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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV00-916-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, with minor changes, the provisions of an interim final rule that revised the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container marking requirements for fresh shipments of these fruits, beginning with 2000 season shipments. This rule also continues in effect the modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2000 season only. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: June 28, 2000.

FOR FURTHER INFORMATION CONTACT:

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Small businesses may request information on compliance 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) 720-5698, 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 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.

Under the orders, lot stamping, grade, size, maturity, container, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on November 30, 1999, and unanimously recommended that these handling requirements be revised for the 2000 season, which began April 1. The changes: (1) Revise the lot stamping requirements for the 2000 season only; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2000 season; (3) eliminate the minimum letter height of maturity marking requirements for all containers; (4) provide a tolerance for the "Peento" or "donut" types of peaches for healed, non-serious, blossom-end growth cracks; and (5) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions. These changes continue in effect as published in the interim final rule.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees recommended a crop estimate at their meetings in early spring. Preliminary estimates indicate that the 2000 crop will be slightly larger in size with characteristics similar to the 1999 crop which totaled 20,405,000 boxes of nectarines and 20,460,000 boxes of peaches. The 2000 crop is estimated to be 22,000,000 boxes of nectarines and 21,000,000 boxes of peaches.

Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and prior to shipment to show that the fruit has been inspected. These requirements apply except for containers that are loaded directly onto railway cars, exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified by the inspector at the time of inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp numbers and date codes to trace fruit in the container back to the orchard where harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the "trace-back" effort, as it is called, would be jeopardized.

Recently, several new containers have been introduced for use by nectarine and peach handlers. The boxes are returnable plastic containers which retailers send back to a central clearinghouse after use. Use of these boxes may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional containers. Fruit is packed in the boxes by the handler, delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. However, because they were designed to be reused, these boxes do not support markings that are permanently affixed to the container. All markings must be printed on cards which slip into tabs on the front or sides of the containers. The

cards are easily inserted and removed, and further contribute to the efficient use of the container.

The cards are a concern for the inspection service and the industries, however. Because of their unique portability, there is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industries' "trace-back" program.

To address this concern, the committees have recommended that pallets of inspected fruit be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on the container. In this way, an audit trail is created, confirming that the lot stamp number on the containers on each pallet correspond to the lot stamp number on the pallet tag.

The inspection service and the committees have presented their concerns to the manufacturers of these types of boxes. One manufacturer has indicated a willingness to address the problem by offering an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, the inspection service, and the manufacturer. However, the manufacturer expressed the belief that this change may not be available in time for the 2000 season. For that reason, the committees further recommended that the proposed modification of the lot stamping requirements be put into place for the 2000 season only.

This rule continues in effect revisions to §§ 916.115 and 917.150 which require the lot stamp number to be adhered to a USDA-approved pallet tag, in addition to the requirement that the number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet.

This rule also continues in effect a conforming change to § 917.150 that changed the word "but" to "and," making the language in this section similar to that in § 916.115.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S.

No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not "serious damage."

This rule continues in effect a revision of § 916.350, § 916.356, § 917.442, and § 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2000 season. ("CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements were permitted during the 1996 and 1997 seasons, and also during the 1998 and 1999 seasons with slight modifications.

Studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign importers found the lower quality fruit acceptable in some markets. When shipments of "CA Utility" nectarines were first permitted in 1996, they only represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments, or 366,000 boxes. By 1998 and 1999, shipments of "CA Utility" nectarines represented 4.5 percent and 4.0 percent, respectively, of all nectarine shipments; or approximately 760,000 boxes and 819,600 boxes, respectively. In 1998 and 1999, shipments of "CA Utility" peaches represented 3.3 percent and 3.4 percent, respectively, of all peach shipments; or approximately 602,000 boxes and 689,800 boxes, respectively.

For these reasons, the committees unanimously recommended that shipments of "CA Utility" quality nectarines and peaches be permitted for the 2000 season with a continuing in-house statistical review. This rule continues in effect a revision to paragraphs (d) of §§ 916.350 and 917.442, and paragraphs (a)(1) of §§ 916.356 and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2000 season, on the same basis as last season.

In addition, this rule continues in effect a revision of paragraph (a)(1) of § 917.459 to provide a 10 percent tolerance for healed, non-serious, blossom-end growth cracks for the "Peento" or "donut" varieties of peaches, such as the "Saturn" and "Jupiter" varieties.

These varieties of peaches characteristically suffer blossom-end (calyx basin) cracks during development. These cracks heal as the growth continues and as the fruit gains size. Generally, the cracks are completely healed by harvest. Peaches with unhealed or serious blossom-end growth cracks at the time of inspection would not be included in U.S. No. 1 or "CA Utility" packages. Such a relaxation will permit handlers of the Peento type of peaches to utilize more of these fruit in boxes of U.S. No. 1 peaches, benefitting both handlers and growers of these varieties.

The PCC unanimously recommended this additional tolerance of 10 percent for healed, non-serious, blossom-end growth cracks for the Peento type of peaches, beginning in the 2000 season.

Container Marking Requirements

Sections 916.52 and 917.41 of the nectarine and peach orders, respectively, authorize container marking requirements. Requirements for container markings are specified in §§ 916.350 and 917.442 of the orders' rules and regulations. Container marking requirements include marking of the commodity and variety (e.g., Fay Elberta peaches), the size of the fruit in the box (e.g., 88 size), the net weight, and the maturity (either U.S. Mature (US MAT) or California Well Matured (CA WELL MAT)), on each container of nectarines or peaches.

As innovative containers enter the marketplace, especially those preferred by retailers, the configuration of display panels changes. This is true for both retail and consumer-size containers. As a result, handlers are forced to make adjustments in their container markings to accommodate the differences in display panels. Some containers, such as those intended for purchase by individual consumers, are smaller and have less display-panel surface area, and meeting all the minimum size labeling requirements is difficult. Some handlers requested a relaxation in the container labeling requirements with regard to the fruit maturity marking, and the committees agreed that a modification would be appropriate. This relaxation eliminates the minimum lettering height in favor of a requirement that fruit maturity markings be clear and legible. Therefore, the revision to §§ 916.350 and 917.442, paragraphs (a)(3) continues in effect.

Maturity Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum

maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. Additionally, both orders' rules and regulations provide for a higher, "well matured" classification. For most varieties, "well-matured" fruit determinations are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most recent information available on the individual characteristics of each variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as TABLE 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2000 handling regulation are the same as those that appeared in the 1999 handling regulation with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. While SPI made no recommendation with regard to changes to the NAC regarding maturity guides, the committee recommended removal of several varieties of nectarines from the maturity guides.

This rule continues in effect a revision of TABLE 1 of paragraph (a)(1)(iv) of § 916.356 by removing 12 nectarine varieties which are no longer in production. The NAC routinely reviews the status of nectarine varieties listed in these maturity guides. The most recent review revealed that 12 of the nectarine varieties currently listed in the maturity guide have not been in production since the 1997 season. Typically, the NAC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Apache, Arm King, Bob Grand, Flavor Grand, Flavortop I, Maybelle, Mike Grand, Pacific Star, Son Red, Summer Star, Sunfre, and Tasty Gold nectarine varieties.

Peaches: Section 917.459 of the order's rules and regulations specifies maturity requirements for fresh peaches being inspected and certified as being "well matured."

This rule continues in effect a revision of TABLE 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for 2 peach varieties and revise

the maturity guide for 1 variety. Specifically, SPI recommended adding the maturity guides for the Earli Rich peach variety to be regulated at the H maturity guide, and the Late Ito Red peach variety to be regulated at the L maturity guide. SPI also recommended a modification to the current maturity guide for the Autumn Rose peach variety, changing the maturity guide from the I to the H maturity guide.

This rule also continues in effect a correction of the reference to the Ambercrest peach variety listed in TABLE 1 of paragraph (a)(1)(iv). The correct name of the variety is "Amber Crest."

The PCC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for peach varieties in production.

TABLE 1 of paragraph (a)(1)(iv) of § 917.459 was also revised to remove 15 peach varieties which are no longer in production, and this rule continues in effect that revision. The PCC routinely reviews the status of peach varieties listed in these maturity guides. The most-recent review revealed that 15 of the peach varieties currently listed in the maturity guide have not been in production since the 1997 season. Typically, the PCC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the August Sun, Autumn Crest, Belmont (Fairmont), Berenda Sun, Fayette, Golden Crest, Golden Lady, June Sun, Mary Anne, Parade, Pat's Pride, Prima Lady, Red Cal, Scarlet Lady, and Springold peach varieties.

Size Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer. This increased growing time not only improves the size of the fruit, but also increases its maturity. In addition, increased size results in an increased number of packed boxes of nectarines or peaches per acre. Acceptable size fruit also provides greater consumer satisfaction and more repeat purchases; and, therefore, increases returns to producers and handlers. Varieties recommended for specific size regulation have been reviewed and such recommendations are based on the specific characteristics

of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect a revision of § 916.356 to establish variety-specific minimum size requirements for 14 nectarine varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1999 season. This rule also continues in effect a modification of the variety-specific minimum size requirements for 6 varieties of nectarines whose shipments fell below 5,000 packages during the 1999 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Diamond Jewel nectarine variety. Studies of the size ranges attained by the Diamond Jewel variety revealed all but one box of that variety met minimum sizes 50, 60, 70, and 80 during the 1999 season. The one box reportedly met a minimum size 88. While the size distribution peaked on the size 70, 100 percent of the fruit sized at a minimum of size 88.

A review of other varieties with the same harvesting period indicated that Diamond Jewel was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirmed this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Diamond Jewel nectarine variety in the variety-specific size regulation at a size 88 is appropriate.

Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when such comments are received by the staff.

For reasons similar to those discussed in the preceding paragraph, the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect to include the Diamond Jewel, Kay Sweet, and White Sun nectarine varieties; and the revision of the introductory text of paragraph (a)(6) in § 916.356 continues

in effect to include the Arctic Blaze, Arctic Gold, Arctic Jay, Cole Red, Fire Sweet, Honey Blaze, Kay Bright, Prima Diamond XVIII, Regal Pearl, Ruby Sweet, and White September nectarine varieties.

This rule continues in effect the revision of the introductory text of paragraph (a)(4) of § 916.356 to remove 2 nectarine varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1999 season. Thus, the revision of the introductory text of paragraph (a)(4) continues in effect the removal of the Early May and Prima Diamond VI nectarine varieties.

This rule also continues in effect the revision of the introductory text of paragraph (a)(6) of § 916.356 to remove 4 nectarine varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1999 season. Thus, the revision of the introductory text of paragraph (a)(6) continues in effect the removal of the Flavortop, Flavortop I, How Red (Sunectnineteen) and the 491-48 nectarine varieties.

The Grand Sun nectarine variety had 1999 shipments of 2,939 packages, but was not recommended for removal from variety-specific size requirements because the variety is expected to increase in commercial significance during the 2000 season. Inclement weather, including the cool spring and frost damage, is considered to be a factor in the decreased production during the 1999 season. However, in the interim final rule, this variety was inadvertently omitted from paragraph (a)(3) of § 916.356. This rule corrects that omission. This rule also corrects the name of the variety from "Gran Sun" to "Grand Sun."

Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh

peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule continues in effect the revision of § 917.459 to establish variety-specific minimum size requirements for 16 peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1999 season. This rule also continues in effect the modification of the variety-specific minimum size requirements for 4 varieties of peaches whose shipments fell below 5,000 packages during the 1999 season.

One of the varieties recommended for addition to the variety-specific size requirements is the Brittany Lane variety. Studies of the size ranges attained by the Brittany Lane variety revealed that while the size distribution peaked on size 50, all of the boxes of that variety met at least the size 80 requirement.

A review of other varieties of the same harvesting period indicated that Brittany Lane was also comparable to those varieties in its size ranges. Discussions with handlers known to handle the variety confirmed this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Brittany Lane variety in the variety-specific size regulation at a size 80 is appropriate.

Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when such comments are received by staff of CTFA.

In § 917.459 of the order's rules and regulations, the revision of the introductory text of paragraph (a)(5) continues in effect to include the Brittany Lane, Snow Prince, Zee Diamond, 012-094, and 172LE White Peach (Crimson Snow/Sunny Snow) peach varieties; and the revision of the introductory text of paragraph (a)(6) continues in effect to include the Country Sweet, Earli Rich, Full Moon, Late September Snow, N117, Queen Lady, Red Sun, Sierra Gem, Snow Blaze, Sweet Kay, and Sweet September peach varieties.

This rule also continues in effect the revision of § 917.459 to remove 4 peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of this variety were produced during the 1999 season. In § 917.459, the revision of the

introductory text of paragraph (a)(5) continues in effect to remove the Golden Crest (Supechthree) peach variety and the revision of the introductory text of paragraph (a)(6) of § 917.459 continues in effect to remove the Snow Diamond, Sparkle, and 1-01-505 peach varieties.

The Super Rich peach variety had 1999 shipments of 3,941 packages, but was not recommended for removal from variety-specific size requirements because the variety is expected to increase in commercial significance during the 2000 season. Inclement weather, including the cool spring and frost damage, is considered to be a factor in the decreased production during the 1999 season.

In paragraph (a) (6) of § 917.459, this action corrects the name of the peach variety "Prima Gattie" to "Prima Gattie 8", and the variety "Yukon King" to "Autumn Snow". These corrections are based on the comment received.

Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various fruit sizes. This rule continues in effect the minimum size requirements for fresh peaches consistent with expected crop and market conditions.

This rule reflects the committees' and the Department's appraisal of the need to continue in effect the revision to the handling requirements for California nectarines and peaches, as specified. The Department has determined that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule continues in effect handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

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 as those whose annual receipts are less than \$5,000,000. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.201] as those having annual receipts of less than \$500,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff have 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. Small handlers represent approximately 94 percent of the handlers within the industry. 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. Therefore, small producer entities are estimated to represent approximately 78 percent of the producers within the industry. For those reasons, a majority of the handler and producers may be classified as small entities, excluding receipts from other sources.

Under §§ 916.52 and 917.41 of the orders, lot stamping, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This rule continues in effect the revision to the handling requirements to: (1) Revise the lot stamping requirements for the 2000 season only; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2000 season; (3) eliminate

the minimum size of maturity marking requirements for all containers; (4) provide a tolerance for the "Peento" or "donut" types of peaches for healed, non-serious, blossom-end growth cracks; and (5) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions.

In §§ 916.115 and 917.150 of the orders' rules and regulations, respectively, handlers are required to stamp containers of nectarines and peaches with the Federal-State Inspection Service lot stamp number after inspection and prior to shipment. New, returnable containers, which do not support permanent markings, utilize printed cards which contain the lot stamp number, date codes, and other container marking requirements. The printed cards are easily inserted into tabs on the front or sides of the containers. The ease of portability of these cards creates problems for both the inspection service and the industries in tracking the containers. Cards on a pallet of inspected fruit could be easily moved to a pallet of uninspected fruit, thus permitting a handler to circumvent inspection requirements. The inspection service and the committees have recommended that each pallet of inspected nectarines and peaches be marked with a pallet tag containing the lot stamp number, in addition to the lot stamp number provided on the card on the containers.

The committees believe that this recommendation should be limited to the 2000 season only, since at least one manufacturer anticipates the availability of an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, inspection service, and the manufacturer. However, the manufacturer expressed the belief that this change may not be available in time for the 2000 season. For that reason, the committees further recommended that the proposed modification of the lot stamping requirements be put into place for the 2000 season only.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of lower-quality nectarines and peaches, known as "CA Utility," as an experiment for the 1996 season only. Such authorization was continued during the 1997, 1998, and 1999 seasons. This rule continues in effect the authority to permit the continued use of "CA Utility" quality fruit for the 2000 season with a continued in-house statistical review to be conducted by the NAC and PCC. During the 1996 season, the Department authorized the shipment of nectarines and peaches which were of a

lower quality than the minimum permitted for previous seasons. During 1996, there were 210,443 boxes of nectarines and 365,761 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.9 percent of fresh shipments, respectively. During 1997, there were 230,275 boxes of nectarines and 216,562 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.0 percent of fresh shipments, respectively. In 1998, there were 760,000 boxes of nectarines and 602,000 boxes of peaches packed as "CA Utility," or 4.5 percent and 3.3 percent of fresh shipments, respectively. In 1999, there were 819,600 boxes of nectarines and 689,800 boxes of peaches packed as "CA Utility," or 4.0 percent and 3.4 percent of fresh shipments, respectively.

Continued availability of "CA Utility" quality fruit is expected to have a positive impact on producers, handlers, and consumers by permitting more nectarines and peaches to be shipped into fresh market channels, without adversely impacting the market for higher quality fruit.

Sections 916.356 and 917.442 establish minimum maturity levels. This rule continues in effect the annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (e.g., color chips), as reviewed by SPI. Such maturity guides provide producers, handlers, and SPI with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, thus ensuring consumer satisfaction while benefitting nectarine and peach producers and handlers.

In § 916.356 of the order's rules and regulations for nectarines and § 917.459 of the order's rules and regulations for peaches, minimum sizes for various varieties of nectarines and peaches are established. This rule continues in effect the adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2000 season. Minimum size regulations are put in place to allow fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity, but also improves fruit size. Increased fruit size increases

the number of packed boxes per acre. Increased fruit size and maturity also provide greater consumer satisfaction and, therefore, more repeat purchases by consumers. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data, and producer and handler information regarding sizes which the different varieties attain.

The recommendations with regard to maturity markings on containers, continuation of authority to ship nectarines and peaches which meet the "CA Utility" quality requirements, and an increased tolerance for Peento type of peaches, are relaxations which continue in effect. These regulations are intended to provide increased flexibility for handlers of nectarines and peaches.

The committees made recommendations regarding these revisions in handling requirements after considering all available information, including comments of persons at three subcommittee meetings. The Grade and Size Subcommittee met on November 9, 1999, the Management Services Committee met on November 17, 1999, and the Returnable Plastic Container Task Force met on November 23, 1999. At the meetings, the impact of and alternatives to these recommendations were discussed.

At the Grade and Size Subcommittee, the members discussed recommendations of SPI with regard to maturity guides, and recommendations of staff with regard to varietal sizing and grades. SPI recommended maturity guides for two varieties of peaches and also recommended a change in maturity guides for an established variety. SPI made no recommendations to add or change any maturity guides for nectarines. The staff made recommendations to remove varieties of nectarines and peaches from the maturity listings which are no longer in commercial production.

The staff also made recommendations to add nectarine and peach varieties to the variety-specific size requirements, based upon internal studies of the sizing characteristics of those nectarines and peaches. These nectarine and peach varieties were packed in commercially-significant quantities of 10,000 packages or more during the 1999 season. Also, the staff made recommendations to remove nectarine and peach varieties from the variety-specific sizing requirements, based upon information indicating that less than 5,000 packages of those varieties were packed in the 1999 season and that the shipments of

those varieties are expected to continue to decline in commercial significance. The committees routinely review their regulations and add varieties of which more than 10,000 packages are packed in a season; or remove varieties of which less than 5,000 packages are packed in a season. The alternative to these requirements would be for the more popular varieties to be subject to the less-precise general sizing regulations. This alternative was rejected since it would ultimately increase the amount of less-acceptable fruit being marketed to consumers. Such a result would be contrary to the long-term interests of producers, handlers, and consumers.

At the Grade and Size Subcommittee meeting, a handler recommended eliminating the required minimum letter height for maturity markings for all types of containers. The handler noted that some boxes preferred by retailers have limited amounts of space on the display panels, especially consumer boxes. He suggested that the lettering height minimum for the maturity markings be eliminated in favor of clear and legible markings. Any alternatives, he noted, would fall short of the need to provide handlers the necessary maturity marking flexibility. He added that with all the required markings for variety, commodity, etc., very little room is left on the display panel and markings may nearly overlap. His recommendation and those of SPI and the staff were approved unanimously.

At the Returnable Plastic Container Task Force meeting, the participants discussed the most expedient method to ensure that lot stamp numbers and date codes could be affixed to containers of nectarines and peaches to allow such containers to be adequately tracked, which would meet the needs of the inspection service and the industries. The members also met with a manufacturer of one of the returnable boxes, who expressed a willingness to cooperate with the industries in finding a solution to the problem of the highly-portable cards on the containers.

Alternatives offered included leaving container marking requirements unchanged, eliminating lot stamp numbers as a required marking, and permitting shipments of nectarines and peaches in these containers without restrictions on the cards. By leaving container marking requirements unchanged, handlers would be precluded from providing nectarines and peaches in containers advocated by receiving retailers. Eliminating lot stamp numbers as a required marking is unacceptable to both the inspection service and the industry. Allowing

returnable, plastic containers to be shipped with the highly portable cards is also unacceptable since the portability of the cards could enable a handler to evade inspection on a lot or lots of nectarines or peaches by moving the cards to uninspected containers, and could jeopardize the industries' "trace back" program. All of these alternatives were, therefore, rejected.

At the Management Services Committee meeting, the members reviewed all subcommittee recommendations available to them. The members of the Management Services Committee include the chairpersons and vice-chairpersons of the committees, who generally have many years experience working in the industries. They, too, discussed recommendations of subcommittees and were free to make alternative recommendations or revise recommendations to the committees, as they reviewed such recommendations.

Like committee meetings, subcommittee meetings are open to the public and comments are widely solicited.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large 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, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. These meetings are held annually during the last week of November or first week of December. Like all committee meetings, the November 30, 1999, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers.

An interim final rule concerning this action was published in **Federal Register** on March 22, 2000 (65 FR 15205). Copies of the rule were mailed

to all committee members and handlers by the committee staff on March 22, 2000. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period ending May 22, 2000, was provided to allow interested persons to respond to the proposal. One comment was received during the comment period in response to the proposal.

The commenter submitted several clarifications to the interim final rule. One clarification dealt with the inadvertent omission of the "Grand Sun" nectarine variety from the variety specific size designations in paragraph (a)(3) of § 916.356. The clarification also noted that the interim final rule listed the variety as "Gran Sun." As noted earlier, these corrections relative to the Grand Sun nectarine variety have been made.

The commenter also requested name corrections for two peach varieties. According to the commenter, the name "Prima Gattie" should be corrected to read "Prima Gattie 8," and the name "Yukon King" should be corrected to read "Autumn Snow."

Accordingly, appropriate changes are made based upon the comment received.

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 material presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, with appropriate changes, as published in the **Federal Register** (65 FR 15205, March 22, 2000) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers are already shipping nectarines and peaches from the 2000 crop; (2) handlers are already aware of this rule, which was unanimously recommended at a public meeting; and (3) a 60-day comment period was provided for in the 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.

Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 65 FR 15205 on March 22, 2000, is adopted as a final rule with the following changes:

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

§ 916.356 [Amended]

2. Section 916.356, paragraph (a)(3) is amended by adding the words "Grand Sun" between the words "Early Diamond" and "Johnny's Delight."

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.459 [Amended]

3. Section 917.459, paragraph (a)(6) is amended by revising the words "Prima Gattie" to read "Prima Gattie 8," removing the words "Yukon King," and adding the words "Autumn Snow" between the words "Autumn Rose" and "Cal Red."

Dated: June 21, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3 and 292

[EOIR No. 112F; A.G. Order No. 2309-2000]

RIN 1125-AA13

Professional Conduct for Practitioners—Rules and Procedures

AGENCY: Executive Office for Immigration Review and Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends the rules and procedures concerning professional conduct for attorneys and