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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV01-916-1 IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, and maturity requirements for fresh shipments of these fruits, beginning with 2001 season shipments. This rule also continues requirements for placement of Federal-State Inspection Service lot stamps for the 2001 season. 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 interests of producers, handlers, and consumers of these fruits.

DATES: Effective April 1, 2001; comments received by June 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, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, 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.

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) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 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 December 5, 2000, and unanimously recommended that the handling requirements be revised for the 2001 season, which begins April 1. The changes: (1) continue the lot stamping requirements which were in effect for the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2001 season; and (3) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions.

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 are encouraged to 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 are dormant. The committees will recommend a crop estimate at their meetings in early spring. However, preliminary estimates indicate that the 2001 crop will be similar in size and characteristics to the

2000 crop, which totaled 20,645,000 containers of nectarines and 21,491,000 containers 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 before 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 inspector's corresponding working papers or field 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 to by the inspector at the time of the inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp number and date codes to trace fruit in the container back to the orchard where it was 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. These containers are returnable plastic containers. Use of these containers may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional, single-use, containers. Fruit is packed in the containers by the handler, delivered to the retailer, emptied, and returned to a central clearinghouse for cleaning and redistribution to the handler. However, because they were designed for reuse, these containers do not support

markings that are permanently affixed to the container. All markings must be printed on cards that slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient reuse of the container.

The cards are a concern for the inspection service and the industries. Because of their unique portability, 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 for the 2000 season, the committees 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, noted the committees, an audit trail would be created, confirming that the lot stamp number on the containers on each pallet corresponds to the lot stamp number on the pallet tag.

The committees and the inspection service presented their concerns to the manufacturers of these types of containers prior to the 2000 season. At that time, one manufacturer indicated a willingness to address the problem by offering an area on the principal display panel where the container markings would adhere to the container. Another possible improvement discussed was for an adhesive for the current style of containers which would securely hold the cards with the lot stamp numbers, yet would be easy for the clearinghouse to remove when the containers are washed. However, the changes would not be in effect for the 2000 season, but were anticipated to be in effect for the 2001 season.

In a meeting of the Returnable Plastic Container Task Force on November 1, 2000, it was determined that while such a display panel might be available for placement of the cards on some containers, there was no assurance from container manufacturers that such a panel would be available for all returnable plastic containers utilized by the industries. In addition, an adhesive is reportedly currently available, which may hold the cards securely in place while affording the ease of removal necessary for cleaning and redistribution. However, as the subcommittee found, the adhesive has yet to be tested under current conditions and may not be widely available.

For those reasons, the task force recommended to the committees that

the regulation in effect for the 2000 season requiring lot stamp numbers on USDA-approved pallet tags, as well as on individual containers on a pallet, be again required for the 2001 season. The committees, in turn, recommended unanimously that such requirement be extended for the 2001 season, as well.

Thus, §§ 916.115 and 917.150 will be amended to require the lot stamp number to be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet.

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 for 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 revises §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2001 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 have been permitted each season since 1996.

Studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign importers find the lower-quality fruit acceptable in some markets. When shipments of "CA Utility" nectarines were first permitted in 1996, they represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of "CA Utility" nectarines reached a high of 4.5 percent (928,500 containers) during the 2000 season, but usually represent approximately 3 to 3.5 percent of total nectarine shipments. Shipments of "CA Utility" peaches totaled 1.9 percent of all peach shipments, or approximately 366,000 containers, during the 1996 season. Shipments of "CA Utility" peaches reached a high of 4.1 percent of all peach shipments (872,500 containers) during the 2000 season, but usually

range from 3 to 3.5 percent of total peach shipments.

Handlers have also commented that the availability of "CA Utility" lends flexibility to their packing operations. They have noted that they now have the opportunity to remove marginal nectarines and peaches from their U.S. No. 1 containers and place this fruit in containers of "CA Utility." This flexibility, the handlers note, results in making the contents of their U.S. No. 1 containers better without sacrificing any fruit.

For these reasons, the committees unanimously recommended that shipments of "CA Utility" quality nectarines and peaches be permitted for the 2001 season with a continuing in-house statistical review. Paragraphs (d) of §§ 916.350 and 917.442, and paragraphs (a)(1) of §§ 916.356 and 917.459 are revised to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2001 season, on the same basis as the 2000 season.

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" determinations for nectarines and peaches 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 upon the most-recent information available on the individual characteristics of each nectarine and peach 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 2001 handling regulations are the same as those that appeared in the 2000 handling regulations 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. This rule revises TABLE 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for two varieties of nectarines. Specifically, SPI

recommended adding maturity guides for the Diamond Bright nectarine variety to be regulated at the J maturity guide, and for the Honey Kist variety to be regulated at the I maturity guide.

The NAC recommended these maturity guide 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 nectarine varieties in production.

Peaches: Requirements for "well-matured" peaches are specified in § 917.459 of the order's rules and regulations. This rule revises TABLE 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for four varieties of peaches. Specifically, SPI recommended adding maturity guides for the Autumn Flame and Vista peach varieties to be regulated at the J maturity guide, for the Earlitreat variety to be regulated at the H maturity guide, and for the Summer Zee variety to be regulated at the L maturity guide.

The PCC recommended these maturity guide 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.

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, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases; and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations 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 attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions and additions to 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 revises § 916.356 to establish variety-specific minimum size requirements for 7 varieties of nectarines, which were produced in

commercially significant quantities of more than 10,000 containers for the first time during the 2000 season. This rule also removes the variety-specific minimum size requirements for 11 varieties of nectarines whose shipments fell below 5,000 containers during the 2000 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the September Free variety of nectarines, recommended for regulation at a minimum size 80. Studies of the size ranges attained by the September Free variety revealed that 100 percent of the containers met the minimum size of 80 during the 2000 season. Sizes ranged from size 40 to size 80, with 3.3 percent of the packages in the 40 sizes, 37 percent in the 50 sizes, 32.5 percent in the 60 sizes, 23.8 percent in the 70 sizes and 3.3 percent at size 80.

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

Historical 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 the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(3) of § 916.356 is revised to include the Crimson Baby nectarine variety, and the introductory text of paragraph (a)(4) is revised to include the Scarlet Jewels nectarine variety. In addition, the introductory text of paragraph (a)(6) of § 916.356 is revised to include the Arctic Mist, August Pearl, July Pearl, September Free, and Spring Sweet nectarine varieties.

This rule also revises the introductory text of paragraphs (a)(4) and (a)(6) of § 916.356 to remove 11 varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of

each of these varieties were produced during the 2000 season. Specifically, the introductory text of paragraph (a)(4) of § 916.356 is revised to remove the Diamond Jewel and May Lion nectarine varieties; and the introductory text of paragraph (a)(6) of § 916.356 is revised to remove the Alshir Red, Autumn Delight, Crystal Rose, Fairlane, Fantasia, Kay Bright, Niagra Grand, Rio Red, and White September nectarine varieties.

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

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 revises § 917.459 to establish variety-specific minimum size requirements for 10 peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2000 season. This rule also removes the variety-specific minimum size requirements for 9 varieties of peaches whose shipments fell below 5,000 containers during the 2000 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Coral Princess variety of peaches, which was recommended for regulation at a minimum size 72. Studies of the size ranges attained by the Coral Princess variety revealed that 100 percent of the containers met the minimum size of 72 during the 2000 season. The sizes ranged from the 30 sizes to the 70 sizes, with 1.6 percent of the containers meeting the 30 sizes, 37 percent meeting the 40 sizes, 55.9 percent meeting the 50 sizes, 4.9 percent meeting the 60 sizes, and 0.6 percent meeting size 72. The size distribution for the 2000 season was similar to the size distribution for the 1999 season.

A review of other varieties with the same harvesting period indicated that the Coral Princess variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Coral Princess variety in the variety-specific minimum size regulation at a minimum size 72 is appropriate.

Historical 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 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 PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a) (5) of § 917.459 is revised to include the Kingscrest peach variety; and the introductory text of paragraph (a)(6) of § 917.459 is revised to include the Autumn Red, Coral Princess, Garnet Jewel, Ivory Princess, Klondike, Pretty Lady, Snow Jewel, Summer Dragon, and Sweet Dream peach varieties.

This rule also revises the introductory text of paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) of § 917.459 to remove 9 peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties were produced during the 2000 season. Thus, the introductory text of paragraph (a)(2) of § 917.459 is revised to remove the Lady Sue peach variety; the introductory text of paragraph (a)(3) is revised to remove the Goldcrest peach variety; and the introductory text of paragraph (a)(5) is revised to remove the Merrill Gemfree peach variety. The introductory text of paragraph (a)(6) of § 917.459 is revised to remove the Autumn Lady, Early O'Henry, Late September Snow, N117, Red Sun, and Suncrest peach varieties.

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

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

This rule reflects the committees' and the Department's appraisal of the need to revise 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 fresh California nectarines and peaches.

This rule establishes 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 establish and maintain orderly marketing conditions for these fruits in the interests 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 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.

The committees' staff has estimated that there are less than 20 handlers 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 555,555 containers 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 2000 season, the committees' staff estimates that small handlers represent approximately 94 percent of the handlers within the industry.

The committees' staff has also estimated that approximately 22 percent of the 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 producers within the industry.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on December 5, 2000, and unanimously recommended that the handling requirements be revised for the 2001 season, which begins April 1, 2001. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) continue the lot stamping requirements which were in effect for the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2001 season; and (3) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions.

This rule authorizes continuation of the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that were in effect for such containers during the 2000 season for nectarine and peach shipments. The modified requirements of §§ 916.115 and 917.150 mandated that the lot stamp numbers be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to the cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. Continuation of such requirements for the 2001 season would help the inspection service safeguard the identity of inspected and certified containers of nectarines and peaches, and would help the industry by keeping in place the information necessary to facilitate their "trace-back" program.

The Returnable Plastic Container Task Force and Grade and Size Subcommittee considered possible alternatives to this action. They discussed the availability

of a new container style with a specific area on the principal display panel for placement of the cards, but were not assured by container manufacturers that all containers would have such a display area. Also, in the absence of an adhesive to secure the cards, the display area would not meet the requirements of the committees or the inspection service. Such alternatives were, thus, rejected.

For these reasons, the task force and subcommittee recommended to the committees, and the committees voted unanimously, to extend the requirement for the lot stamp number to be provided on the cards on each container and for each pallet to be marked with a USDA-approved pallet tag, also containing the lot stamp number. Such safeguards will continue to ensure that all the containers on each pallet had been inspected and certified in the event a card on an individual container or containers is removed, misplaced, or lost.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of "CA Utility" quality nectarines and peaches as an experiment during the 1996 season only. Since that time, shipments of "CA Utility" have ranged from 1 to 4 percent of total nectarine and peach shipments. This rule authorizes continued shipments of "CA Utility" quality nectarines and peaches during the 2001 season.

The Grade and Size Subcommittee considered one alternative to this action. They considered not authorizing continued shipments of "CA Utility" quality nectarines and peaches. However, shipments of "CA Utility" quality fruit are holding steady or increasing in volume since 1996. Also, some handlers note, the availability of "CA Utility" gives handlers the flexibility to remove marginal fruit from their U.S. No. 1 containers, thus, making the contents of their U.S. No. 1 containers better. Based upon these considerations, this alternative was rejected.

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 makes 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

recommended by SPI. 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 characteristics of nectarines and peaches as experienced over the previous season's inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, ensuring consumer satisfaction while benefiting nectarine and peach producers and handlers.

Currently, in § 916.356 of the nectarine order's rules and regulations, and in § 917.459 of the peach order's rules and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2001 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time. This increased growing time not only improves maturity, but also increases fruit size. Increased fruit size increases the number of packed containers per acre; and coupled with heightened maturity levels, also provides greater consumer satisfaction, fostering repeat purchases. Such improved consumer satisfaction and repeat purchases benefit both producers and handlers alike. Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such actions would include not establishing lot stamping, grade, size, and maturity regulations for nectarines and peaches. Such an action, however, would be a significant departure from the committees' practices, would ultimately increase the amount of less acceptable fruit being marketed to consumers, and, thus, would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative is not appropriate.

The committees made recommendations regarding all the revisions in handling and lot stamping requirements after considering all available information, including comments of persons at several subcommittee meetings and comments received by committee staff. Such subcommittees include the Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, the Returnable Plastic Container Task Force,

and the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations were deliberated. These subcommittees and the task force, 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 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.

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 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized through the nectarine and peach industries and all interested parties are encouraged to attend 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 December 5, 2000, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. In addition, various subcommittee meetings were held prior to the December 5 meeting in 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.

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.

This rule invites comments on changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

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) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible, since early shipments of these fruits are expected to be about April 1; (2) this rule relaxes grade requirements for 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. Section 916.115 is revised to read as follows:

§ 916.115 Lot stamping.

Except when loaded directly into railway cars, exempted under § 916.110, or for nectarines mailed directly to consumers in consumer packages, all exposed or outside containers of nectarines, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment,

with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 916.55: *Provided*, That for the period April 1 to October 31, 2001, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

3. Section 916.350 is amended by revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

* * * * *

(d) During the period April 1 through October 31, 2001, each container or package when packed with nectarines meeting the "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least $\frac{3}{8}$ inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with all other required markings, in letters at least $\frac{3}{8}$ inch in height.

* * * * *

4. Section 916.356 is amended by:
A. Revising the introductory text of paragraph (a)(1);
B. Revising TABLE 1 of paragraph (a)(1)(iv); and
C. Revising the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle $\frac{3}{8}$ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle $\frac{1}{2}$ inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 1 through October 31,

2001, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

(iv) * * *

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
April Glo	H
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Diamond Bright	J
Diamond Jewel	L
Diamond Ray	L
Earliglo	I
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavortop	J
Grand Diamond	L
Honey Kist	I
Independence	H
July Red	L
June Brite	I
Juneglo	H
Kay Diamond	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Moon Grand	L
Niagra Grand	H
P-R Red	L
Red Delight	I
Red Diamond	L
Red Fred	J
Red Free	L
Red Glen	J

TABLE 1—Continued

Column A variety	Column B maturity guide
Red Glo	I
Red Grand	H
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Sunburst	J
Sun Diamond	I
Sun Grand	G
Super Star	G
Tom Grand	L
Zee Glo	J
Zee Grand	I

Note:Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Crimson Baby, Earliglo, Early Diamond, Grand Sun, Johnny's Delight, May Jim, or May Kist variety nectarines unless:

* * * * *

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Diamond Bright, Juneglo, June Pearl, Kay Glo, Kay Sweet, May Diamond, May Grand, Prima Diamond IV, Prima Diamond 13, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Scarlet Jewels, Sparkling May, Star Brite, White Sun, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alta Red, Arctic Blaze, Arctic Gold, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Pearl, August Red, August Snow, Big Jim, Brite Pearl, Cole Red,

Diamond Ray, Early Red Jim, Firebrite, Fire Pearl, Fire Sweet, Flame Glo, Flaming Red, Grand Diamond, Grand Pearl, Honey Blaze, Honey Kist, July Pearl, July Red, Kay Diamond, King Jim, Late Red Jim, Mid Glo, P-R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Red Diamond, Red Glen, Red Jim, Regal Pearl, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, Scarlet Red, September Free, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Spring Sweet, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunny Red, Super Star, Terra White, or Zee Glo variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

5. Section 917.150 is revised to read as follows:

§ 917.150 Lot stamping.

Except when loaded directly into railway cars, exempted under § 917.143, or for peaches mailed directly to consumers in consumer packages, all exposed or outside containers of peaches, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 917.45: *Provided*, That for the period April 1 through November 23, 2001, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

6. Section 917.442 is amended by revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

* * * * *

(d) During the period April 1 through November 23, 2001, each container or package when packed with peaches meeting "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along

with all other required markings, in letters at least 3/8 inch in height.

* * * * *

- 7. Section 917.459 is amended by:
 - A. Revising the introductory text of paragraph (a)(1);
 - B. Revising Table 1 of paragraph (a)(1)(iv); and
 - C. Revising the introductory text of paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further*, That peaches of the Peento type shall be permitted a 10 percent tolerance for healed, non-serious, blossom-end growth cracks: *Provided further*, That during the period April 1 through November 23, 2001, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the peaches in any container meet or exceed the requirement of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

(iv) * * *

TABLE 1

Column A variety	Column B maturity guide
Amber Crest	G
Angelus	I
August Lady	L
Autumn Flame	J
Autumn Gem	I
Autumn Lady	H
Autumn Rose	H
Blum's Beauty	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Earli Rich	H
Earliltreat	H
Early Delight	H
Early Elegant Lady	L

TABLE 1—Continued

Column A variety	Column B maturity guide
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Honey Red	G
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Lady Sue	L
Late Ito Red	L
May Crest	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
O'Henry	I
Pacifica	G
Prima Gattie 8	L
Queencrest	G
Ray Crest	G
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Sugar Lady	J
Summer Lady	L
Summerset	I
Summer Zee	L
Suncrest	G
Sweet Scarlet	J
Topcrest	H
Tra Zee	J
Vista	J
Willie Red	G
Zee Lady	L

* * * * *

(2) Any package or container of Earliltreat variety peaches unless:

* * * * *

(3) Any package or container of Super Rich or Topcrest variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Brittany Lane, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, June Lady, Kern Sun, Kingscrest, May Crest, May Sun, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Snow Prince, Springcrest, Spring Lady, Spring Snow, Sugar May, Sweet Scarlet, White Dream, Zee Diamond, 012-094, or 172LE White Peach (Crimson Snow/Sunny Snow) variety peaches unless:

* * * * *

(6) Any package or container of Amber Crest, August Lady, Autumn Flame, Autumn Red, Autumn Rose, Autumn Snow, Cal Red, Carnival, Cassie, Champagne, Coral Princess, Country Sweet, Diamond Princess, Earli Rich, Early Elegant Lady, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, Full Moon, Garnet Jewel, Ivory Princess, John Henry, June Pride, Kaweah, Kings Lady, Klondike, Lacey, Late Ito Red, Madonna Sun, Morning Lord, O'Henry, Pretty Lady, Prima Gattie 8, Prima Peach 13, Prima Peach 20, Prima Peach 23, Queen Lady, Red Dancer, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Gem, Sierra Lady, Snow Blaze, Snow Giant, Snow Jewel, Snow King, Sprague Last Chance, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Sweet Dream, Sweet Kay, Sweet September, Tra Zee, Vista, White Lady, or Zee Lady variety peaches unless:

* * * * *

Dated: March 28, 2001.

Kenneth C. Clayton,
Acting Administrator, Agricultural Marketing Service.

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Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above