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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99-916-3 FR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the rules and regulations of the marketing orders (orders) for fresh nectarines and peaches grown in California pertaining to reporting requirements. The orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). Under the orders, authority is provided for the committees to require handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. This rule will require handlers to file such destination reports. Additional and timely information will thus be available to the committees and industry, facilitating improved decision making and program administration with regard to marketing research and development, and promotional activities.

EFFECTIVE DATE: This final rule becomes effective March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order

Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The 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. 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 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 exempted therefrom. A 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 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.

This final rule revises the orders' rules and regulations pertaining to reporting requirements under the orders. This rule establishes procedures in the orders' rules and regulations for handlers to file reports on the destinations of their shipments of fresh nectarines and peaches. Under the orders the term "handler" is synonymous with the term "shipper." This rule was unanimously recommended by the committees at their meetings on December 2, 1998.

In §§ 916.60 and 917.50 of the orders, authority is provided for the committees to require handlers to file reports with the committees. The information authorized includes, but is not limited to: (1) The name of the shipper and the shipping point; (2) The car or truck license number (or name of the trucker), and identification of the carrier; (3) The date and time of departure; (4) The number and type of containers in the shipment; (5) The quantities shipped, showing separately the variety, grade, and size of the fruit; (6) The destination; and (7) The identification of the inspection certificate or waiver pursuant to which the fruit was handled. Handlers have not been required to report the destinations of their shipments of fresh nectarines and peaches.

The Nectarine Administrative Committee's (NAC) and the Peach Commodity Committee's (PCC) discussions on destination reports were prompted by recommendations of two subcommittees which met prior to the December 2, 1998, committee meetings. At a Domestic Promotion Subcommittee meeting, the merits of destination reports were discussed, among other issues. The subcommittee unanimously recommended adding a requirement to the orders' rules and regulations for destination reports. The subcommittee believed that having information about markets to which nectarines and peaches are shipped will be a valuable marketing tool. The members believed that such information will allow the subcommittee to target markets more effectively for promotion, and permit a more effective analysis of the effectiveness of industry funded media and promotional campaigns. At an International Programs Subcommittee meeting, the merits of destination

reports also were discussed. The members of this subcommittee also believed that such reports will provide invaluable information to assist the NAC and PCC in targeting their promotional activities in the most-promising markets for these two fruits.

The NAC and PCC discussed the subcommittees' recommendations and the merits of destination reporting. Both the NAC and PCC agreed that the establishment of such a report requiring each handler to list the destination of his/her shipments of nectarines and peaches in both domestic and international markets will provide invaluable information and greatly benefit the industries.

With destination information from handlers, the committees will be able to make better-informed decisions about marketing research and development projects conducted, and gauge the success of such activities knowing the volume of fruit shipped to various markets. With this information, the committees will also be able to direct their marketing research and development activities and funds to the most-promising markets, and tailor the activities to meet the needs of the particular markets, focus on the more successful promotional activities, and target markets based on consumption.

Current market analysis tools, such as consumer and retail surveys, provide useful information based on a small group of respondents, but specific shipment and destination information will enable the committees to direct their activities to the most successful markets, and perform a more thorough analysis of the benefits of their promotional activities.

Without exact destination information, the committees do not know precisely the quantities of nectarines and peaches shipped to various markets, and, therefore, may be spending funds on promotional activities not appropriate for the particular market. Experience has shown that certain types of promotion are appropriate for developing markets and other activities are more appropriate when trying to expand markets. With the ability to determine the markets to which nectarines and peaches are not shipped, the committees will have the ability to direct their marketing research and promotion funds to open those markets for future shipments. In addition, such information will permit the committees to constructively evaluate the effectiveness of their marketing promotion and research programs by helping them get a better handle on promotions that have been working and

those that have not, and determine the reason(s) for any lack of success. The industries have long recognized the importance of this information in making their promotion activities more effective and in helping to sell more nectarines and peaches. They have tried voluntary reporting, but this has not worked.

The shipping season for nectarines begins April 1 and ends on October 31 of each year, and the shipping season for peaches begins on April 1 and ends on November 23 of each year. The destination report will be required from all handlers by the fifteenth of the month following the month in which the shipments were made. Handlers will be required to report the number of packages of peaches and nectarines shipped to each destination, and indicate whether the fruit were white-fleshed or yellow-fleshed, and whether the fruit were "CA Utility" quality. Destination information for domestic market shipments will include the city and state, and zip code, if known. Destination information for international market shipments will include the country to which shipped.

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 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$5,000,000. Small agricultural producers are defined as those having annual receipts of less than \$500,000.

Based upon committees' staff data, it is estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. If the average handler price received were \$9.00 per box or box equivalent of

nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of \$5,000,000. Less than 20 handlers ship more than 555,000 boxes of nectarines and/or peaches. Small handlers would, therefore, represent approximately 94 percent of the handlers within the industry. In addition, there are approximately 400 producers who could be defined as other than small entities. If the average producer price received were \$6.00 per box or box equivalent for nectarines and \$5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of \$500,000. More than 1,400 producers produce less than 84,000 boxes of nectarines or 89,000 boxes of peaches. Therefore, small producer entities would represent approximately 78 percent of the producers within the industry. For these reasons, a majority of the handlers and producers may be classified as small entities.

This final rule revises §§ 916.160 and 917.178 of the orders' administrative rules and regulations to require handlers to file destination reports on a monthly basis during the shipping season by adding a new paragraph (c) to each section. The information obtained from such reports will improve decision making and program administration with regard to marketing research and development activities undertaken to expand shipments of fresh nectarines and peaches domestically and in foreign markets.

Two comments were received as a result of a proposed rule published in the **Federal Register** on June 7, 1999 (64 FR 30252). The commenters raised issues concerning both the initial regulatory impact analysis and the information collection requirements, as proposed. These comments are discussed more fully later in this document.

Requiring handlers to file this report on a monthly basis will impose an additional reporting burden on both small and large handlers. The report is estimated to take three-quarters of an hour to complete. It is further estimated that handlers will file an average of four destination reports per year, creating an estimated total annual burden of three hours per handler. The total industry annual burden is, therefore, estimated at approximately 900 hours per year for nectarine and peach shipments each.

Although this action creates an additional burden on handlers of fresh nectarines and peaches, the benefits of

collecting additional and timely information regarding destinations are anticipated to outweigh the estimated increased reporting burden. The committees will have detailed information about markets to which fruit is sent; and, therefore, will be able to make better-informed decisions about marketing research and promotion fund expenditures and activities undertaken. Such reports and forms will be filed by all handlers, regardless of size; and thus, the increased burden will be equitably distributed to all handlers. Finally, 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 accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0072 for documents required under the nectarine marketing order, and OMB No. 0581-0080 for documents required under the peach marketing order. The estimated burden has been revised based upon a comment received. The revised estimated total annual burden for nectarine and peach handlers is reduced from 1,200 hours to 900 hours. As previously stated, this comment is discussed more fully later in the document. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

An alternative to this action would be to continue operations without required destination reporting. Most committee members agreed that the value of having destination information outweighed the burden on handlers of filing such reports in terms of targeting marketing and promotion funds and activities. In recent years, the committees have decided to keep their marketing and promotion expenses relatively constant. Because of this, the committee members felt that greater emphasis should be placed on using the funds to their greatest advantage.

All committee members agreed that continuing to spend promotion funds, without the information to be provided by destination reports, was not in the best interest of the industries. Further, as the percentage of promotion funds either decreases or remains constant in relationship to total committee funds, and as shipments of nectarines and peaches increase over time, detailed information on the destinations of nectarine and peach shipments will be

valuable in targeting promising markets. The committee members also noted that voluntary destination reports have been requested in the past, but very few handlers provided the information. The committees, therefore, voted unanimously at all the meetings to require destination reports from nectarine and peach handlers.

During the deliberations, some committee members indicated their concern that destination information will not be kept confidential by committee staff. The Act states, in part, in § 608d(2), that "all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information * * *, shall be kept confidential by all officers and employees of the Department of Agriculture." In addition, §§ 916.60(d) and 917.50(d) of the orders also require committee employees to maintain confidentiality of all reports and records submitted by handlers. Therefore, each handler is generally protected against disclosure of any confidential information the handler furnishes to the committees. Further, under the Act, persons found guilty of revealing confidential information could be subject to a fine, imprisonment, or both, or could be removed from office.

The committee meetings were widely publicized throughout the tree fruit industry and all interested persons were invited to express their views and participate in committee deliberations on all issues. Like all committee meetings, the December 2, 1998, meetings were public meetings, and all entities, large and small, were able to express their views on this issue. The subcommittee meetings were also public meetings at which large and small entities were invited to express their views and participate in all deliberations. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

A proposed rule concerning this action was published in the **Federal Register** on June 7, 1999 (64 FR 30252). The proposal also announced AMS's intent to request a revision to the currently approved information collection requirements issued under the orders. Copies of the proposal were also mailed to handlers on June 9, 1999, by the California Tree Fruit Agreement staff, who conduct day-to-day business operations for the committees. Finally, the proposed rule was made available through the Internet by the Office of the

Federal Register. A 60-day comment period, ending August 6, 1999, was provided to allow interested persons to respond to the proposal.

Two comments were received during the comment period in response to the proposal. One commenter, a handler, made two points concerning the proposed rule. First, the commenter was of the view that the proposed information to be collected was not necessary to ensure the high quality of nectarines and peaches and adequate returns to producers. This commenter went on to state that the marketing orders have never been concerned with the returns to the producer, only moving the crop at whatever price necessary to move it, in addition to collecting the mandatory assessment. The Department disagrees with the commenter's views. The marketing orders were issued consistent with the provisions of the Act. The regulations issued in this rulemaking are authorized under the orders and their purpose is to provide additional and timely information to the committees and the industries, thereby facilitating improved decision making and program administration with regard to marketing research and development, and promotional activities. Accordingly, the Department believes that the information required by the regulations is needed to accomplish their stated objectives.

With regard to the commenter's second point, the commenter stated that the number of producers that are small entities should be based on an average of boxes shipped over 3-5 years. The regulatory flexibility analysis discusses and sets forth the identification and estimates of small entities under criteria established by the Small Business Administration. The information is based on the most current and accurate information available, and, as such, the Department believes is best suited to accomplish the objectives of the Regulatory Flexibility Act and this program. The commenter went on to state that there should be a minimum of perhaps 50,000 shipped boxes before a destination report should be required of producers who are also handlers. While minimum exemptions are and have been used as an alternative in a variety of regulatory schemes, they may not be appropriate in all programs. For example, with regard to this program, a second commenter noted that given the structure of the industries, it was important that all handlers report their destinations and that the report be compiled collectively to measure trends and to analyze marketing effectiveness. Accordingly, given the purpose and nature of these regulations, the

Department does not believe that a minimum exemption is appropriate. Further, based upon information in another comment received concerning the proposed rule, the committees have revised the detail in the forms to be used to further minimize the burden.

The second commenter, the manager of the California Tree Fruit Agreement, the body which manages the PCC and NAC, supported the proposed rule, stating that destination reports will help in providing information for the committees to make long-term decisions designed to improve the marketing of nectarines and peaches grown in California. This commenter noted, as well, the importance of requiring all handlers to file destination reports. This commenter also discussed requirements for similar information in other programs, the confidentiality of the information submitted, and the need to finalize this action as soon as possible.

The comment went on to state that the NAC and the PCC have revised the destination reports since the proposed rule was issued to make it more simple for handlers to complete. For example, requested information concerning grade and size has been removed, and zip code information would be required only if known by the handler. Reporting "CA Utility" quality fruit also would be required. It was suggested that the computer technology that is being used in the industries may also assist handlers in completing the destination report in less time that it would take to complete the report by hand.

The Department has revised its estimate of the time it would take to complete the destination report from one hour to three-quarters of an hour. The revised estimated total annual burden to nectarine and peach handlers is reduced from 1,200 hours to 900 hours.

Accordingly, appropriate changes have been made to the rule as proposed, based on this second comment. Finally, this rule will be effective for the beginning of the 2000 shipping season.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: <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, including the information and recommendation submitted by the committees and other available information, it is hereby found that this rule, as hereinafter set forth,

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.

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 § 916.160, paragraph (c) is added to read as follows:

§ 916.160 Reporting procedure.

* * * * *

(c) *Destination report.* Each shipper who ships nectarines shall furnish to the manager of the Nectarine Administrative Committee a report of the number of packages of nectarines shipped to each destination, and whether the nectarines were yellow-fleshed or white-fleshed, and whether the nectarines were "CA Utility" quality. The destination is defined as nectarine shipments to any domestic or international market. Destination information for domestic market shipments shall include city and state, and zip code, if known. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which nectarine shipments were made.

PART 917—PEACHES GROWN IN CALIFORNIA

3. In § 917.178, paragraph (c) is added to read as follows:

§ 917.178 Peaches.

* * * * *

(c) *Destination report.* Each shipper who ships peaches shall furnish to the manager of the Control Committee a report of the number of packages of peaches shipped to each destination, and whether the peaches shipped were yellow-fleshed or white-fleshed, and whether the peaches were "CA Utility" quality. The destination is defined as peach shipments to any domestic or

international market. Destination information for domestic market shipments shall include the city and state, and zip code, if known. Destination information for international market shipments shall include the country to which shipped. This report shall be submitted by the fifteenth of each month following the month in which peach shipments were made.

Dated: February 3, 2000.

Robert C. Keeney,
Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–2978 Filed 2–8–00; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–00–985–1 FR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2000–2001 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year, which begins on June 1, 2000. This rule establishes salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,211,207 pounds and 65 percent, respectively, and for Class 3 (Native) spearmint oil of 1,033,648 pounds and 50 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

EFFECTIVE DATE: June 1, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing