

Vineyard, Perkins, Phillips, Rangeley, Rangeley Plantation, Redington, Salem, Sandy River Plantation, Strong, Temple, Township 6 North of Weld, Township D, Township E, Washington, Weld, Wilton, and Wyman.

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*Penobscot County.* The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Carroll Plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew Plantation, E. Millinocket, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Grindstone, Hampden, Hermon, Hersey Town, Holden, Hopkins Academy Grant, Howland, Hudson, Indian Purchase, Kenduskeag, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Long A, Lowell, Mattamiscontis, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Mount Chase, Newburgh, Newport, Old Town City, Orono, Orrington, Passadumkeag, Patten, Plymouth, Prentiss Plantation, Seboeis Plantation, Soldiertown, Springfield, Stacyville, Stetson, Summit, Veazie, Veazie Gore, Webster Plantation, Winn, Woodville, T1 ND, T1 R6 WELS, T1 R8 WELS, T2 R8 NWP, T2 R8 WELS, T2 R9 NWP, T3 R1 NBPP, T3 R9 NWP, T5 R1 NBPP, T5 R8 WELS, T6 R8 WELS, TA R7, TA R8, TA R9, and the portion of T3 R8 within the boundaries of Baxter State Park.

*Piscataquis County.* The townships of Abbot, Atkinson, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Ellitsville, Greenville, Guilford, Katahdin Iron Works, Kingsbury Plantation, Lakeview Plantation, Medford, Milo, Monson, Mount Katahdin, Nesourdnahunk, Orneville, Parkman, Sangerville, Sebec, Shirley, Trout Brook, Wellington, Williamsburg, Willimantic, T1 R9 WELS, T1 R10 WELS, T1 R11 WELS, T2 R10 WELS, T2 R9 WELS, T3 R10 WELS, T4 R9 NWP, T4 R9 WELS, T5 R9 NWP, T5 R9 WELS, T6 R10 WELS, T7 R9 NWP, TA R10 WELS, TA R11 WELS, TB R10 WELS, TB R11 WELS, and the portion of T4 R10 WELS within the boundaries of Baxter State Park.

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*Somerset County.* The townships of Anson, Athens, Bald Mountain, Bigelow, Bingham, Bowtown, Brighton Plantation, Cambridge, Canaan, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Cornville, Dead River, Detroit, East Moxie, Embden, Fairfield, Harmony, Hartland, Highland Plantation, Lexington Plantation, Lower Enchanted, Madison,

Mayfield, Mercer, Moscow, Moxie Gore, New Portland, Norridgewock, Palmyra, Pierce Pond, Pittsfield, Pleasant Ridge Plantation, Ripley, Skowhegan, Smithfield, Solon, St. Albans, Starks, The Forks Plantation, West Forks Plantation, and T3 R4 BKP WKR.

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#### Ohio

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*Athens County.* The entire county.

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*Crawford County.* The entire county.

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*Marion County.* The entire county.

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*Vinton County.* The entire county.

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#### Virginia

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*City of Covington.* The entire city.

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*City of Radford.* The entire city.

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*Bland County.* The entire county.

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*Floyd County.* The entire county.

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*Franklin County.* The entire county.

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*Pulaski County.* The entire county.

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#### West Virginia

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*Fayette County.* The entire county.

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#### Wisconsin

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*Ashland County.* Madeline Island area and Apostle Islands National Lakeshore (island units only).

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*Iron County.* The entire county.

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*Monroe County.* The entire county.

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Done in Washington, DC, this 13th day of April 2011.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011-9291 Filed 4-15-11; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Doc. No. AMS-FV-11-0019; FV11-916/917-5 IR]

#### Nectarines and Peaches Grown in California; Suspension of Handling Requirements

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This rule suspends the quality, inspection, reporting, and assessment requirements specified under the California nectarine and peach marketing orders (orders). The orders regulate the handling of nectarines and peaches grown in California. During recent referenda, less than the required two-thirds majority of growers, by number and production volume, favored continuation of the orders. After consideration of the referendum results and other factors, the Department of Agriculture (USDA) has decided to seek termination of the orders. Suspension of the handling regulations for the 2011 and subsequent marketing seasons will relieve handlers of all regulatory burden under the orders while USDA processes the terminations. Termination of the orders must be delayed until after a 60-day Congressional notification period following issuance of a proposed rule, which will be published in a future issue of the **Federal Register**.

**DATES:** Effective April 19, 2011; comments received by June 17, 2011 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must 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 Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the

comments will be made public on the Internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901; Fax: (559) 487-5906; or E-mail: [Jerry.Simmons@ams.usda.gov](mailto:Jerry.Simmons@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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: [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.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. Regulatory requirements for nectarines and peaches grown in California are suspended indefinitely beginning with the 2011 marketing season.

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 action suspends for the 2011 and subsequent marketing seasons the quality, inspection, reporting, and

assessment requirements for nectarines and peaches specified under the orders. Suspension of the handling requirements will relieve handlers of all regulatory burdens associated with the programs while USDA seeks to terminate the orders, which are no longer favored by industry growers.

The nectarine order has been in effect since 1958. The peach order, which includes provisions for the handling of fresh pears, has been in effect since 1939. The orders have been used over the years to provide the California tree fruit industries with authority for grade, size, maturity, pack, and container regulations, as well as authority for inspection requirements. The orders also authorize production research and marketing research and development projects, as well as the necessary reporting and recordkeeping functions required for operation. The programs are funded by assessments imposed on handlers.

Sections 916.64(e) and 917.61(e) of the orders require continuance referenda to be conducted every fourth year between December 1 and February 15. During the period January 12 through February 2, 2011, USDA conducted referenda among growers to determine if they favored continuation of their programs. The referendum order published in the **Federal Register** on December 13, 2010 (75 FR 77563), explained that USDA would consider terminating the orders if fewer than two-thirds of the growers voting and growers of less than two-thirds of the production volume represented in the referenda favored continuance.

Ballots were mailed to 447 known nectarine and peach growers in California. Ninety-nine valid nectarine ballots and 102 valid peach ballots were returned. Only 63 percent of participating nectarine growers, who produced 36 percent of the volume represented in the referendum, favored continuation of the nectarine order. Only 62 percent of the peach growers, who produced 36 percent of the volume represented in the referendum, favored continuing the peach order.

During the same period, referendum ballots were mailed to 140 pear growers. Thirty-four valid ballots were returned. Ninety-four percent of participating pear growers, who produced 99 percent of the production volume represented in the referendum, voted to continue the fresh pear order. The provisions of Marketing Order No. 917 (7 CFR part 917) pertaining to pears have been suspended since 1994 (59 FR 10055; March 5, 1994). However, because pear growers support continuance of the suspended provisions, USDA does not

intend to terminate the pear provisions at this time. The remainder of this document pertains to the suspension of regulations under the nectarine and peach orders only.

These are the second consecutive referenda in which growers have failed to support continuation of the nectarine and peach orders. In 2003, growers did not vote in favor of continuing the programs. However, after conducting listening sessions with the industry, USDA determined that with certain modifications the order programs could continue to be beneficial. The orders were amended (71 FR 41345; July 21, 2006) and regulatory changes were made that were intended to make the programs relevant to contemporary industry needs (72 FR 18847; April 16, 2007). No continuance referenda were conducted in 2007 because the orders were being amended at the time.

Despite USDA efforts to help refine the programs over the past several years, growers have continued to express their belief that the programs no longer meet their needs. These referendum results demonstrate a lack of grower support needed to carry out the objectives of the Act. Thus, it has been determined that the provisions of the orders no longer tend to effectuate the declared policy of the Act. USDA intends to seek termination of the orders through the informal rulemaking process and will publish a proposed rule regarding the terminations in a future issue of the **Federal Register**. Additionally, USDA is required to notify Congress not later than 60 days before the date the order would be terminated.

The 2011-12 fiscal year for California nectarines and peaches began March 1, 2011. The 2011 marketing season begins on April 1. This action suspends the nectarine and peach quality, inspection, and assessment regulations in effect under the orders for the 2011-12 and subsequent marketing seasons. Also, handler reports would not be required beginning with the 2011 marketing season. Suspending all regulatory requirements relieves handlers of all regulatory burden under the orders.

It is hereby determined that the quality, inspection, reporting, and assessment requirements specified in Sections 916.110, 916.115, 916.234, 916.235, 916.350, and 916.356 for nectarines do not effectuate the declared policy of the Act and should not be applied during the 2011-12 and subsequent seasons. Further, it is hereby determined that the quality, inspection, reporting, and assessment requirements specified in Sections 917.143, 917.150, 917.258, 917.259, 917.442, and 917.459 for peaches do not effectuate the

declared policy of the Act and should not be applied during the 2011–12 and subsequent seasons. Therefore, these sections are suspended effective April 19, 2011. Upon termination of the order provisions pertaining to nectarines and peaches grown in California, these and other regulations under the orders would no longer be in effect.

#### Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial 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 the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 97 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 447 growers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and 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.

For the 2010 marketing season, the committees' staff estimated that the average handler price received was \$10.50 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 666,667 containers to have annual receipts of \$7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2010 season, the committees' staff estimates that approximately 46 percent of handlers in the industry would be considered small entities.

For the 2010 marketing season, the committees' staff estimated the average grower price received was \$5.50 per container or container equivalent for nectarines and peaches. A grower would have to produce at least 136,364 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 2010 season, the committees' staff estimates that more than 80 percent of the growers within the industry would be considered small entities.

This rule suspends the quality, inspection, and assessment requirements for nectarines and peaches under the orders. Also, handler reports would not be required beginning with the 2011 marketing season. This action is consistent with USDA's decision to seek termination of the nectarine and peach order provisions. Growers recently participated in continuance referenda to determine current support for the orders. Less than the required two-thirds majority of voters, by number and production volume, favored continuance. As provided in the orders, USDA is obligated to consider order termination when growers fail to support the order programs in sufficient numbers. Following the 2003 continuance referenda, in which voters did not support continuation of the programs, USDA conducted listening sessions in the industry. It was determined at that time that the programs might continue to benefit growers and handlers if certain modifications were made to the programs. The orders were amended in 2006 (71 FR 41345; July 21, 2006). Significant changes to the orders' grade and inspection regulations were subsequently made to reduce costs to handlers (72 FR 18847; April 16, 2007). The industries then transferred the bulk of their promotional activities to California State marketing programs. The California State marketing programs were subsequently discontinued in 2010. Despite all these attempts to modify the Federal programs, the industry has continued to express its belief that the benefits of the programs no longer outweigh the costs. Therefore, USDA has decided to seek termination of the nectarine and peach marketing order programs. Suspension of the regulations would relieve handlers of quality, inspection, and assessment burdens during the termination process. Also, handler reports would not be required beginning with the 2011 marketing season. Additionally, growers may be relieved of some costs, such as assessment expenses, which are often passed onto them by handlers. Suspension of the requirements is therefore expected to reduce the regulatory burden on handlers and growers of all sizes.

As an alternative to this rule, AMS considered not suspending the stated handler requirements. In that case, handlers would have to comply with all

quality, inspection, assessment, and reporting requirements until the orders were terminated. However, AMS does not believe that it is appropriate to require handlers to continue to be regulated during the 2011 marketing season when AMS intends to terminate the orders as soon as practicable. Therefore, this alternative was rejected and handlers will be relieved of the regulatory burdens under orders 916 and 917.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large California nectarine or peach 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, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on suspension of the quality, inspection, reporting, and assessment requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the results of recent grower continuance referenda, it is found that the regulatory requirements suspended by this interim rule, as hereinafter set forth, do not tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause

exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible, since shipments of California nectarines and peaches are expected to begin in early April; (2) less than the required two-thirds majority of voters, by number or production volume, favored continuance of the nectarine and peach orders in the recent referenda; (3) handlers are aware of USDA's intention to suspend the regulations, which was announced in a press release issued on March 25, 2011; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

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

**Authority:** 7 U.S.C. 601–674.

#### PART 916—NECTARINES GROWN IN CALIFORNIA

- 2. In part 916, §§ 916.110, 916.115, 916.234, 916.235, 916.350, and 916.356 are suspended indefinitely, effective April 19, 2011.

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

- 3. In part 917, § 917.143, paragraph (b), lift the suspensions of March 3, 1994 (59 FR 10056); and suspend §§ 917.143, 917.150, 917.258, 917.259, 917.442, and 917.459 indefinitely, effective April 19, 2011.

Dated: April 12, 2011.

**David R. Shipman,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–9328 Filed 4–15–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 924

[Docket No. AMS–FV–10–0053; FV10–924–1 FR]

#### Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Termination of Marketing Order 924

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

**ACTION:** Final rule, termination of order.

**SUMMARY:** This final rule terminates the Federal marketing order regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, and the rules and regulations issued thereunder. The Department of Agriculture (USDA) has determined that the marketing order is no longer an effective marketing tool for the fresh prune industry, and that termination best serves the current needs of the industry while also eliminating the costs associated with the operation of the marketing order.

**DATES:** *Effective Date:* April 19, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Martin Engeler, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721, *telephone:* (559) 487–5110, *Fax:* (559) 487–5906, or *E-mail:* [Martin.Engeler@ams.usda.gov](mailto:Martin.Engeler@ams.usda.gov); or Robert Curry, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 805 SW Broadway, Suite 930, Portland, Oregon 97205, *telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *E-mail:* [Robert.Curry@ams.usda.gov](mailto:Robert.Curry@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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:* [Antoinette.Carter@ams.usda.gov](mailto:Antoinette.Carter@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This action is governed by section 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act”, and § 924.64 of Marketing Agreement and Order No. 924, both as amended (7 CFR part 924), effective under the Act and hereinafter referred to as the “order.”

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

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

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 terminates Federal Marketing Order No. 924 and the rules and regulations issued thereunder. The order contains authority for regulation of the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. At a meeting held in Prosser, Washington, on June 1, 2010, the Committee unanimously recommended termination of the order.

Section 924.64 of the order provides, in pertinent part, that USDA terminate or suspend any or all provisions of the order when a finding is made that the order does not tend to effectuate the declared policy of the Act. Section 608c(16)(A) of the Act provides that USDA terminate or suspend the operation of any order whenever the order or provision thereof obstructs or does not tend to effectuate the declared policy of the Act. Additionally, USDA is required to notify Congress not later than 60 days before the date the order would be terminated.

The order, which was effectuated in 1960, provided the fresh prune industry in Washington and Oregon with authority for grade, size, quality, maturity, pack, and container regulations, as well as authority for mandatory inspection. The order also contained authorization for production research and marketing research and development projects, as well as the necessary reporting, recordkeeping, and assessment functions required for operation.

Based on the Committee's recommendation, USDA suspended the order's handling regulations on May 9, 2006 (71 FR 26817). The suspended