

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

#### 7 CFR Part 249

[FNS-2006-0046]

RIN 0584-AD35

#### Senior Farmers' Market Nutrition Program Regulations; Announcement of Approval and Compliance Date, With Technical Amendment

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule; announcement of approval and compliance date, with technical amendment.

**SUMMARY:** The provisions of the final rule entitled Senior Farmers' Market Nutrition Program Regulations published on December 12, 2006, contained information collection requirements that required approval by the Office of Management and Budget (OMB). This document announces the approval date of the provisions contained in the final rule and amends the final rule to include the OMB Control Number assigned to the information collection burden.

**DATES:** *Effective date:* The technical amendment to § 249.27 will become effective on March 23, 2007.

*Approval date:* The information collection requirements of §§ 249.1 through 249.26 of the rule published in the **Federal Register** on December 12, 2006 (71 FR 74618), were approved by OMB on January 5, 2007.

*Compliance date:* Compliance with the provisions of the SFMNP Final Rule, including the information collection requirements, is required as of January 11, 2007.

**FOR FURTHER INFORMATION CONTACT:** Debra Whitford or Donna Hines, Supplemental Food Programs Division, Food and Nutrition Service, USDA,

3101 Park Center Drive, Room 528, Alexandria, Virginia 22302, (703) 305-2746, OR  
Debbie.Whitford@fns.usda.gov, or  
Donna.Hines@fns.usda.gov.

#### List of Subjects in 7 CFR Part 249

Aging, Community supported agriculture programs, Elderly, Farmers, Farmers' markets, Food assistance programs, Food donations, Grant programs, Nutrition education, Public assistance programs, Seniors, Social programs.

■ Accordingly, 7 CFR part 249 is amended to read as follows:

#### PART 249—SENIOR FARMERS' MARKET NUTRITION PROGRAM

■ 1. The authority citation for 7 CFR part 249 continues to read as follows:

*Authority:* 7 U.S.C. 3007.

■ 2. Section 249.27 is added to read as follows:

##### § 249.27 OMB Control Number.

The information collection requirements for part 249 have been reviewed and approved by the Office of Management and Budget (OMB). The OMB approval number is 0584-0541.

Dated: March 16, 2007.

**George Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. E7-5330 Filed 3-22-07; 8:45 am]

**BILLING CODE 3410-30-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

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

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the administrative

rules and regulations that define production districts, allocate committee membership, and specify nomination procedures for the Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees). The committees are responsible for local administration of the Federal marketing orders (orders) for fresh nectarines and peaches grown in California, respectively. This rule also continues in effect the revision to the committees' mailing address. These revisions are necessary to bring the orders' administrative rules and regulations into conformance with the recently amended order provisions.

**DATES:** *Effective Date:* April 23, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Laurel May, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or *E-mail:* [Laurel.May@usda.gov](mailto:Laurel.May@usda.gov); or Kurt Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; *Telephone:* (559) 487-5901, *Fax:* (559) 487-5906, or *E-mail:* [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or *E-mail:* [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to

have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that removed or revised obsolete language in the orders' administrative rules and regulations pertaining to the alignment of production districts; the allocation of committee membership; and the nomination processes for NAC, Shipper's Advisory Committee, PCC, and Control Committee members. This rule also continues in effect to change the PCC's business address by removing reference to the Control Committee in order to reflect current committee operations. These changes are needed to bring the orders' administrative rules and regulations into conformity with amendments to the orders' provisions recently approved by nectarine and peach growers. These changes were unanimously recommended by the committees at their meetings on August 31, 2006.

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

##### *Nectarine Administrative Committee*

Section 916.12 of the nectarine order establishes the nectarine production districts into which the state of California has been divided. Section 916.20 establishes the size of the NAC and the allocation of NAC membership to the districts defined in § 916.12. In addition, § 916.31 provides authority for the NAC to recommend changes to district boundaries and to reapportion committee representation to reflect shifts in production within the state as necessary. The changes to district boundaries and membership reapportionment recommended by the

NAC were reflected in §§ 916.105 and 916.107 of the order's administrative rules and regulations.

A final rule amending §§ 916.12 and 916.20 of the nectarine order was published in the **Federal Register** on July 21, 2006 (71 FR 41345). The amendments, which became effective on January 1, 2007, redefined the nectarine production districts, increased the size of the NAC from eight to thirteen members, and reallocated committee membership among the new districts. After January 1, 2007, §§ 916.105 and 916.107 no longer reflected the district boundaries and committee membership allocation as defined in the amended order. Therefore, the NAC recommended removing the obsolete sections when the amendments became effective. This rule continues in effect the action that removed those sections. Any subsequent changes to the production districts and reallocation of committee membership among new districts will be accomplished by notice and comment rulemaking as appropriate.

##### *Peach Commodity Committee*

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

A final rule amending §§ 917.14 and 917.22 of the peach order was published in the **Federal Register** on July 21, 2006 (71 FR 41345). The amendments, which became effective on January 1, 2007, redefined the peach production districts and reallocated committee membership among the new districts. After January 1, 2007, § 917.120 no longer reflected the district boundaries and committee membership allocation as defined in the amended order provisions. Therefore, the PCC recommended removing the obsolete section when the amendments became effective. This rule continues in effect the action that removed that section. Any subsequent changes to the production districts and reallocation of committee membership among new districts will be accomplished by notice

and comment rulemaking as appropriate.

#### **Committee Nomination Processes**

##### *Nectarine Administrative Committee*

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

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

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

##### *Peach Commodity Committee*

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

A final rule published in the **Federal Register** on July 21, 2006, amended § 917.24 to allow the PCC to conduct

nominations through mail balloting. The amendment became effective on January 1, 2007. After that date, § 917.119, which contains language pertaining to the nomination processes for both the Peach and Pear Commodity Committees, is inconsistent with the amendments that allow the PCC to conduct nominations through mail balloting. Therefore, the PCC recommended revising the section to specify which language therein pertains to each commodity committee's nomination procedures. This rule continues in effect the action that revises § 917.119 to include a new paragraph that specifies which procedures apply to both the Peach and Pear Commodity Committees, and which apply only to Pears.

#### **Committee Business Address**

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

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

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

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

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2005 season, the committees' staff estimated that the average handler price received was \$10.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 650,000 containers to have annual receipts of \$6,500,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2005 season, the committees' staff estimates that small handlers represent approximately 86 percent of all the handlers within the industry.

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

With an average grower price of \$5.25 per container or container equivalent, and a combined packout of nectarines and peaches of approximately 38,776,500 containers, the value of the 2005 packout is estimated to be \$203,576,600. Dividing this total estimated grower revenue figure by the estimated number of growers (800) yields an average revenue per grower of about \$254,471 from the sales of peaches and nectarines.

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

This rule continues in effect the action that removed or revised certain sections of the orders' administrative rules and regulations to conform to the amended order provisions.

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

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

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

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

This rule will not impose any additional reporting or recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public

sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested persons were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the August 31, 2006, meetings were public meetings and all entities, both large and small, were able to express their views on these issues.

An interim final rule concerning this action was published in the **Federal Register** on December 28, 2006. The rule was posted on CTFA's website. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period, which ended on February 26, 2007. One comment supporting the actions was received. The commenter stated that the actions accurately reflected the industries' desire to bring the orders' rules and regulations into conformance with the amended order provisions.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 78038, December 28, 2006), will tend to effectuate the declared policy of the Act.

#### 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

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 71 FR 78038 on December 28, 2006, is adopted as a final rule without change.

Dated: March 19, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-5311 Filed 3-22-07; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 930

[Docket No. AMS-FV-06-0187; FV07-930-1 FR]

#### Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2006-2007 Crop Year for Tart Cherries

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

**ACTION:** Final rule.

**SUMMARY:** This rule establishes final free and restricted percentages for the 2006-2007 crop year. The percentages are 55 percent free and 45 percent restricted and will establish the proportion of cherries from the 2006 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body that locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

**DATES:** *Effective Date:* March 26, 2007. This final rule applies to all 2006-2007 crop year restricted cherries until they are properly disposed of in accordance with marketing order requirements.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Unit 155, 4700 River Road, Riverdale, MD 20737; *Telephone:* (301) 734-5243, or *Fax:* (301) 734-5275, or E-mail at [Patricia.Petrella@usda.gov](mailto:Patricia.Petrella@usda.gov) or [Kenneth.Johnson@usda.gov](mailto:Kenneth.Johnson@usda.gov).

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule establishes final free and restricted percentages for tart cherries for the 2006-2007 crop year, beginning July 1, 2006, through June 30, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary 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 exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary 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 in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.