees in another district provided the grower is producing in the district for which he/she wants to participate. For both commodity committees, each such grower, including employees of such grower, shall be entitled to cast but one vote for each position to be filled for the representation area in which he/she produces such fruit.

(c) \* \* \* The members and alternates of the Peach Commodity Committee shall be growers, or shall be authorized employees of such growers and at least 50% of the nominees from each representation area shall be pure growers.

(d) For peaches, no person shall serve more than three (3) consecutive two-year terms of office or a total of six (6) consecutive years; *Provided*, That an appointment to fill less than a two-year term of office, or serving one (1) term as an alternate, shall not be included in determining the (3) consecutive terms of office; *Provided further*, That time served prior to the effective date of this section shall not be counted toward consecutive term limits. The members shall serve until their respective successors are selected and have qualified.

■ 27. In § 917.25, suspension of the words “§ 917.21 through” that were

suspended at 59 FR 10055, March 3, 1994, is lifted effective January 1, 2007.

■ 28. Amend § 917.25 by redesignating the introductory text as paragraph (a) and adding a new paragraph (b) to read as follows:

**§ 917.25 Acceptance.**

\* \* \* \* \*

(b) For the Peach Commodity Committee, each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

■ 29. In § 917.25 paragraph (a), the words “§ 917.21 through” are suspended effective January 1, 2007.

■ 30. Revise paragraph (d) of § 917.29 to read as follows:

**§ 917.29 Organization of committees.**

\* \* \* \* \*

(d) The Control Committee or any commodity committee may, upon due notice to all of the members of the respective committee, vote by letter, telegraph or telephone: *Provided*, That any member voting by telephone shall promptly thereafter confirm in writing his/her vote so cast. The Peach Commodity Committee may, upon due notice to all of the members of the respective committee, vote by letter, telegraph, telephone, facsimile, video teleconference, or any other means of communication recommended by the committee and approved by the Secretary; *Provided*, That any member voting by telephone shall promptly thereafter confirm in writing his/her vote so cast.

■ 31. Add a sentence at the end of paragraph (d) of § 917.35 to read as follows:

**§ 917.35 Powers and duties of each commodity committee.**

\* \* \* \* \*

(d) \* \* \* To establish subcommittees to aid the Peach Commodity Committee in the performance of its duties under this part as may be deemed advisable.

\* \* \* \* \*

■ 32. Revise § 917.37 to read as follows:

**§ 917.37 Assessments.**

(a) As his/her pro rata share of the expenses which the Secretary finds are reasonable and are likely to be incurred by the commodity committees during a fiscal period, each handler shall pay to the Control Committee, upon demand, assessments on all fruit handled by him/her. The payment of assessments for the maintenance and functioning of the

committees may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the respective rate of assessment, which handlers shall pay with respect to each fruit during each fiscal period in an amount designed to secure sufficient funds to cover the respective expenses, which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rates of assessment in order to secure funds to cover any later findings by the Secretary relative to such expenses, and such increase shall apply to all fruit shipped during the fiscal period. Furthermore, any assessment not paid by a peach handler within a period of time prescribed by the Control Committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest and late payment charge shall be as recommended by the committee and approved by the Secretary. Subsequent to such approval, all assessments for peaches not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

(c) In order to provide funds to carry out the functions of the commodity committee prior to commencement of shipments in any season, shippers may make advance payments of assessments, which advance payments shall be credited to such shippers and the assessments of such shippers shall be adjusted so that such assessments are based upon the quantity of fruit shipped by such shippers during such season. Any shipper who ships fruit for the account of a grower may deduct, from the account of sale covering such shipment or shipments, the amount of assessments levied on said fruit shipped for the account of such grower.

Dated: July 17, 2006.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E6-11600 Filed 7-20-06; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 97

[Docket No. 30504 Amdt. No. 3176]

#### Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective July 21, 2006. The compliance date for each SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 21, 2006.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination—*

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/code-or-federal-regulations/ibr-locations.html>.

*For Purchase—*Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription—*Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:**

Donald P. Pate, Flight Procedure Standards Branch (AFS-420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954-4164.

**SUPPLEMENTARY INFORMATION:** This amendment to Title 14 of the Code of Federal Regulations, part 97 (14 CFR part 97), establishes, amends, suspends or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA from documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, 8260-5 and 8260-15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.