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## **Part VII**

# **Department of Agriculture**

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**Agricultural Marketing Service**

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**7 CFR Parts 916 and 917**

**Nectarines and Peaches Grown in  
California; Revision of Handling  
Requirements for Fresh Nectarines and  
Peaches; Final and Interim Rules**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 916 and 917**

[Docket No. FV03-916-2 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 (USDA) is adopting, as a final rule, with minor changes, the provisions of an interim final rule and an amended interim final rule revising the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container and pack requirements for fresh shipments of these fruits, beginning with 2003 season shipments. This rule also continues in effect a modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2003 season, a revised net weight for a style of containers, an exemption for those containers from the well-filled requirement, clarifications to the provisions on the use of variety names, and the revised weight-count standards for Peento type peaches. It also changes the names of six peach varieties for clarification purposes. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committee (committees).

**EFFECTIVE DATE:** March 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (559) 487-5901, fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491; fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence

Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule adopts, with minor changes, the provisions of an interim final rule published in the **Federal Register** on August 13, 2003 (68 FR 48251) that amended an interim final rule that was published in the **Federal Register** on April 9, 2003 (68 FR 17257). Together, these rules made modifications to the handling requirements for fresh nectarines and peaches under the orders' rules and regulations.

Under the orders, lot stamping, grade, size, maturity, and 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 3, 2002, and unanimously recommended that these handling requirements be revised for the 2003 season, which began in April. The changes contained in the interim final rule: (1) Continue the lot stamping requirements which have been in effect since the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2003 season; (3) revise weight-count standards for the Peento type peaches; (4) establish a net weight for all five-down containers and exempt those containers from the well-filled requirement; and (5) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices.

The committees met again on May 1, 2003, and recommended further modification to the orders' rules and regulations. The changes contained in the amended interim final rule: (1) Provide an additional net weight for five down Euro containers, (2) exempt Peento type peaches from all weight-count standards applicable to round varieties, and (3) clarify the provisions on the use of variety names.

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 committees held such meetings on December 3, 2002, and May 1, 2003. USDA 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' December meetings because the nectarine and peach trees were dormant. The committees recommended crop estimates at their May 1, 2003, meetings of 22,004,000 containers or container equivalents of nectarines and 21,336,000 containers or container equivalents of peaches, which are slightly lower than the 2002 actual production.

**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 from which 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.

Over the last few years, several new containers have been introduced for use by nectarine and peach handlers. These containers are returnable plastic containers (RPCs). Use of RPCs 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 these containers are designed for reuse, RPCs 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 RPCs.

The cards are a continuing concern for the inspection service and the industries 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 industry's "trace back" program.

To address this concern since the 2000 season, the committees have annually recommended that pallets of inspected fruit in RPCs 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 each container on the 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 offered by the manufacturers were not available for use in the previous three seasons, and there is no assurance that they will be available for the 2003 season.

During a meeting of the Stone Fruit Grade and Size Subcommittee on November 6, 2002, it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic and the industry needed to continue the lot stamping requirements in place since the 2000 season.

For those reasons, the subcommittee unanimously recommended to the committees that the regulation in effect since 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 2003 season. The committees, in turn, recommended unanimously that such requirement be extended for the 2003 season, as well.

Thus, the amendments to §§ 916.115 and 917.150 are continued in effect 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, during the 2003 season.

#### 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 continues in effect the 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 2003 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 in 1996 indicated 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 represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of "CA Utility" nectarines reached a high of 5.3 percent (1,239,000 containers) during the 2002 season, but usually represent approximately 4 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 5.6 percent of all peach shipments (1,231,000 containers) during the 2002 season, but usually represent approximately 4 percent of total peach shipments.

Handlers have also commented that the availability of the "CA Utility" quality option 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 better quality U.S. No. 1 packs without sacrificing fruit.

The Stone Fruit Grade and Size Subcommittee met on November 6, 2002, and did not make a recommendation to the NAC and PCC to continue shipments of "CA Utility" quality nectarines and peaches. Some subcommittee members raised concerns about "CA Utility" quality fruit, including concerns that growers' returns on "CA Utility" quality fruit are lower. The issue of the authorized tolerance of 40 percent U.S. No. 1 fruit in each container of "CA Utility" quality was raised, and there was some discussion that the tolerance should be reduced so that less U.S. No. 1 fruit would be in a box of "CA Utility" quality fruit. However, ultimately no decisions were made by the subcommittee as the result of these discussions.

Subsequently, however, the NAC and PCC voted unanimously at their December 3, 2002, meetings to authorize continued shipments of "CA Utility" quality fruit during the 2003 season.

Accordingly, based upon the recommendations, the revision of paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 is continued in effect to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2003 season, on the same basis as shipments since the 2000 season.

#### **Weight-Count Standards for Peento Type Peaches**

Under the requirements of § 917.41 of the order, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches, which may be packed in tray-packed containers, are converted to volume-filled containers. Under § 917.442 of the order's rules and regulations, weight-count standards are established for all varieties of peaches as Tables 1, 2, and 3 of paragraph (a)(5)(iv).

According to the PCC, Peento type peaches were initially packed in trays because they were marketed as a premium variety, whose value justified the added packing costs. However, as the volume has increased, the value of Peento type peaches has diminished in the marketplace, and some handlers converted their tray-packed containers of Peento type peaches to volume-filled containers.

Prior to the 2002 season, weight-count standards established for peaches and nectarines were developed solely for round fruit. Peento type peaches are shaped like donuts, and weight-count standards for round fruit were

inappropriate. In an effort to standardize the conversion from tray-packed containers to volume-filled containers for Peento type peaches, the committee staff conducted weigh-count surveys to determine the most optimum weight-counts for the varieties at varying fruit sizes.

As a result of those surveys, a new weight-count table applicable to only the Peento type peaches was added for the 2002 season and amended for the 2003 season. The new weight-count tables accommodate very large Peento type peaches that were not previously converted from tray-packs to volume-filled containers, but were being packed in volume-filled containers and required weight-count standards specifically for those sizes. These weight-count standards continue in effect.

However, Peento peaches, which are subject to weight-count standards in Table 3 of paragraph (a)(5)(iv) in § 917.442, were not exempted from weight-count standards in the non-listed variety size requirements specified in paragraphs (b)(3) and (c)(3) of § 917.459, according to the commenter. This was an inadvertent omission in the previous interim final rule and required a conforming change in the amended interim final rule.

This final rule continues in effect the corrections to paragraphs (b)(3) and (c)(3) of § 917.459, which exempts Peento type peaches from the weight-count standards applicable to round varieties by adding the words "except for Peento type peaches" at the end of paragraphs (b)(3) and (c)(3) of § 917.459.

#### **Container and Pack Requirements**

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and marking requirements for shipments of nectarines and peaches, respectively. Under §§ 916.350 and 917.442 of the orders' rules and regulations, the specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of nectarines and peaches, and lists of standard containers are provided.

The committees unanimously recommended that a uniform net weight be established for all "five down" boxes (commonly referred to as "Euro" boxes), and that all such containers be exempted from the well-filled requirement. The net weight requirement in effect at that time of 31 pounds for "five down" boxes and the exemption from the well-filled requirement applies only to RPCs. However, as a handler noted at one meeting, the industry uses boxes of the same "footprint" (length and width

dimensions) as the RPCs that are made of more traditional materials, such as corrugated cardboard. "Five down" boxes are containers that lay in a pattern of five containers per layer on each pallet. In other words, each layer of boxes on a pallet contains only five Euro boxes. Other container sizes and footprints may result in nine boxes per layer, etc. Since applying the well-filled requirements to any five down Euro box might result in bruising or other damage to fruit packed in it, the Stone Fruit Grade and Size Subcommittee voted unanimously to extend the requirements applicable to RPCs with regard to net weight and well-filled requirements to all five down Euro containers. This would ensure that all five down Euro containers have a uniform net weight and ensure that the fruit in those containers is handled in such a way to minimize damage. These requirements continue in effect.

At the December 3, 2002, meeting, the NAC and PCC also unanimously recommended that all five down Euro boxes have an established net weight of 31 pounds, which is to be printed on the end of the container, and that those containers, like the RPCs, be exempt from the well-filled requirement.

However, discussions regarding minimum net weights for all five down Euro boxes continued at the April 8, 2003, Grade and Size Subcommittee meeting and at the May 1, 2003, committee meetings.

As a result of those meetings, the committees revised their December 3, 2003, recommendation to include the authority for a 29-pound box in addition to the 31-pound box, thus necessitating the need for the amended interim final rule. That rule was published on August 13, 2003 (68 FR 48251). The committees recommended the additional net weight when a handler requested such consideration. Containers used in the nectarine and peach industry have largely resulted from retailer demands. Many retailers want all of their suppliers to provide them with commodities in containers of the same footprint (length and width dimensions), thereby creating consistency and ease of transportation, storage, etc., for the retailer. Euro containers meet those demands, but require the industry to make changes in pack styles and package weights to conform to the evolving demands of the retail sector.

This recommendation resulted from a request by a handler who wanted to respond to a demand from one of his larger retail customers. The customer wanted volume-filled containers of nectarines and peaches of the same

weight as tray-packed containers, which currently weigh 29 pounds.

At the meeting, the handler advised the committees that the current minimum net weight of 31 pounds for volume-filled Euro containers is not flexible enough to afford him the opportunity to meet the demands of his buyer.

*Nectarines:* For the reasons stated above, the revision of paragraph (a)(8) of § 916.350 continues in effect to include a 29-pound net weight for all volume-filled five down Euro containers of nectarines, in addition to the 31-pound net weight authorized. The 29-pound container will be permitted during the 2003 season only. At the end of the 2003 season, the committee will recommend either a 29-pound, 31-pound container, or other appropriate weight. The container markings shall be placed on one outside end of the container in plain sight and in plain letters.

*Peaches:* For the reasons stated above, the revision to paragraph (a)(9) of § 917.442 continues in effect to include a 29-pound net weight for all volume-filled five down Euro containers of peaches, in addition to the 31-pound net weight authorized. The 29-pound container will be permitted during the 2003 season only. At the end of the 2003 season, the committee will recommend either a 29-pound, 31-pound container, or other appropriate weight. The markings shall be placed on one outside end of the container in plain sight and in plain letters.

#### Variety Nomenclature

In §§ 916.350 and 917.442 of the orders' rules and regulations, specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of fruit, and lists of standard containers are provided.

In §§ 916.356 and 917.459 of the orders' rules and regulations, specifications of grade, maturity, and size regulations for nectarines and peaches, respectively, are assigned by variety. These variety-specific requirements are applied based upon the name of the variety, the size each variety is known to attain, the appropriate maturity guide (*e.g.*, color chip) for the variety, and the historic harvest period specific to each named variety.

In §§ 916.60 and 917.50, handlers are required to report on shipments of nectarines and peaches. Sections 916.160 and 917.178 of the orders' rules and regulations specify the types of reports that handlers must file with the committees. Among the requirements, handlers must report the total

shipments of nectarines and peaches by variety by November 15 of each year. Thus, ensuring that the appropriate name of each variety is used for inspections and reports is critical to the operation of the nectarine and peach marketing orders.

Some handlers are using trademark names in place of the patented or introductory name on containers of fruit and in committee reports. Thus, the Shipping Point Inspection Service (SPI) may not be able to provide appropriate inspection for a variety with an unfamiliar name and the committees may not be able to collect data appropriately. Accordingly, the amendment of paragraphs (a)(2) of §§ 916.350 and 917.442 are continued in effect by adding that a marketing name, trademark, or brand name may be associated with the patented or introductory name, but cannot be substituted for a variety name.

In recognition of this language, this final rule corrects the names of six peach varieties so those varieties are identified by their patented or introductory names. The patented or introductory names are listed first followed by the marketing name, trademark, or brand name in parenthesis. Thus, Table 1 of paragraph (a)(1)(iv) of § 917.459 is revised to change the name of the Burpeachthree peach variety to Burpeachthree (September Flame); the introductory text of paragraph (a)(5) is amended to change the name of the Burpeachone peach variety to Burpeachone (Spring Flame 21); and the introductory text of paragraph (a)(6) of § 917.456 is revised to change the names of the Burpeachtwo, Burpeachthree, Burpeachfive, and Burpeachsix peach varieties to Burpeachtwo (Henry II), Burpeachthree (September Flame), Burpeachfour (August Flame), Burpeachfive (July Flame), and Burpeachsix (June Flame), respectively. The names in parentheses are included with the patented or introductory names because these names sometimes are more familiar to handlers.

#### Maturity and Size Requirements

In §§ 916.52 and 917.41, authority is provided 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. 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 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 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 2003 handling regulations are the same as those that appeared in the 2002 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 continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for four varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Mango variety to be regulated at the B maturity guide, for the Honey Royale and the Sunny Red varieties at the J maturity guide, and the Prince Jim variety to be regulated at the L 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 continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for six peach varieties. Specifically, SPI recommended adding maturity guides for the September Flame variety to be regulated at the I maturity guide; Autumn Red, Magenta Queen, Pretty Lady, and the Prima Gattie 10 varieties to be regulated at the J maturity guide; and the Golden Princess variety to be regulated at the L maturity guide.

In addition, SPI requested that the language in paragraph (a)(1)(vi) of § 917.459 be revised with regard to the Joanna Sweet variety. The Joanna Sweet variety was previously required to have a one hundred percent surface color requirement for meeting the assigned color chip. SPI requested that the language be changed to reflect that any of the fruit surface that is not red shall meet the color guide established for the variety, including any color found in the stem cavity. This recommendation is based upon SPI's experience with the maturity characteristics of this variety.

Thus, the revision of paragraph (a)(1)(iv) of § 917.459 continues in effect to reflect that recommendation. 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 continues in effect the revision of § 916.356 establishing variety-specific minimum size requirements for four varieties of nectarines that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2002 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for 11 varieties of nectarines whose shipments fell below 5,000 containers during the 2002 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Red Roy variety of nectarines, recommended for regulation at a minimum size 88. Studies of the size ranges attained by the Red Roy variety revealed that 100 percent of the containers met the minimum size of 88 during the 2002 season. Sizes ranged from size 40 to size 88, with 1.5 percent of the fruit in the 40 sizes, 22.2 percent of the packages in the 50 sizes, 55.8 percent in the 60 sizes, 14.6 percent in

the 70 sizes, 5.4 in the 80 sizes, with .5 percent in the size 88.

A review of other varieties with the same harvesting period indicated that the Red Roy 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 Red Roy variety in the variety-specific minimum size regulation at a minimum size 88 is appropriate. This recommendation resulted from size studies conducted over a two-year period.

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 revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect to include the Red Roy variety; and the revision of the introductory text of paragraph (a)(6) of § 916.356 continues in effect to include the Candy Gold, Candy Sweet, and Honey Royale nectarine varieties.

This rule also continues in effect the revision of the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to remove 11 varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2002 season. Specifically, the revision of the introductory text of paragraph (a)(3) of § 916.356 continues in effect to remove the Johnny's Delight and May Jim nectarine varieties; the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect to remove the Scarlet Jewels and Star Brite nectarine variety; and the revision of the introductory text of paragraph (a)(6) of § 916.356 continues in effect to remove the Arctic Gold, Kay Diamond, Prima Diamond XVI, Spring Diamond, Spring Red, Summer Beaut, and Sunecteight (Super Star) 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 continues in effect the revision of § 917.459 to establish variety-specific minimum size requirements for 12 peach varieties that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2002 season. This rule also continues in effect the removal of variety-specific minimum size requirements for 10 varieties of peaches whose shipments fell below 5,000 containers during the 2002 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Springtreat (60EF32) variety of peaches, which was recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Springtreat (60EF32) variety revealed that 100 percent of the containers met the minimum size of 80 during the 2002 season. The sizes ranged from size 50 to size 80, with 8.2 percent of the containers meeting the size 50, 41.2 percent meeting the size 60, 37.6 percent meeting the size 70, and 12.9 percent meeting the size 80.

A review of other varieties with the same harvesting period indicated that the Springtreat (60EF32) variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Springtreat (60EF32) variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate. This recommendation, as with all other size recommendations for peaches, resulted from size studies conducted over a three-year period.

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 revision of the introductory text of paragraph (a)(5) of § 917.459 continues in effect to include the Happy Dream, Magenta

Queen, Springtreat (60EF32), and Spring Flame 21 peach varieties; and the revision of the introductory text of paragraph (a)(6) of § 917.459 continues in effect to include the August Flame, Henry II, June Flame, Pink Giant, Prima Peach XV, Red Giant, Snow Beauty, and Snow Princess peach varieties.

This rule also continues in effect the revision of the introductory text of paragraph (a)(3) of § 917.459 to remove the Topcrest peach variety; continues in effect the revision of the introductory text of paragraph (a)(5) of § 917.459 to remove the White Dream peach variety; and continues in effect the revision of the introductory paragraph (a)(6) of § 917.459 to remove the Cal Red, Champagne, Flaming Dragon, Garnet Jewel, Lacey, Madonna Sun, Morning Lord, and Red Sun peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties was produced during the 2002 season.

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) of § 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 continues these requirements in effect and 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 USDA's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that this rule will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule continues in effect the establishment of 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 to 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.

### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than \$750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. For the 2002 season, the committees' staff estimated that 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 556,000 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 2002 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. For the 2002 season, the committees' staff estimated the average producer price received was \$4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of \$750,000. Given data maintained by the committees' staff and

the average producer price received during the 2002 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry. With an average producer price of \$4.00 per container or container equivalent, and a combined packout of nectarines and peaches of 45,354,000 containers, the value of the 2002 packout level is estimated to be \$181,416,000. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimate of average revenue per producer of about \$101,000 from the sales of peaches and nectarines.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, 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 3, 2002, and unanimously recommended that these handling requirements be revised for the 2003 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes contained in the interim final rule: (1) Continue the lot stamping requirements for reusable plastic containers that have been in effect since the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2003 season; (3) revise weight-count standards for the Peento type peaches; (4) establish a net weight for all five-down containers and exempt those containers from the well-filled requirement; and (5) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices.

The committees met again on May 1, 2003, and recommended amendments to the interim final rule. The changes contained in the amended interim final rule: (1) Provide an additional net weight for five down Euro containers, (2) exempt Peento type peaches from all weight-count standards applicable to round varieties, and (3) clarify the provisions on the use of variety names.

### Lot Stamping Requirements—Discussions and Alternatives

This final rule continues in effect the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that have been in effect for such containers since 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 cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. Continuation in effect of such requirements for the 2003 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 Stone Fruit Grade and Size Subcommittee met on November 6, 2002, and considered possible alternatives to this action. Other alternatives were rejected because it was determined that given the different styles and configurations of RPCs available, having a satisfactory adhesive for placement of the cards may not be realistic, at least for the time being, given the reluctance of box manufacturers to respond to the industry's requests.

For those reasons, the subcommittee and the committees unanimously recommended extending the requirement for the lot stamp number to be printed 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 are intended to ensure that all the containers on each pallet have been inspected and certified in the event a card on an individual container or containers is removed, misplaced, or lost.

#### **Grade and Quality Requirements—Discussions and Alternatives**

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. Such shipments have subsequently been permitted each season. Since 1996, shipments of "CA Utility" have ranged from 1 to 5 percent of total nectarine and peach shipments. This rule authorizes continued shipments of "CA Utility" quality nectarines and peaches during the 2003 season.

The Grade and Size Subcommittee met on November 6, 2002, and briefly discussed "CA Utility" quality nectarines and peaches. The subcommittee deliberated the relative value of continued shipment of "CA Utility" quality nectarines and peaches. The subcommittee ultimately did not make a recommendation to the NAC and PCC regarding continued shipments of

"CA Utility" quality nectarines and peaches. The subcommittee did, however, request that the results of a grower survey on attitudes toward "CA Utility" quality fruit conducted in December of 2001 by the committees be provided to the committees at the December 3, 2002, meeting.

However, at their meetings on December 3, 2002, the NAC and PCC unanimously recommended continued shipments of "CA Utility" quality nectarines and peaches, noting that the alternative to discontinue such shipments was not in the interest of the industry and would have been inconsistent with past practices of permitting such shipments.

#### **Weight-Count Standards for Peento Type Peaches—Discussions and Alternatives**

Section 917.442 also establishes minimum weight-count standards for containers of peaches. Under these requirements, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. Those same maximum numbers of peaches are also applicable to volume-filled containers, based upon the tray-packed standard. The weight-count standard was developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that fruit of a specific size in the volume-filled container will be the same as that in the tray-packed container.

When Peento type peach varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento type peaches to volume-filled containers. Weight-count standards provide a basis for volume filling containers of other varieties of peaches. Peento type peaches are regulated under a new table of weight-count standards applicable to only these uniquely-shaped peaches, and this regulation continues in effect.

This rule continues in effect the exemption from the weight-count standards for round peaches in the non-listed (blanket) variety sizes in paragraph (b)(3) and (c)(3) of §§ 917.459. Thus, under the rules and regulations in the orders, varieties of Peento type peaches that are not regulated by name would be regulated by date of harvest in the blanket regulations. To correct that omission, the words "except Peento

type peaches" were added to the end of each of those paragraphs.

The alternative to this conforming change would be to have Peento type peaches in non-listed variety sizes subject to the same weight-count standards assigned to round varieties, treating these Peento type peaches differently than other varieties of Peento type peaches. Clearly, that is not an acceptable alternative, given that these donut-shaped peaches cannot meet the requirements established for round peaches, and require their own weight-count standards.

Also under section 917.442, containers of peaches must meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. Those same maximum numbers of peaches are also applicable to volume-filled containers, based upon the tray-packed standard. The weight-count standard was developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that fruit of a specific size in the volume-filled container will be the same as that in the tray-packed container.

When the Stone Fruit Grade and Size Subcommittee met on November 6, 2002, they discussed the recent changes in the packing and marketing of Peento type peaches. When these varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento type peaches to volume-filled containers. Weight-count standards provide a basis for volume filling containers of peaches. Peento type peaches are regulated under a new table of weight-count standards applicable to only these uniquely-shaped peaches, and these standards continue in effect.

During continued weight studies conducted in 2002, the staff learned that all available sizes of Peento type peaches were being packed in volume-filled containers, including sizes for which there were not yet minimum weight-count standards. For that reason, modifications to Table 3 in paragraph (a)(5)(vi) of § 917.442 are continued in effect to include additional sizes 30 and 32, which are larger-sized Peento peaches.

The alternative to this would result in larger-sized Peento type peaches being exempted from weight-count standards applicable to these fruit specifically. They may, however, have been subject to weight-counts for their size (30 and



32) of round varieties of peaches. Clearly, that alternative is not acceptable, given the unique shape of Peento type peaches.

#### **Container and Pack Requirements—Discussions and Alternatives**

The Stone Fruit Grade and Size Subcommittee also discussed the 31-pound net weight requirement for all five down Euro containers at its meeting on November 6, 2002. At that time, it was noted by one handler that the current net weight of 31 pounds and exemption from the well-filled requirement are applicable to only the RPCs. The handler noted, however, that the industry also currently uses five down Euro boxes that are not RPCs. He further suggested that all five down Euro boxes should be required to meet the net weight of 31 pounds and be exempted from the requirement to be well-filled. The subcommittee agreed and unanimously recommended the change to the committees. The alternative would have meant that only the RPC five down Euro containers would have been subject to the minimum regulated with a net weight of 31 pounds, and exempted from the requirement to be well-filled. In consideration of uniformity for all five down Euro containers, this alternative was rejected.

The Stone Fruit Grade and Size Subcommittee discussed the 31-pound net weight requirement for volume-filled five down Euro containers again at another meeting on April 8, 2003. At that time, one handler advised that the current net weight of 31 pounds is not flexible enough to afford him the opportunity to meet the demands of his buyers. The handler noted that one large customer has begun demanding volume-filled boxes of nectarines and peaches in a 29-pound box rather than a 31-pound box, which makes the volume-filled container weight consistent with the tray-packed container weight. The handler added that he was unable to provide what his customer wanted, given that the current requirements limit him to a box with a 31-pound minimum weight. In the absence of change, the handler would be forced to ship 31 pounds to the customer, and risk receiving payment for only the 29 pounds the customer wanted. The subcommittee agreed that the 31-pound box did not provide enough flexibility for all handlers and unanimously recommended that the minimum 31-pound requirement for volume-filled containers be revised. The alternative would have meant that this handler at least would have been unable to meet the demands of a buyer without pricing

considerations. In an effort to enhance each handler's ability to provide what the market demands, such an alternative was rejected.

The NAC and PCC discussed the subcommittee's recommendation at their meeting on May 1, 2003. They debated the value of simply making 29 pounds the sole minimum net weight for volume-filled Euro containers, but opted to maintain the 31-pound container and add the 29-pound container for the 2003 season, contingent upon review at the end of the season by the Grade and Size Subcommittee. At that time, the subcommittee is expected to recommend only one net weight for five down, volume-filled Euro containers of nectarines and peaches for the 2004 season.

The NAC voted 7 in favor and one opposed to this recommendation, while the PCC voted unanimously in favor of the recommendation. The NAC member opposed to the recommendation noted that additional box styles are costly to the industry and should be avoided, if possible. However, the large majority of committee members disagreed with that alternative, opting instead to take steps to be responsive to buyers.

Sections 916.350 and 917.442 establish container, pack, and marking requirements for shipments of nectarines and peaches, respectively. This rule continues in effect the changes to the pack and container marking requirements of the orders' rules and regulations to authorize both a 29-pound and a 31-pound net weight for all types of five down Euro boxes, and exempt such boxes from the well-filled requirement.

#### **Variety Nomenclature—Discussions and Alternatives**

The Grade and Size Subcommittee discussed the issue of variety nomenclature at its meeting on April 8, 2003. Several members expressed concern that use of different marketing names by different handlers for the same variety was causing mismarking situations, which affect inspections, size and maturity assignments, and data collection. The current regulations require that containers bear the name of the variety. This was clarified in the amended interim final rule of August 13, 2003, by adding that trademarks, marketing names, and brand names may be associated with the variety name, but cannot be substituted for the variety name. We are finalizing this change. This change is expected to foster consistent variety identification within the industries, and uniform application of maturity and size requirements.

As noted in the discussion of comments concerning the naming of varieties and recognizing the importance of providing a uniform method of identifying varieties, USDA plans to work with the committees in developing procedures on the naming of varieties to assure consistency within the industries. If necessary, further rulemaking will be implemented by USDA on this issue.

#### **Maturity and Size Requirements—Discussions and Alternatives**

Sections 916.356 and 917.459 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 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 refinements in measurements of the maturity characteristics of nectarines and peaches as experienced over previous seasons' inspections. Adjustments in the guides utilized 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 rule and regulations, and in § 917.459 of the peach order's rule and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule continues in effect the adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2003 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 improves maturity, increases fruit size, and results in the increased number of packed containers per acre. Those factors, coupled with heightened maturity levels, also provide greater consumer satisfaction, which foster repeat purchases. Those factors, in turn, 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 action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' practices and represent a significant change in the regulations as they currently exist; could 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 was not recommended.

The committees make recommendations regarding all the revisions in handling and lot stamping requirements after considering all available information, including recommendations by various subcommittees, comments of persons at committee and subcommittee meetings, and comments received by committee staff. Such subcommittees include the Stone Fruit Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years' experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Stone Fruit Grade and Size Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee are invited to attend the meetings and actively participate in the public deliberations. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them, thereby increasing the availability of information within the industry.

Each of the recommended handling requirement changes for the 2003 season is expected to generate financial benefits for producers and handlers through increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

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.

USDA 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 throughout the nectarine and peach industry 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 and the last week of April or first week of May. Like all committee meetings, the December 3, 2002, and May 1, 2003, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at subcommittee meetings held on November 6, 2002, and April 8, 2003.

An interim final rule concerning this action was published in the **Federal Register** on April 9, 2003 (68 FR 17257), and an amended interim final rule was published on August 13, 2003 (68 FR 48251). The interim final rule provided for a 60-day comment period, which ended on June 9, 2003. One comment was received. That comment was addressed in the amended interim final rule. The amended interim final rule provided for a 30-day comment period, which ended September 12, 2003. One comment was received on the amended interim final rule. Copies of the interim final rule and amended interim final rule were provided to all committee members, and were available on the committees' Web site at [www.caltreefruit.com](http://www.caltreefruit.com). The U.S. Government Printing Office and USDA also made copies of both rules available on the Internet.

The commenter to the amended interim final rule recommended changes to the names of several peach varieties to bring them into conformity with the recommendations of the PCC. These changes have been made. However, to assure consistency in the naming of varieties, USDA plans to work with the committees in developing procedures in naming varieties. USDA recognizes that there is a need for consistency in naming the various peach and nectarine varieties to prevent misleading variety markings and to accomplish program

objectives. If necessary, further rulemaking would be undertaken on this matter.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <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, the comment received, and other information, it is found that finalizing the interim final and amended interim final rules, with minor changes, as published in the **Federal Register** (68 FR 17257, April 9, 2003, and 68 FR 48251, August 13, 2003, respectively), will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this rule until after 30 days after publication in the **Federal Register** because the 2004 shipping season is expected to begin in early April and these rulemaking actions for 2003 should be finalized promptly so the regulation modifications for 2004 can be implemented. These rules continue to relax grade requirements for nectarines and peaches. Appropriate subcommittees met and made recommendations to the committees, the committees met and unanimously recommended changes at public meetings, and interested persons had opportunities to provide input at all these meetings. Interested persons had an opportunity to file written comments, which were considered prior to the finalization of the interim rules.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

#### **PART 916—NECTARINES GROWN IN CALIFORNIA**

#### **PART 917—PEACHES GROWN IN CALIFORNIA**

■ Accordingly, the interim final rules amending 7 CFR parts 916 and 917 which were published at 68 FR 17257 on

April 9, 2003, and at 68 FR 48251 on August 13, 2003, are adopted as final rules with the following changes to 7 CFR part 917:

■ 1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 917.459 is amended by:

■ A. Amending paragraph (a)(1)(iv) by removing the entry “September Flame” and adding the entry “Burpeachthree” (September Flame™) to Table 1.

■ B. Removing the words “Spring Flame 21” and adding in alphabetical order the words “Burpeach (Spring Flame™ 21)” in paragraph (a)(5).

■ C. Revising the introductory text of paragraph (a)(6).

Revisions read as follows:

**§ 917.459 California Peach Grade and Size Regulation.**

\* \* \* \* \*

TABLE 1

Column A variety	Column B maturity guide
Burpeachthree (Spring Flame™)	I

\* \* \* \* \*

(a) \* \* \*

(6) Any package or container of August Lady, Autumn Flame, Autumn Red, Autumn Rose, Autumn Snow, Burpeachtwo (Henry II™), Burpeachthree (September Flame™), Burpeachfour (August Flame™), Burpeachfive (July Flame™), Burpeachsix (June Flame™), Cassie, Coral Princess, Country Sweet, Diamond Princess, Earlririch, Early Elegant Lady, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, Full Moon, Ivory Princess, Jillie White, Joanna Sweet, John Henry, June Pride, Kaweah, Kings Lady, Klondike, Late Ito Red, O’Henry, Pink Giant, Pretty Lady, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXV, Prima Peach XXVII, Princess Gayle, Queen Lady, Red Dancer, Red Giant, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Gem, Sierra Lady, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Princess, Sprague Last Chance, Spring Gem, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Supechfour (Amber Crest), Sweet Dream, Sweet Gem, Sweet Kay,

Sweet September, Tra Zee, Vista, White Lady, Zee Lady, or 24–SB variety peaches unless:

\* \* \* \* \*

Dated: March 19, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–6701 Filed 3–24–04; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 916 and 917**

[Docket No. FV04–916–1 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, maturity, and container requirements for fresh shipments of these fruits, beginning with 2004 season shipments. This rule also continues a modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2004 season and beyond, establishes a minimum net weight for a style of containers, authorizes continued shipments of “CA Utility” quality nectarines and peaches, and revises the tolerance for blossom-end growth cracks for Peento type peaches. 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 would enable handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

**DATES:** Effective March 26, 2004. Comments received by May 24, 2004, 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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; fax: (202) 720–8938, or e-mail:

*moab.docketclerk@usda.gov* or *www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

**FOR FURTHER INFORMATION CONTACT:**

Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487–5901, fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491; fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the “orders.” The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with