

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

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

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

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

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that suspended the quality, inspection, reporting, and assessment requirements specified under the California nectarine and peach marketing orders (orders). The interim rule suspended the handling regulations for the 2011 and subsequent marketing seasons relieving handlers of all regulatory burdens under the orders while USDA processes the terminations of the orders.

**DATES:** Effective July 22, 2011.

**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 obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400

Independence Avenue, S.W., STOP 0237, Washington, DC 20250-0237; *Telephone:* (202) 720-2491, *Fax:* (202) 720-8938, or *E-mail:* [Laurel.May@ams.usda.gov](mailto:Laurel.May@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, 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."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of nectarines and peaches grown in California is regulated by 7 CFR parts 916 and 917, respectively. In early 2011, USDA conducted mandatory referenda among California nectarine and peach growers to determine if they favored continuation of their programs. The referenda results demonstrated a lack of grower support for continuing the orders. Thus, USDA intends to terminate the orders.

In an interim rule published in the **Federal Register** on April 18, 2011, and effective on April 19, 2011, (76 FR 21615, Doc. No. AMS-FV-11-0019, FV11-916/917-5 IR), §§ 916.110, 916.115, 916.234, 916.235, 916.350 and 916.356 and 917.143, 917.150, 917.258, 917.259, 917.442, and 917.459, were suspended indefinitely.

#### Final 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 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 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, and about 447 growers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration 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 (13 CFR 121.201). 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 continues in effect the suspension of the quality, inspection, reporting, and assessment requirements for nectarines and peaches under the orders. This action is consistent with USDA's decision to seek termination of the nectarine and peach order provisions. Suspension of the requirements is expected to reduce the regulatory burden on handlers and growers of all sizes.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the orders' information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Marketing Order Administration Branch

Generic OMB Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

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.

Comments on the interim rule were required to be received on or before June 17, 2011. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: <http://www.regulations.gov/#!documentDetail;D=AMS-FV-11-0019-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that the regulatory requirements suspended by the interim rule, (76 FR 21615, April 18, 2011), affirmed in this action, do not 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.

Accordingly, the interim rule that amended 7 CFR parts 916 and 917 and that was published at 76 FR 21615 on April 18, 2011, is adopted as a final rule, without change.

Dated: July 14, 2011.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011-18396 Filed 7-20-11; 8:45 am]

**BILLING CODE 3410-02-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 26

[NRC-2011-0058]

RIN 3150-AI94

### Alternative to Minimum Days Off Requirements

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations governing the fitness for duty of workers at nuclear power plants. These amendments allow holders of nuclear power plant operating licenses the option to use a different method from the one already prescribed in the NRC's regulations for determining when certain nuclear power plant workers must be afforded time off from work to ensure that such workers are not impaired due to cumulative fatigue caused by work schedules.

**DATES:** *Effective Date:* This final rule is effective August 22, 2011.

**ADDRESSES:** You can access publicly available documents related to this document using the following methods:

- *Federal rulemaking Web site:* Go to <http://www.regulations.gov/> and search for documents filed under Docket ID NRC-2011-0058. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301-492-3668, *e-mail:* [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

- *NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, or 301-415-4737, or by e-mail to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov).

#### FOR FURTHER INFORMATION CONTACT:

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Commission, Washington, DC 20555; *telephone:* 301-415-4060; *e-mail:* [Howard.Benowitz@nrc.gov](mailto:Howard.Benowitz@nrc.gov); *nrc.gov*; [Howard.Benowitz@nrc.gov](mailto:Howard.Benowitz@nrc.gov).

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#### I. Background

##### A. NRC's Fitness for Duty Regulations

On March 31, 2008, the NRC promulgated a final rule which substantially revised its regulations for fitness for duty (FFD) in Title 10 of the *Code of Federal Regulations* (10 CFR) part 26 (73 FR 16966; March 31, 2008). The revised regulations updated the NRC's FFD requirements and made them more consistent with other relevant Federal rules, guidelines, and drug and alcohol testing programs that impose similar requirements on the private sector.

In addition, by establishing clear and enforceable requirements for the management of worker fatigue, the 2008 amendments require nuclear power plant licensees to ensure that worker fatigue does not adversely affect public health and safety and the common defense and security. Among these fatigue management requirements is a minimum days off requirement, which requires licensees to manage cumulative fatigue by providing workers with a minimum number of days off over the course of a period not to exceed 6 weeks.

##### B. Stakeholder Reaction to the Fitness for Duty Requirements

On September 3, 2010, the Nuclear Energy Institute (NEI) submitted a