

**§ 81.16 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any producer shall be refunded to AMS together with interest.

(b) All producers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any producer under this part if AMS determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS was at fault for the overpayment.

(d) Interest allowable in favor of AMS in accordance with paragraph (c) of this section may be waived when there was no intentional noncompliance on the part of the producer, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for those claims which are addressed in 7 CFR part 792.

(f) Producers must refund to AMS any excess payments, as determined by AMS, with respect to such application.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the producer, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest.

**§ 81.17 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance, or dissolution of a prune/plum producer that is eligible to receive benefits in accordance with this part, such person or persons who would, under 7 CFR part 707 be eligible

for payments and benefits covered by that part, may receive the tree-removal benefits otherwise due the actual producer.

Dated: March 8, 2002.

**A.J. Yates,**  
*Administrator, Agricultural Marketing Service.*

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**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 916 and 917****[Docket No. FV01-916-3 FIR]****Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches**

**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 reporting requirements under the marketing orders for California nectarines and peaches by modifying the requirement that all handlers submit a monthly destination report. This rule continues in effect the relaxation of the requirement by establishing an exemption for handlers who ship fewer than 50,000 containers or container equivalents of tree fruit, including nectarines, peaches, and plums. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative (NAC) and Peach Commodity Committees (PCC) (committees). The handling of plums grown in California is regulated by a California State marketing order.

**EFFECTIVE DATE:** April 15, 2002.

**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, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20090-0237; telephone: (202) 720-2491; Fax: (202) 720-8938.

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 20090-0237; 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 Agreement 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 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 modification of the reporting requirements under the orders' rules and regulations by establishing an exemption from filing mandatory monthly destination reports for handlers who handle less than 50,000 containers or container equivalents of nectarines, peaches, and plums. While nectarines and peaches are regulated under the Federal marketing orders, plums are regulated under a California state marketing order. Most handlers,

however, handle and report on a combination of these fruit.

Under this modification, handlers who shipped less than 50,000 containers or container equivalents of any combination of nectarines, peaches, and plums in the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, provided their shipments continue to total less than 50,000 containers or container equivalents of these fruit in the previous season.

Handlers who begin operation during or after the 2001 season will also be exempt from filing monthly destination reports during their first year of operation. These handlers will continue to be exempt from such reporting requirements as long as their shipments of these tree fruit total less than 50,000 containers or container equivalents, in the previous season.

Handlers who are not exempt, but in some subsequent year ship less than 50,000 containers or container equivalents, will be exempt the following season and will be exempt in subsequent seasons, provided their shipments continue to total less than 50,000.

Under the orders, reporting requirements are established in §§ 916.60 and 917.50 for fresh shipments of California nectarines and peaches, respectively. Prior to publication of the interim final rule, such reports were to be filed with the committees by all handlers. The information required includes: (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. Other information may be requested by the committees, with the approval of the Secretary, to enable the committees to carry out their duties.

Sections 916.160 and 917.178 of the orders' rules and regulations specify the reporting procedures for handlers of nectarines and peaches, which include the requirements related to destination reports.

Information from destination reports is utilized by the NAC and PCC to determine the quantities of nectarines and peaches shipped to various markets. Such information permits the committees to target marketing research and promotion efforts more effectively,

giving the committees the flexibility to direct their limited marketing funds to open new markets or expand existing markets.

The more accurate the information obtained from handlers, the more precisely the committees can address their marketing research and promotion efforts. However, this information collection comes at a cost to the committees and to handlers, especially smaller handlers who generally lack the staff to prepare such reports.

The NAC and PCC, which are responsible for local administration of the orders, met on May 3, 2001, and unanimously recommended that these reporting requirements be revised, beginning with the 2001 season, which began April 1. However, because the season had already begun, the relaxation in report requirements was implemented as of the effective date of the interim final rule.

At three subcommittee meetings prior to the May 3, 2001 committee meetings, discussions on the merits of the exemption were held. The Management Services Committee met on January 18, 2001, and discussed a request from a small handler to review the destination report requirements. It was reported that destination information from small handlers is not always accurate since the reporting handlers do not necessarily know the final destination of their fruit sold at terminal markets. It was also noted that the burden of filing destination reports is often a complaint of small handlers.

The Management Services Committee then directed the committee staff to review the destination report requirements and procedures, and make recommendations based upon their review at the following Management Services Committee meeting.

The Management Services Committee met again on March 6, 2001, and discussed the destination report information provided by the committee staff. The members also discussed changes to the destination report requirements, as well as the effect of the revision on handlers in the industry and on information gathering conducted by the committees.

A review of destination report records by the staff revealed that approximately 160 handlers shipped less than 50,000 containers of all three tree fruit during the 2000 season. As a percentage of total shipments, these handlers represent approximately 3 percent of all shipments of nectarines, peaches, and plums. The committees' staff spends a portion of their time administering the collection of this relatively small amount of additional information. The

committees believe that exempting information from handlers who represent approximately 3 percent of all tree fruit shipments would not have a significant effect on overall destination information, and may actually improve the accuracy of destination information. These handlers are small entities, and such a relaxation will reduce the reporting burden on them. In addition, the committees' administrative costs associated with destination reports may be reduced.

Finally, the Management Services Committee met on April 18, 2001, to review destination report summaries from the 2000 season. Based on all the information considered, the members voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit (including nectarines, peaches, and plums) should be exempted from filing monthly destination reports.

#### 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 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, are 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 by the Small Business Administration as those having annual receipts of less than \$750,000. A majority of these handlers and producers may be classified as small entities. Since the interim final rule was published, the small business producer standards were changed from \$500,000 to \$750,000.

The committees' staff has estimated that there are less than 20 handlers of nectarines and peaches in the industry

who could be defined as other than small entities. In the 2000 season, the average handler price received was \$9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 555,556 containers of nectarines and peaches to have annual receipts of \$5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the previous season, the committees' staff estimates that small handlers of nectarines and peaches represent approximately 94 percent of the handlers within the industry.

The committees' staff has also estimated that approximately 20 percent of the nectarine and peach producers in the industry could be defined as other than small entities. In the 2000 season, the average producer price received was \$5.50 per container or container equivalent for nectarines, and \$5.25 per container or container equivalent for peaches. A producer would have to produce at least 136,364 containers of nectarines and 142,858 containers of peaches to have annual receipts of \$750,000. Given data maintained by the committees' staff and the average producer price received during the 2000 season, the committees' staff estimates that small producers represent approximately 80 percent of the nectarine and peach producers within the industry.

This rule continues in effect the revision of §§ 916.160 and 917.178 of the orders' administrative rules and regulations to relax the requirement that all handlers file monthly destination reports. Under that revision, handlers who shipped less than 50,000 containers or container equivalents of tree fruit during the 2000 season will be exempted from filing monthly destination reports in subsequent seasons, as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

Handlers who begin operations during or after the 2001 season will also be exempt from filing monthly destination reports during their first season of operation. Such handlers will continue to be exempt in subsequent seasons as long as their shipments total less than 50,000 containers or container equivalents of tree fruit in the previous season.

The NAC and PCC met on May 3, 2001, and unanimously recommended these changes to the reporting requirements for the 2001 season, which began April 1. This action was recommended to the committees by a

subcommittee charged with review and discussion of the changes.

The Management Services Committee met on January 18, 2001, to discuss a request from a small handler concerning destination report requirements. At that time, the members reviewed the request and directed the staff to research the destination report requirements and procedures. At the March 6, 2001, meeting, the Management Services Committee reviewed a staff recommendation to relax the destination reporting requirements for small handlers. The members also considered two alternatives to this action at that meeting.

First, the committee considered not establishing any exemption for small handlers. This alternative was rejected because the members felt that small handlers should be provided an exemption from the destination reporting requirements. Second, they considered establishing a filing exemption for handlers who shipped less than 10,000 containers of tree fruit during the 2000 season. The committee estimated that this exemption would affect approximately 100 handlers only and one percent of total shipments. The Management Services Committee rejected that alternative because they believed that more handlers should be exempted from the requirement for filing destination reports. After some discussion, it was determined and recommended by the Management Services Committee that handlers who ship less than 50,000 containers or container equivalents of tree fruit should be exempted from filing monthly destination reports.

At a subsequent Management Services Committee meeting on April 18, 2001, the members reviewed destination report summaries from the 2000 season and voted unanimously to recommend to the NAC and PCC that handlers who ship less than 50,000 containers or container equivalents of tree fruit be exempted from filing monthly destination reports.

The committees make recommendations regarding all the revisions in reporting requirements after considering all available information, including comments of persons at committee and subcommittee meetings, and comments received in writing or verbally by committee staff. Such subcommittees include the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers (and handlers, where

authorized) with many years' experience in the industry, who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments, both in person and in writing, are widely solicited.

This relaxation is expected to have an impact on small handlers by reducing the time and related costs of filing monthly destination reports. The committees estimate that approximately 160 peach and nectarine handlers would be exempt from filing destination reports. Each handler files an average of four reports each season. The time each handler spends preparing the monthly report has been estimated at 45 minutes. Therefore, in terms of reporting burden time, each qualified respondent handler will save an average of three hours each season as a result of this exemption. In total, this exemption could save the qualified industry respondents approximately 480 hours annually each for peach handlers and nectarine handlers.

This rule is also expected to have an impact on the committees by decreasing hours of staff time currently utilized to collect, reconcile, and assimilate destination report data received from small handlers.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. In fact, as noted previously, this rule will reduce reporting and recordkeeping requirements on qualified handlers, as well as on the committees themselves. 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, such as effectuated by this rule.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industries and all interested parties are encouraged to attend and participate in committee deliberations on all issues. The committees routinely schedule meetings bi-annually during the last week of November or first week of December, and the last week of April or first week of May. Like all committee meetings, the May 3, 2001, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues.

In addition, the committees have a number of appointed subcommittees to review certain issues and make

recommendations to the NAC and PCC. For this action, three subcommittee meetings were held prior to the May 3, 2001, meeting at which these regulations were reviewed and discussed.

An interim final rule concerning this action was published in the **Federal Register** on July 31, 2001 (66 FR 39406). Copies of the rule were provided to all committee members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended October 1, 2001. No comments were received.

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/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 changes, as published in the **Federal Register** (66 FR 39406, July 31, 2001), 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—PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 66 FR 39406, July 31, 2001, is adopted as a final rule without change.

Dated: March 11, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02-6148 Filed 3-13-02; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 920

##### [Docket No. FV02-920-1 FIR]

### Kiwifruit Grown in California; Relaxation of Pack Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, a corrected interim final rule which relaxed pack requirements prescribed under the California kiwifruit marketing order. The marketing order regulates the handling of kiwifruit grown in California and is administered locally by the Kiwifruit Administrative Committee (Committee). This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

**EFFECTIVE DATE:** April 15, 2002.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, 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, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 205-8938.

Small businesses may request information on compliance 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) 205-8938 or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, 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."

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 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 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 the USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to allow handlers to pack more individual pieces of fruit per 8-pound sample for seven size designations, continues the elimination of one size designation, and the addition of two new size designations. These changes were unanimously recommended by the Committee and are expected to increase grower returns and enable handlers to compete more effectively in the marketplace.

Under the terms of the order, fresh market shipments of kiwifruit grown in California are required to be inspected and meet grade, size, maturity, pack, and container requirements. Section 920.52 authorizes the establishment of pack requirements. Section 920.302(a)(4) of the order's administrative rules and regulations outlines pack requirements for fresh shipments of California kiwifruit.

Section 920.302(a)(4)(iii) establishes a maximum number of fruit per 8-pound sample for each numerical count size designation for fruit packed in bags, volume fill, or bulk containers.

The amount of kiwifruit supplied to the domestic market by California handlers has declined 40 percent since the 1992-93 season. In addition, grower prices have steadily declined in spite of