''fresh fruits and fresh vegetables'' (7 CFR 42 (u), to expressly extend PACA coverage to perishable agricultural commodities that have been coated or battered. In its petition of June 21, 2001, FPPI requested that AMS codify its August 2000 opinion to ensure that all dealers of perishable agricultural commodities are properly on notice as to the scope of products covered by PACA regulations.

Executive Orders 12866 and 12988

This proposed rule, issued under the Perishable Agricultural Commodities Act (7 U.S.C. 499 *et. seq.*), has been determined to be not significant for the purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), AMS has considered the economic impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those whose annual receipts are less than $5,000,000. There are approximately 15,700 firms licensed under the PACA, many of which could be classified as small entities.

AMS recognizes that frozen potato products represent the largest single frozen commodity in the United States. PACA coverage of such commodities would affect countless growers, shippers, processors, and distributors who deal in the commodities, most of which are small businesses. To exclude over 26 percent of frozen potato products from coverage of the PACA is inconsistent with the intent of Congress in enacting the PACA to protect producers and dealers of fresh and frozen fruits and vegetables.

This regulatory amendment is being proposed in response to the petition of the frozen food industry to codify USDA's opinion that the coating or battering of fruits and vegetables is an operation that is not considered as changing a commodity into a food of a different kind or character. Producers and distributors of coated and battered product would benefit since they would have the same rights as those afforded other processors and suppliers whose product may be indistinguishable in appearance or texture, but not coated or battered. AMS believes that codifying this opinion will help reduce litigation time and expenses for small produce businesses that seek to enforce their trust rights in federal district courts.

Given the preceding discussion, AMS has made an initial determination that the provisions of this proposed rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements that are covered by this proposed rule were approved under OMB number 0581–0031 on September 30, 2001, and expire on September 30, 2004.

List of Subjects in 7CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 46 is proposed to be amended as follows:

PART 46—[AMENDED]

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In § 46.2, paragraph (u) would be revised to read as follows:

§ 46.2 Definitions.

* * * * *

(u) *Fresh fruits and fresh vegetables* include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but does not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a commodity into a food of a different kind or character: Water, steam, or oil blanching, battering, coating, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seed, pits, stems, calyx, husk, pods rind, skin, peel, et cetera; polishing, precooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruit or vegetables for packaging in any type of containers; or comparable methods of preparation.

* * * * *

Dated: December 9, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–31583 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV03–916–1]

Nectarines, Pears, and Peaches Grown in California; Continuance Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referenda order.

SUMMARY: This document directs that referenda be conducted among eligible growers of California nectarines, pears, and peaches to determine whether they favor continuance of the marketing orders regulating the handling of nectarines, pears, and peaches grown in the production area.

DATES: The referenda will be conducted from January 6 through January 31, 2003. To vote in these referenda, growers must have been producing California nectarines, pears, and peaches during the period April 1 through November 30, 2002.

ADDRESSES: Copies of the marketing orders may be obtained from the office of the referenda agents at 2202 Monterey Street, Suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture (USDA), 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and

Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone (559) 487–5901; fax (559) 487–5906; or Kathleen Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave., SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491; fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 916 (7 CFR part 916) and Marketing Order No. 917 (7 CFR part 917), hereinafter referred to as the ''orders,'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that referenda be conducted to ascertain whether continuance of the orders is favored by growers. The referenda shall be conducted during the period January 6 through January 31, 2003, among California nectarine, pear, and peach growers in the production area. Only growers that were engaged in the production of California nectarines, pears, and peaches during the period of April 1 through November 30, 2002, may participate in the continuance referenda.

Although pears are included under the provisions of M.O. 917, those provisions have been suspended since April 1994. Since that time, the pear industry has been regulated by a State marketing order. If the results of the pear referendum do not favor continuance, the pear order will be terminated. Otherwise, this suspension will remain in effect unless the pear industry recommends reactivation of the federal program.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The USDA would consider termination of the orders if less than two-thirds of the growers voting in the referenda and growers of less than two-thirds of the volume of California nectarines, pears, and peaches represented in the referenda favor continuance. In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referenda. The USDA will also consider all other relevant information concerning the operation of the orders and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the orders would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referenda herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0189 for nectarines, pears, and peaches. It has been estimated that it will take an average of 30 minutes for each of the approximately 2,130 growers of California nectarines, pears, and peaches to cast a ballot. Participation is voluntary. Ballots postmarked after January 31, 2003, will not be included in the vote tabulation.

Kurt J. Kimmel and Terry Vawter of the California Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referenda agents of USDA to conduct such referenda. The procedure applicable to the referenda shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR part 900.400 et. seq).

Ballots will be mailed to all growers of record and may also be obtained from the referenda agents and from their appointees.

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.

Authority: 7 U.S.C. 601–674.

Dated: December 9, 2002.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–31582 Filed 12–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 82, and 94

[Docket No. 00–107–1]

RIN 0579–AB31

Salmonella Enteritidis Phage-Type 4; Remove Import Restrictions and Salmonella Enteritidis serotype Enteritidis; Remove Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations to remove import restrictions on eggs (other than hatching eggs) of poultry, game birds, and other birds from regions where *Salmonella enteritidis* phage-type 4 exists. Previously, *Salmonella enteritidis* phage-type 4 had not been isolated in the United States; therefore, those import restrictions were necessary to help prevent *Salmonella enteritidis* phage-type 4 from being introduced into this country. However, *Salmonella enteritidis* phage-type 4 is now known to be present in the United States. This action would eliminate restrictions on the importation of eggs from regions where *Salmonella enteritidis* phage-type 4 exists. We are also proposing to remove our regulations regarding poultry disease caused by *Salmonella enteritidis* serotype *enteritidis*.

These regulations are no longer enforced, and it is necessary to remove them to make our regulations consistent with our enforcement.

DATES: We will consider all comments that we receive on or before February 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–107–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–107–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–107–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in