

# Rules and Regulations

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 792

RIN 3206-AJ77

#### Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is issuing final regulations implementing the Child Care Subsidy Program legislation. OPM is issuing final regulations because Congress made permanent the law authorizing agencies in the Executive Branch of the Federal Government to assist lower income employees with their child care costs, thus making child care more affordable for those employees.

**EFFECTIVE DATE:** The regulations are effective March 24, 2003.

**ADDRESSES:** Direct questions to: U.S. Office of Personnel Management, 1900 E St. NW., Room 7315, Washington, DC 20415, Attn: Bonnie Storm or e-mail [bstorm@opm.gov](mailto:bstorm@opm.gov).

**FOR FURTHER INFORMATION CONTACT:** Bonnie Storm at (202) 606-1313; by fax at (202) 606-2091; or by e-mail at [bstorm@opm.gov](mailto:bstorm@opm.gov).

**SUPPLEMENTARY INFORMATION:** OPM is issuing final regulations for 5 CFR part 792. Congress enacted Pub. L. 106-58, sec. 643, on September 29, 1999, which allowed Executive agencies to use appropriated funds to assist their lower income Federal employees with the costs of child care. The authority was first established as a pilot program effective from March 14, 2000, until September 30, 2001.

OPM first issued interim regulations to implement the authority, which were

published in the **Federal Register** on March 14, 2000. The authority for the Child Care Subsidy Program was then made permanent on November 12, 2001, by sec. 630, Pub. L. 107-67, the 2001 Treasury and General Government Appropriations Act. OPM then issued interim regulations "Agency Use of Appropriated Funds for Child Care Costs for Lower Income Employees" on March 24, 2003 (68 FR 14127). This regulation became effective on March 24, 2003.

The latest interim regulations clarified that the law was permanent and removed dates that were no longer relevant. The regulation also authorized advance payments to child care providers under certain circumstances as described in Sec. 792.231. The revisions contained in the interim regulations also made the regulations easier to understand by substituting the words "child care subsidy" for "tuition assistance" to avoid any confusion associated with educational programs versus custodial care programs. Finally, the interim regulations clarified that agencies must use child care providers that meet State and local licensing standards, and that employees are free to choose among both accredited and non-accredited providers in order to qualify.

The interim regulations that were published in the **Federal Register** on March 24, 2003, provided a 30-day period for comments, but no comments were received.

#### Executive Order 12866 Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### Regulatory Flexibility Act

I certify that these changes will not have a significant economic impact on a substantial number of small entities because the regulations pertain only to Federal employees and agencies.

#### List of Subjects in 5 CFR Part 792

Alcohol abuse, Alcoholism, Day care, Drug abuse, Government employees.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

■ Accordingly, under the authority of Pub. L. 107-67, the interim rule issued on March 24, 2003 (68 FR 14127)

## Federal Register

Vol. 69, No. 36

Tuesday, February 24, 2004

amending 5 CFR part 792, is adopted as final with no substantive changes.

[FR Doc. 04-3953 Filed 2-23-04; 8:45 am]

**BILLING CODE 6325-41-M**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV03-916-610 REVIEW]

#### Nectarines and Peaches/Pears Grown in California; Section 610 Review

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

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Orders 916 and 917 regulating the handling of nectarines and peaches/pears grown in California. The provisions and regulations for pears have been suspended since 1994. Based upon its review, AMS has determined that the nectarine and peach marketing orders should be continued, and that the pear order provisions should be continued, as suspended.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should 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; or e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov).

#### FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487-5902; fax: (209) 487-5906; e-mail: [Terry.Vawter@usda.gov](mailto:Terry.Vawter@usda.gov); or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491; fax: (202) 720-8938; e-mail: [George.Kelhart@usda.gov](mailto:George.Kelhart@usda.gov).

**SUPPLEMENTARY INFORMATION:** Marketing Orders 916 and 917, as amended (7 CFR parts 916 & 917), regulate the handling of nectarines and peaches grown in California. The marketing 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 nectarine marketing order authorizes the Nectarine Administrative Committee (NAC), consisting of eight growers or employees of growers and their respective alternates from four districts in California.

The peach marketing order authorizes the Peach Commodity Committee (PCC) consisting of 13 growers or employees of growers, representing five districts within the production area.

Currently, there are approximately 1,800 nectarine and peach growers and approximately 300 handlers. The majority of the growers and handlers may be classified as small entities. The regulations implemented under the orders are applied uniformly to all size entities, and are designed to benefit all entities, regardless of size.

Marketing Order No. 916, originally established in 1948, and Marketing Order No. 917, established in 1939, authorize grade, size, maturity, quality, and container marking and pack requirements; mandatory inspection and reporting; cultural research; marketing research; marketing development; and promotion projects.

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Orders 916 and 917, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), and again on August 14, 2003 (68 FR 48574). AMS published a notice of review and request for written comments on the California nectarine, peach, and pear marketing orders in the April 21, 2003, issue of the **Federal Register** (68 FR 19491). No comments were received from that publication, but, as discussed below, numerous comments on the programs were received as a result of a public meeting (listening sessions) held by USDA in May 2003.

The 610 review was undertaken to determine whether the California nectarine and peach marketing orders should be continued without change, amended, or rescinded to minimize the impacts on small entities. Regarding pears, the review was conducted to determine whether the program should be reactivated with change, amended, or

rescinded. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing orders; (2) the nature of complaints or comments received from the public concerning the marketing orders; (3) the complexity of the marketing orders; (4) the extent to which the marketing orders overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing orders have been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing orders.

The nectarine and peach marketing orders require that a continuance referendum be held every four years to determine whether growers favor continuation. Continuance referenda were held on both orders in January 2003. Results from the referenda revealed that slightly less than two-thirds of those voting favored continuation of the nectarine and peach orders. The vote of pear growers to continue the order met the two-thirds criteria. As a result, USDA published an announcement of a public meeting to review the nectarine and peach orders (listening sessions) in the April 21, 2003, issue of the **Federal Register** (68 FR 19466). The listening sessions were held in the production area on May 20 and 21, 2003, and written comments were solicited until June 20, 2003. Thirty-seven individuals spoke at the listening sessions and seven others filed comments on the marketing orders.

The majority of commenters believed that the programs are effective and important tools for the nectarine and peach industries. Commenters identified the orders' promotional programs, research activities, quality regulations, and data collection provisions as benefits to growers and handlers. Many commenters believe that recent changes in the programs will improve support for the marketing orders.

The marketing orders for nectarines and peaches have been used effectively in the areas of quality control and marketing research and development. The establishment of a quality control program that includes minimum grades and standards and mandatory inspections, the establishment of container and pack requirements, and the compilation and dissemination of statistical information to the industry has helped improve the quality of product moving from the farm to market and has helped growers and handlers more effectively market their crops.

These order requirements have helped ensure that only satisfactory quality product reaches the consumer. This has helped increase and maintain market demand for nectarines and peaches from this marketing order area over the years. In regard to complaints or comments received from the public regarding the marketing orders, USDA received 44 comments from industry members as a result of the listening sessions relative to the nectarine and peach marketing orders. Only four of the commenters favored termination of the marketing orders. The majority of the comments were supportive of the programs as they currently exist. However, there were some concerns voiced by commenters. Some of the commenters found the referendum ballot complicated or confusing, some objected to or supported continued shipments of "CA Utility" quality fruit, some felt that reporting and compliance requirements should be eliminated and assessments reduced, and some felt that the size regulations needed to be reviewed. The committees and USDA will review the issues raised by the commenters.

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the committees and USDA before program changes are implemented.

In considering the orders' complexity, AMS has determined that the marketing orders are not unduly complex. During the review, the orders were also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the marketing orders for nectarines and peaches grown in California.

As stated previously, the orders were established in 1939 and 1958. During this time, AMS and the California nectarine and peach industries have continuously monitored marketing operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of these evaluations is to assure that the marketing orders and the regulations implemented under them fit the needs of the industries and are consistent with the Act. The committees meet whenever needed, but at least annually, to discuss the marketing orders and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been

made numerous times over the years to address industry operation changes and to improve program administration.

In 1994, the provisions of part 917 relating to pears were suspended indefinitely (59 FR 10054). The suspension was implemented because the California Bartlett pear industry began using a California State pear program. We believe that if a pear program were in effect under part 917, similar conclusions could be made regarding the 610 review as have been made for nectarines and peaches.

Based upon its review, AMS has determined that the nectarine and peach marketing orders should be continued, and that the pear order provisions should be continued, as suspended.

The marketing orders were established to help the California nectarine and peach industries work with USDA to solve marketing problems. The marketing order regulations on grade, size, maturity, quality, container marking and pack requirements, mandatory inspection, and reporting; and cultural research, marketing research, marketing development, and promotion continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the California nectarine and peach industries in maintaining effective marketing order programs.

Dated: February 18, 2004.

**A.J. Yates,**  
Administrator, Agricultural Marketing Service.  
[FR Doc. 04-3956 Filed 2-23-04; 8:45 am]  
BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1135

[Docket No. AO-380-A18; DA-01-08-W]

#### Milk in the Western Marketing Area; Termination of the Order

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

**ACTION:** Final rule.

**SUMMARY:** This rule terminates the Western Federal milk marketing order, effective April 1, 2004. A referendum held to determine approval by producers did not obtain the necessary two-thirds percent for adopting the amended order. In these circumstances, the continuation of the existing Western order would not be in conformity with the declared policy of the Agricultural Marketing Agreement Act (AMAA), the

statute providing for milk marketing orders.

**EFFECTIVE DATE:** April 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Gino M. Tosi, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, Stop 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: [gino.tosi@usda.gov](mailto:gino.tosi@usda.gov).

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed action will not have a significant economic impact on a substantial number of small entities. This rule would eliminate the regulatory impact of the order on dairy farmers and regulated handlers. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees. In the Western Federal milk order 550 of the 860 dairy producers (farmers), or 64 percent, whose milk was pooled under the order in June 2003 would meet the definition of small businesses. On the processing side, 15 of the 42 milk plants or 36 percent associated with the Western milk order during June 2003 would qualify as “small businesses”.

This rule terminates the Western Federal milk marketing order, effective April 1, 2004. It is likely that market conditions would tend to become less orderly or stable. However, it must be assumed that the consequences of the termination of the Western order have been considered by those producers who rejected the proposed amended order, and that possibly other methods have or will be made to replace the stabilizing influence of the marketing order. Less than two-thirds percent of the voting producers in the referendum approved the issuance of the proposed amended order.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a 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 Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and may request a modification of an order or to be exempted from the order. After a hearing, the Secretary would rule on the petition. The Act provides that the district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of termination is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of the milk in the Western marketing area.

#### Prior Documents in This Proceeding:

*Proposed Termination of Order:* Issued January 7, 2004; published January 13, 2004 (69 FR 1957).

*Tentative Final Decision:* Issued August 8, 2003; published August 18, 2003 (68 FR 49375).

#### Statement of Consideration

This rule terminates the Western Federal milk marketing order, effective April 1, 2004.

In total, eight comments were received from interested parties. Five comments were from dairy interests regulated under the terms of the Western milk marketing order. Of these five comments, two supported termination and three expressed support for retaining the current Western order.

Three interested parties who are not regulated or pool milk on the Western order also submitted comments. Of these three comments, one comment did not either support or oppose termination and two supported retaining the current Western order.

Comments that supported retaining the current Western order expressed concern for the potential consequences to producers in other Federal milk