

Office of Personnel Management.

Kay Coles James,
Director.

Accordingly, OPM amends part 537 to Title 5, Code of Federal Regulations, as follows:

PART 537—REPAYMENT OF STUDENT LOANS

1. The authority citation for part 537 continues to read as follows:

Authority: 5 U.S.C. 5379.

2. Section 537.101 is revised to read as follows:

§ 537.101 Purpose.

This part provides regulations to implement 5 U.S.C. 5379, as amended, which authorizes agencies to establish a program under which they may agree to repay (by direct payment on behalf of the employee) all or part of any outstanding federally insured student loan or loans previously taken out by a candidate to whom an offer of employment has been made, or a current employee of the agency, in order to recruit or retain highly qualified personnel.

3. In § 537.102 the definitions of *Employee* and *Student loan* are revised to read as follows:

§ 537.102 Definitions.

* * * * *

Employee has the meaning given that term in 5 U.S.C. 2105, except it does not include an employee occupying a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy advocating character (i.e., employees serving under Schedule C appointments).

* * * * *

Student loan means—

(a) A loan made, insured, or guaranteed under parts B, D or E of title IV of the Higher Education Act of 1965; or

(b) A health education assistance loan made or insured under part A of title VII of the Public Health Service Act, or under part E of title VIII of that Act.

4. In section 537.110 the section heading is revised and the existing text is designated as paragraph (a), and paragraph (b) is added, to read as follows:

§ 537.110 Records and Reports.

* * * * *

(b) Before January 1st of each year, each agency must submit a written report to the Office of Personnel Management stating when the agency made student loan repayments on behalf

of an employee during the previous fiscal year. Each report must include:

(1) The number of employees selected to receive this benefit;

(2) The job classifications of the employees selected to receive benefits under this part; and

(3) The cost to the Federal government for providing benefits under this part.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV01-916-3 IFR]

Nectarines and Peaches Grown in California; Revision of Reporting Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises 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 relaxes 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.

DATES: August 1, 2001; comments received by October 1, 2001 will be considered prior to issuance of any 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-8938, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket 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.ams.usda.gov/fv/moab.html>.

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, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; 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, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: 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 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 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 in 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 rule modifies 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 for 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. Such reports are to be filed with the committees. The information authorized 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 has already begun, the relaxation in report requirements will be implemented as of the effective date of this 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.

Initial 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 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 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 \$500,000. A majority of these handlers and producers may be classified as small entities, excluding receipts from other sources.

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 22 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 90,910 containers of nectarines and 95,239 containers of peaches to have annual receipts of \$500,000. 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 78 percent of the nectarine and peach producers within the industry.

This rule will revise §§ 916.160 and 917.178 of the orders' administrative rules and regulations to relax the requirement that all handlers file monthly destination reports. Under this rule, 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 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. 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 previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0189. 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.

Finally, interested persons are invited to submit information on 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 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.

This rule invites comments on revisions of the handling requirements regarding destination reporting 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 matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will 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) The shipping season for California nectarines and peaches is currently underway and handlers

should be allowed to utilize this exemption as soon as possible; (2) this rule relaxes reporting requirements for some handlers of nectarines and peaches; (3) the committees unanimously recommended these changes at public meetings and interested persons had an opportunity to provide input; and (4) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final 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. Paragraph (c) of § 916.160 is revised 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: *Provided*, That handlers who shipped fewer than 50,000 containers or container equivalents of any combination of nectarines, peaches, and plums during the previous season are exempted from these reporting requirements: *Provided further*, That handlers who begin operation during or after the 2001 season shall be exempted from these reporting requirements during their first season of operation. 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.

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3. Paragraph (c) of § 917.178 is revised 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: *Provided*, That handlers who shipped fewer than 50,000 containers or container equivalents of any combination of peaches, nectarines, and plums during the previous season are exempted from these reporting requirements: *Provided further*, That handlers who begin operation during or after the 2001 season shall be exempted from these reporting requirements during their first season of operation. 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 day of each month following the month in which peach shipments were made.

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Dated: July 26, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV01–930–5 IFR]

Tart Cherries Grown in the States of Michigan, et al.; Suspension of Provisions Under the Federal Marketing Order for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.