

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## 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; Hearing on Proposed Amendment of Marketing Agreement Nos. 124 and 85 and Order Nos. 916 and 917

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

**ACTION:** Notice of hearing on proposed rulemaking.

**SUMMARY:** Notice is hereby given of a public hearing to receive evidence on proposed amendments to Marketing Agreement Nos. 124 and 85 and Orders Nos. 916 and 917, which regulate the handling of nectarines and peaches grown in California. The amendments are jointly proposed by the Nectarine Administrative Committee (NAC), the Peach Commodity Committee, and the Control Committee (part of M.O. No. 917) (committees), which are responsible for local administration of orders 916 and 917. The proposed 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. The amendments would: update definitions and districts in both orders; increase committee membership of the NAC from eight to thirteen 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; authorize interest and late payment

charges on assessments paid late; add authority to recommend different quality and size regulations for different market destinations; and other related amendments. All of the proposals are intended to streamline industry organization and improve the administration, operation, and functioning of the programs.

**DATES:** The hearing will be held on February 15, 2005, in Fresno, California, beginning at 8:30 a.m. and ending at 4:30 p.m. The hearing will continue, if necessary, on February 16, 2005, commencing at 8:30 a.m.

**ADDRESSES:** The hearing location is: Fresno Metropolitan Flood Control District, 5469 East Olive Avenue, Fresno, CA 93727, telephone: (559) 456-3292.

**FOR FURTHER INFORMATION CONTACT:** Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 1035, Moab, Utah; 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:** This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

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. 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 the 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.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed recommendations are the result of a task force appointed by the committees to conduct a review of the orders. The task force met several times in 2003 and drafted proposed amendments to the orders and presented the recommendations at industry meetings. The recommendations were then forwarded to the commodity committees and the Control Committee, each of which unanimously approved the proposed amendments. The amendments are intended to streamline organization and administration of the committees.

The Committees' request for a hearing was submitted to USDA on January 5, 2004. The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Committees' proposed amendments to Marketing Orders Nos. 916 and 917 (orders) are summarized

below. Modifications from what was proposed by the committees on marketing order No. 917 have been made to some of the proposals. These modifications were made to provide clarity that no amendments are being proposed to the suspended pear provisions.

1a. Amend the order to allow hybrid fruit that exhibits the characteristics of nectarines and is subject to cultural practices common to nectarines be subject to marketing order regulations. This proposal would amend § 916.5.

1b. Amend the order to allow hybrid fruit that exhibits the characteristics of peaches and is subject to cultural practices common to peaches to be subject to marketing order regulations. This proposal would amend § 917.4.

2a. Amend the order by specifying that the act of packing nectarines is considered a handling function and clarifying that the word "packer" is synonymous with "handler" and "shipper." This proposal would amend §§ 916.10, 916.11.

2b. Amend the order by specifying that the act of packing peaches is considered a handling function and clarifying that, for peaches, the word "packer" is synonymous with "handler" and "shipper." This proposal would amend §§ 917.6 and 917.7.

3. Amend the nectarine order by changing the marketing season from May 1 through November 30 to April 1 through November 30. This proposal would amend § 916.15.

4. Amend the provisions relating to the Control Committee under marketing order No. 917 by allowing the duties and responsibilities of the Control Committee to be transferred to one commodity committee if the provisions of the other commodity committee are suspended. This proposal would amend § 917.18.

5a. Amend the nectarine order by increasing membership from eight members to thirteen members and revising the procedures that constitute quorum and voting requirements to conform to the increased committee. The proposal would also add that the committee may vote by facsimile and would specify that voting requirements for video conferencing would be the same as those for assembled meetings. This proposal would amend §§ 916.20 and 916.32.

5b. Amend the peach order by adding that the Peach Commodity Committee may vote by facsimile or video teleconference. This proposal would amend § 917.29(d).

6. Amend the nectarine order by eliminating the Shippers' Advisory

Committee. This proposal would remove § 916.37.

7a. Amend the nectarine order by modifying the definition of grower to clarify that officers of corporations are considered growers for purposes of eligibility for membership on the committee. This proposal would amend § 916.9.

7b. Amend the order by modifying the definition of grower to clarify that, for peaches, officers of corporations are considered growers for purposes of eligibility for membership on the committees. This proposal would amend § 917.5.

8a. Amend the order by adding a definition of "pure producer" and "pure grower" for purposes of eligibility for membership on the committee. This proposal would add a new § 916.16.

8b. Amend the order by adding a definition for peaches of "pure producer" and "pure grower" for purposes of eligibility for membership on the committee. This proposal would add a new § 917.5a.

8c. Amend the nectarine order by allowing alternative methods to conduct nominations, changing the date that the nomination procedure should be held from February 15 to January 31, requiring at least 50 percent of the positions be pure producers and adding tenure requirements for committee members. This proposal would amend §§ 916.20 and 916.22.

8d. Amend the peach provisions of the order by allowing alternative methods to conduct nominations, changing the date that the nomination procedure should be held from February 15 to January 31, requiring at least 50 percent of the positions be pure producers, and adding tenure requirements for committee members. This proposal would amend § 917.24.

9a. Amend the order by authorizing the nominees to state their willingness to serve on the committee prior to the selection. This proposal would amend § 916.25.

9b. Amend the order by authorizing the peach nominees to state their willingness to serve on the committees prior to the selection. This proposal would amend § 917.25.

10a. Amend the order by changing the district boundaries under the nectarine order. This proposal would amend § 916.12.

10b. Amend the order by redefining the peach growing Fresno and Tulare districts under the order. This proposal would amend § 917.14.

11. Amend the order by changing the names and the composition of the districts of the Peach Commodity

Committee. This proposal would amend § 917.22.

12a. Amend the order to allow for interest and/or late payments for assessments not paid timely. This proposal would amend § 916.41.

12b. Amend the order to allow for interest and/or late payments for peach assessments not paid timely and to authorize the committee to borrow money for administration of peach provisions of the order. This proposal would amend § 917.37.

13a. Amend the order to provide authority to recommend different regulations for different market destinations of the product. This proposal would amend § 916.52.

13b. Amend the order to provide authority to recommend different regulations for different market destinations of peaches. This proposal would amend § 917.41.

14. Amend the order to clarify that subcommittees may be established by the Peach Commodity Committee. This proposal would amend § 917.35.

15. Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

The committees work with USDA in administering the orders. These proposals have not received the approval of the Department. The Nectarine Administrative Committee, the Peach Commodity Committee, and the Control Committee believe that the proposed changes would improve the administration, operation, and functioning of the programs in effect for nectarines and peaches grown in California.

AMS also proposes to allow such changes to the order as may be necessary to conform to any amendment that may result from the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act. Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, USDA employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employee of the General Counsel assigned to represent the Committee in this proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

#### 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.

### PART 916—NECTARINES GROWN IN CALIFORNIA

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

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

**Authority:** 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Nectarine Administrative Committee, the Peach Commodity Committee, and the Control Committee are as follows:

##### *Proposal Number 1a*

3. 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.

##### *Proposal Number 1b*

4. 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.

##### *Proposal Number 2a*

5. Revise § 916.10 to read as follows:

#### **§ 916.10 Handler.**

*Handler, shipper and packer* are synonymous and mean any person (except a common or contract carrier transporting nectarines owned by another person) who handles nectarines.

6. Revise § 916.11 to read as follows:

#### **§ 916.11 Handle.**

*Handle, ship and pack* are synonymous and mean to place nectarines into containers, sell, consign, deliver, or transport nectarines, or to cause nectarines to be placed into containers, 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.

##### *Proposal Number 2b*

7. Revise § 917.6 to read as follows:

#### **§ 917.6 Handle.**

*Handle and ship* are synonymous and mean to place fruit into containers, sell, consign, deliver or transport fruit or to cause fruit to be placed into containers, 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 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. For peaches, the term “pack” is also synonymous with “handle” and “ship.”

8. Revise § 917.7 to read as follows:

#### **§ 917.7 Handler.**

*Handler and shipper* are synonymous and mean any person (except a common or contract carrier transporting fruit owned by another person) who handles fruit. For peaches, the term “packer” is also synonymous with the terms “handler” and “shipper.”

##### *Proposal Number 3*

9. 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.

##### *Proposal Number 4*

10. Revise § 917.18 to read as follows:

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

Nominations for the 13 members of the Control Committee to represent the commodity committees shall be made in the following manner:

(a) A nomination for one member shall be made by each commodity committee selected pursuant to § 917.25. Nominations for the remaining members shall be made by the respective commodity committees as provided in this section. The number of remaining members which each respective commodity 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 as to any fruit, the members of the commodity committee of the remaining fruit shall have all of 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. In the event provisions of this part are 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 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 which 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.

*Proposal Number 5a*

11. 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 producers of nectarines in District 1. Four members and their respective alternates shall be producers of nectarines in District 2; two of the members and their respective alternates shall be producers of nectarines in District 3; and one member and his/her alternate shall be producers of nectarines in District 4.

12. 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.

*Proposal Number 5b*

13. 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, or video

teleconference; *Provided, That* any member voting by telephone shall promptly thereafter confirm in writing his/her vote so cast.

*Proposal Number 6*

14. Remove § 916.37.

**§ 916.37 Shippers' Advisory Committee.**

(a) A Shippers' Advisory Committee, consisting of five members and their respective alternates who shall be handlers, or employees of handlers, selected by the handlers in accordance with the provisions of this section, is hereby established. The members and their respective alternates shall be selected biennially for a term ending on the last day of February of odd numbered years. An alternate member shall, in the event of the member's absence from a meeting of the committee, act in the place and stead of such member, and, in the event of a vacancy in the office of such member, shall act in the place and stead of such member until a successor for the unexpired term of such member has been selected.

(b) The members and alternate members of the Shippers' Advisory Committee shall be elected by handlers at a general meeting of all handlers and shall serve in such capacities during the marketing seasons subsequent to such election. Such meeting shall be supervised by the Nectarine Administrative Committee which may prescribe such rules and procedures as may be necessary to assure a membership representative of all shippers.

(c) The Shippers' Advisory Committee may attend each meeting of the Nectarine Administrative Committee held to consider recommendations with respect to regulations of shipments pursuant to the provisions of this subpart. The Shippers' Advisory Committee may advise the committee on matters relating to such recommendations, but shall have no vote with such committee in any matter. Members of the Shippers' Advisory Committee shall serve without compensation but may be reimbursed for expenses necessarily incurred in attendance of meetings of the Nectarine Administrative Committee.

*Proposal Number 7a*

15. Revise § 916.9 to read as follows:

**§ 916.9 Grower.**

*Grower* is synonymous with *producer* and means any person who produces nectarines for the fresh market and who has a proprietary interest therein. Officers of corporations actively

engaged in growing nectarines are considered to be growers.

*Proposal Number 7b*

16. 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. Officers of corporations actively engaged in growing peaches are considered to be growers.

*Proposal Number 8a*

17. Revise § 916.16 to read as follows:

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

*Pure grower* means the grower is not an employee or officer of a packing business; or if he/she is an officer or employee of a packing business, that specific packing business packs 75% or more of its nectarines from said grower. A *pure producer* is synonymous with *pure grower*.

*Proposal Number 8b*

18. Add a new § 917.5a to read as follows:

**§ 917.5a Pure Grower or Pure Producer.**

For peaches, *pure grower* means the grower is not an employee or officer of a packing business; or if he/she is an officer or employee of a packing business, that specific packing business packs 75% or more of its fruit from said grower. A *pure producer* is synonymous with *pure grower*.

*Proposal Number 8c*

19. Remove the period after the phrase "District 4" in the proposed amendment of § 916.20 (Proposal Number 5), add a colon and the following:

**§ 916.20 Establishment and membership.**

\* \* \* *Provided, That* at least 50% of the nominees from each presentation area shall be pure producers. Furthermore, no person shall serve more than three consecutive two-year terms of office or a total of six consecutive years; *Provided, 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.

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

**§ 916.22 Nominations.**

\* \* \*

(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 then 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 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.

*Proposal Number 8d*

21. Revise § 917.24 to read as follows:

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

(a) The Control Committee shall hold or cause to be held not later than January 31 for peaches and not later than February 15 for pears of each odd numbered year a nomination procedure or a meeting or meetings of the growers of the fruits in each representation area set forth in §§ 917.21 and 917.22 for purposes of designating nominees for successor members and alternate members of the commodity committees. These meetings shall be supervised by the Control Committee, which shall

prescribe such procedure as shall be reasonable and fair to all persons concerned.

(b) With respect to each commodity committee only growers of the particular fruit who are present at such nomination meetings or represented at such meetings by duly authorized employees may participate in the nomination and election of nominees for commodity committee members and alternates. For peaches, those who may receive nomination forms if the nominations are conducted via a mail process may also participate in the nomination and election of nominees for Peach Commodity Committee members and alternates. 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 the 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) A particular grower, including employees of such growers, shall be eligible for membership as principle or alternate to fill only one position on a commodity committee. A grower nominated for membership on the Pear Commodity Committee must have produced at least 51 percent of the pears shipped by him/her during the previous fiscal period, or he/she must represent an organization that produced at least 51 percent of the pears shipped by it during such period. 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 producers.

(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 three (3) consecutive terms of office. The members shall serve until their respective successors are selected and have qualified.

*Proposal Number 9a*

22. 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.

*Proposal Number 9b*

23. Revise § 917.25 to read as follows:

**§ 917.25 Acceptance.**

(a) The Secretary shall select the members of each commodity committee, except for the Peach Commodity Committee, from nominations made by growers, as provided in §§ 917.21 through 917.24, or from among other eligible persons. Any person selected as a member of the Pear Commodity Committee shall qualify by filing with the Secretary a written acceptance of the appointment.

(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.

*Proposal Number 10a*

24. 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.

\* \* \* \* \*

*Proposal Number 10b*

25. Revise paragraphs (n) and (o) of § 917.14 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.

\* \* \* \* \*

*Proposal Number 11*

26. 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 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.

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

*Proposal Number 12a*

27. Revise § 916.41 to read as follows:

**§ 916.41 Assessments.**

(a) As his/her pro rata share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, each person who first handles nectarines during such period shall pay to the committee, upon demand, assessments on all nectarines so handled. The payment of assessments for the maintenance and functioning of the committee 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 rate of assessment to be paid by each such person during a fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses that may be incurred. Such increase shall be applied to all nectarines handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments on the current year's shipments, the committee may accept the payment of assessments in advance, and may also borrow money for such purposes. 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.

*Proposal Number 12b*

28. 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. The Control Committee may also borrow money for such purposes for peaches.

*Proposal Number 13a*

29. Revise § 916.52 to read as follows:

**§ 916.52 Issuance of regulations.**

(a) The Secretary shall regulate, in the manner specified in this section, the handling of nectarines whenever he/she finds, from the recommendations and information submitted by the committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods and/or by specific market destination, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of nectarines grown in the production area;

(2) Limit the shipment of nectarines by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of nectarines.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary and the committee shall promptly give notice thereof to handlers.

*Proposal Number 13b*

30. Revise § 917.41 to read as follows:

**§ 917.41 Issuance of regulations.**

(a) The Secretary shall regulate, in the manner specified in this section, the handling of any variety or varieties of fruit whenever he/she finds, from the recommendations and information submitted by the commodity committee, or from other available information, that such regulations will tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit, during any period or periods and/or for peaches only, by specific market destination, the total quantity of any grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of fruit;

(2) Limit the shipment of any variety or varieties of fruit by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimensions, markings, or pack of the container, or containers, which may be used in the packaging or handling of any fruit.

(b) The commodity committee shall be informed immediately of any such regulation issued by the Secretary, and the commodity committee shall promptly give notice thereof to handlers.

*Proposal Number 14*

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.

\* \* \* \* \*

*Proposal Number 15*

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: January 25, 2005.

**Kenneth Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

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**DEPARTMENT OF AGRICULTURE  
Food Safety and Inspection Service**

**9 CFR Ch. III**

[Docket No. 04-040N]

**Regulatory Flexibility Act; Amended Plan for Reviewing Regulations Under Section 610 Requirements**

**AGENCY:** Food Safety and Inspection Service (FSIS), USDA.

**ACTION:** Schedule of regulations to be reviewed under section 610 requirements of the Regulatory Flexibility Act; amended.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is publishing an amended scheduling plan for reviewing regulations under Section 610 of the Regulatory Flexibility Act, as amended. These provisions require that all Federal agencies review existing regulations that have a significant economic impact on a substantial number of small entities to determine whether the associated impact can be minimized.

**FOR FURTHER INFORMATION CONTACT:** For further information contact Dr. Quita Bowman Blackwell, Director, Directives and Economic Analysis Staff, FSIS, U.S. Department of Agriculture, 300 12th Street, SW, Room 112, Washington, DC 20250-3700, (202) 720-5627.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 610 of the Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601-612), requires that all

Federal agencies review any regulations that have been identified as having a significant economic impact upon a substantial number of small entities as a means to determine whether the associated impact can be minimized by considering the following factors: (1) The continued need for the rule; (2) the nature of the complaints or comments received concerning the rule from the public; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules; and (5) the length of time since the rule has been initially evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

On April 2, 2002, FSIS published in the **Federal Register** (67 FR 15501) a scheduling plan for reviewing regulations under the 610 provisions. At that point, the Agency had determined to review all rules deemed economically significant, regardless of whether the Agency had stated that the rule would impose a significant economic impact on a substantial number of small entities or not. After further consideration, FSIS now believes that it would be more effective and beneficial if the Agency concentrated its reviews under Section 610 of the RFA on those final and interim final rules that the Agency has identified as having a significant economic impact on a substantial number of small entities.

Accordingly, FSIS has amended its plan for reviewing the Agency rules that it has identified as having a significant economic impact on a substantial number of small entities.

**SCHEDULE OF FSIS' REGULATIONS IDENTIFIED FOR REVIEW UNDER THE RFA'S 610 PROVISIONS**

CFR parts affected and legal authority	Regulation title	Publication citation and date	Review date
9 CFR 304, 308, 310, 320, 327, 381, 416, 417; 21 U.S.C. 451-470, 601-695; 7 CFR 2.18, 2.53.	Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems.	61 FR 38806; July 25, 1996.	2005
9 CFR 430; 7 U.S.C. 450; 7 U.S.C. 1901-1906; 21 U.S.C. 451-470, 601-695; 7 CFR 2.18, 2.53.	Control of <i>Listeria monocytogenes</i> in Ready-to-Eat Meat and Poultry Products.	68 FR 34208; June 6, 2003.	2007
9 CFR 309, 310, 311, 318, 319; 21 U.S.C. 601-695; 7 U.S.C. 138f, 450, 1901-1906; 7 CFR 2.17, 2.18, 2.53, 2.55.	Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle.	69 FR 1862; January 12, 2004.	2008
9 CFR 301, 318, 320; 21 U.S.C. 601-695; 7 U.S.C. 138f, 450, 1901-1906; 7 CFR 2.7, 2.18, 2.53.	Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery (AMR) Systems.	69 FR 1874; January 12, 2004.	2009

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through

the FSIS Web page located at <http://www.fsis.usda.gov>.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices,

FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health