

# Rules and Regulations

Federal Register

Vol. 69, No. 72

Wednesday, April 14, 2004

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV04-916/917-02 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 reducing the minimum net weight for shipments of nectarines and peaches in bulk bins under the marketing orders. 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 packers to continue shipping fresh nectarines and peaches meeting customers' needs in the interests of producers, packers, and consumers of these fruits.

**DATES:** Effective April 15, 2004. Comments received by June 14, 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](mailto:moab.docketclerk@usda.gov) or <http://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](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 in the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review 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.

Under the orders, 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 February 25, 2004, and unanimously recommended that the handling requirements be further revised for the 2004 season, which begins in April. The committees unanimously recommended that the minimum net weight for loose-filled bulk bin containers be reduced from 400 pounds to 100 pounds.

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 February 25, 2004.

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' meetings because the nectarine and peach trees were dormant at the time. The committees will recommend a crop estimate at their meetings in April. However, preliminary estimates indicate that the 2004 crop will be similar in size and characteristics to the 2003 crop, which totaled 21,869,300 containers of nectarines and 22,306,300 containers of peaches.

### Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and container marking requirements for shipments of nectarines and peaches, respectively. Under §§ 916.350 and 917.442 of the orders' rules and regulations, container markings, net weights, well-filled requirements, weight-count standards for various sizes of nectarines and peaches, and standard containers are specified. Included in the container and pack requirements are minimum net weight requirements for several containers, such as the bulk bin.

Currently, the minimum net weight for bulk bin containers is 400 pounds. At the request of a handler, the committees unanimously recommended that the minimum net weight be reduced to 100 pounds for bulk bin containers of loose-filled nectarines and peaches.

The committees' recommendations resulted from a recommendation by the Tree Fruit Quality Subcommittee. At the subcommittee meeting on February 4, 2004, a handler requested that the current minimum net weight be reviewed and possibly modified. The handler noted that it had increased shipments of bulk peaches during the 2003 season, but found that the minimum net weight of 400 pounds too restrictive because the weight of the fruit in the bin damages the contents, especially the peaches at the bottom of the bin. The handler suggested that a minimum weight of 200 pounds might serve the industry better by ensuring the safe arrival of the fruit.

The subcommittee discussed shipments of nectarines and peaches in bulk bins, and reviewed the historical significance of the minimum net weight of 400 pounds. The subcommittee determined that the net weight was set in 1976 when there were few, if any, bulk bin shipments.

The subcommittee also deliberated the relative value of different minimum weights; e.g. 125 pounds, 200 pounds, or 100 pounds. They determined that since the weight constituted a minimum net weight rather than maximum net weight, it was prudent to use a weight that was lighter than currently established, but still heavy enough to constitute a bulk shipment. Since it would be difficult for a handler to pack a 100-pound box for anything other than a bulk bin shipment, the 100 minimum net weight was determined to be the optimum net weight and was unanimously recommended. The subcommittee further unanimously recommended that the 100-pound

minimum net weight be in place for the 2004 season only, with a review of the success of the modification at the end of the season.

The committees discussed the Tree Fruit Quality subcommittee's recommendation at the February 25, 2004, meeting and reviewed the current industry practices regarding shipping in bulk bin containers. While use of bulk bins appears to be in its infancy, the committees appreciate that such shipments could constitute a new trend, and that relaxing the current minimum net weight for those containers provides yet another marketing opportunity for handlers. Moreover, the reduced minimum net weight will provide another container option for handlers and safeguard the fruit in the container from bruising. However, the committees disagreed with the subcommittee's recommendation that the change should be in place for the 2004 season only, and did not believe it necessary to review the use of these containers at the end of the 2004 season.

For the reasons stated above, the committees recommended that the minimum net weight for loose-filled bulk bin containers of nectarines and peaches be decreased from the current 400 pounds to 100 pounds.

**Nectarines:** 1 For the reasons stated above, paragraph (a)(9) of § 916.350 is revised to modify the minimum net weight of bulk bin containers of loose-filled nectarines from 400 pounds to 100 pounds. The required 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, paragraph (a)(10) of § 917.442 is revised to modify the minimum net weight of bulk bin containers of loose-filled peaches from 400 pounds to 100 pounds. The required container markings shall be placed on one outside end of the container in plain sight and in plain letters.

### Initial Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

### Industry Information

There are approximately 250 California nectarine and peach packers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. The Small Business Administration (13 CFR 121.201) defines small agricultural service firms as those whose annual receipts are less than \$5,000,000. The Small Business Administration also defines small agricultural producers as those having annual receipts of less than \$750,000. A majority of these packers 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 2003 season, the average handler price received was \$7.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 714,286 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 2003 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. In the 2003 season, 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 2003 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 44,202,600 containers, the value of the 2003 packout level is estimated to be \$176,810,400. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimated average revenue per producer of approximately \$98,228 from the sales of nectarines and peaches.

### *Discussion of the Change in Minimum Net Weight*

Under §§ 916.52 and 917.41 of the orders, pack and container 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 February 25, 2004, and unanimously recommended that the minimum net weight for loose-filled bulk bin containers be reduced from 400 to 100 pounds. This recommendation was presented to the committees by the Tree Fruit Quality Subcommittee after a thorough discussion at their February 4, 2004, meeting. A handler requested that the subcommittee review the current minimum net weight of bulk bin containers used for loose-filled shipments of nectarines and peaches.

The subcommittee discussed the historical significance of the current minimum net weight of 400 pounds and deliberated the relative value of recommending various lighter net weights, as well. They determined that the optimum net weight for bulk bin containers was 100 pounds. Until recently, they noted, there were few, if any, shipments of nectarines and peaches in bulk bins. However, changes in the industry, improvements in containers, shipments of increasingly more mature fruit, and the demands of their retail customers have apparently improved the prospects for such shipments.

In considering possible alternatives to this action, the subcommittee discussed varying minimum net weights, and the types and sizes of bulk bin containers currently available to the industry. While other alternatives were not rejected out of hand, the subcommittee reasoned that decreasing the current 400-pound minimum net weight to 100 pounds was a prudent option since the weight of the container constituted a minimum net weight rather than a maximum net weight. Such a weight afforded increased protection of the fruit in the bin while providing increased flexibility for handlers who might want to experiment with varying weights, as their customers demanded. If a handler had customer requests for 125 pounds, that option would be available under the recommendations. If another handler had a request for 250 pounds, that option would also be available.

The committees agreed with the Tree Fruit Quality Subcommittee's recommendation, except for establishing a trial period during the 2004 season. The committees voted unanimously to establish the revised minimum net weight of 100 pounds for bulk bin

containers without the requirement for a trial during the 2004 season or an industry review at the end of the season.

The committees make recommendations regarding all the revisions in handling requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Tree Fruit Quality and Research Subcommittees, 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 packers 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 Tree Fruit Quality Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations. In fact, if a specific producer or handler is known to have an interest in one or more topics to be discussed, committee staff specifically invites him or her to the meetings to participate in the debate and provide information not already available to staff and the subcommittee, including information which may refute the staff's findings. In fact, this recommendation resulted from a request made by a handler who was specifically invited by staff to take his concerns to the Tree Fruit Quality Subcommittee.

In addition, minutes of all subcommittee and committee meetings are distributed to committee members and others who have requested them, thereby increasing the availability of information within the industry. The staff is currently surveying committee members and others in the industry to determine each person's preference in receiving committee communications. Each person has the opportunity to specify how he or she would like meeting agendas and other committee communications to be delivered: facsimile, electronic mail, and/or mailed hard copy. The staff is also preparing to make meeting minutes available on the committees' Web site, as well, where meeting agendas are currently available.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large packers. 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.

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 fall, late winter, and early spring. Like all committee meetings, the February 25, 2004, 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 a subcommittee meeting held on February 4, 2004. 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 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.

This rule invites comments on this change to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. All comments received will become a matter of public record and will be available for public inspection during regular business hours at the same address or at <http://www.ams.usda.gov/fv/moab.html>. Once the Web site page is opened, click on "nectarines" or "peaches," and find the docket number of this proposed rule. Any comments received regarding this rule will be found in the "Comments Received" link. If no comments are received in response to a rule, there will be no "Comments Received" link. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that

good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach shipments of 2004 crop began in April and producers and handlers should be allowed to take advantage of the bulk-bin net weight reduction as soon as possible; (2) this rule relaxes the container and pack requirements for nectarines and peaches; (3) the committees unanimously recommended the relaxation at public meetings and interested persons had opportunities to provide input at these meetings and other meetings; 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:

#### PART 916—NECTARINES GROWN IN CALIFORNIA

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

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 916.350, the introductory text of paragraph (a)(9) is revised to read as follows:

##### § 916.350 California nectarine container and pack regulation.

(a) \* \* \*

(9) Each bulk bin container of loose-filled nectarines shall contain not less than 100 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

\* \* \* \* \*

#### PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 3. In § 917.442, the introductory text of paragraph (a)(10) is revised to read as follows:

##### § 917.442 California peach container and pack regulation.

(a) \* \* \*

(10) Each bulk bin container of loose-filled peaches shall contain not less

than 100 pounds net weight, and bear on one outside panel, in plain sight and in plain letters, the following information:

\* \* \* \* \*

Dated: April 9, 2004.

**A.J. Yates,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–8522 Filed 4–13–04; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2003–NM–80–AD; Amendment 39–13572; AD 2004–08–03]

RIN 2120–AA64

#### Airworthiness Directives; Airbus Model A300 B4–600 and A300 C4–600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes, that requires a one-time inspection to detect damage of the pump diffuser guide slots (bayonet) of the center tank fuel pumps, the pump diffuser housings, and the pump canisters; repetitive inspections to detect damage of the fuel pumps and the fuel pump canisters; and corrective action, if necessary. This action is necessary to detect and correct damage of the center tank fuel pumps and fuel pump canisters, which could result in separation of a pump from its electrical motor housing, loss of flame trap capability, and a possible fuel ignition source in the center fuel tank. This action is intended to address the identified unsafe condition.

**DATES:** Effective May 19, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of

the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–600 and A300 C4–600 series airplanes was published in the **Federal Register** on December 18, 2003 (68 FR 70473). That action proposed to require a one-time inspection to detect damage of the pump diffuser guide slots (bayonet) of the center tank fuel pumps, the pump diffuser housings, and the pump canisters; repetitive inspections to detect damage of the fuel pumps and the fuel pump canisters; and corrective action, if necessary.

#### Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

#### Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

#### Cost Impact

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD. The detailed inspections will take about 2 work hours per airplane, and the NDT inspection will take about 5 work hours per airplane, per inspection cycle. The average labor rate is \$65 per work hour. Based on these figures, the cost per airplane is estimated to be \$130 for the detailed inspections and \$325 per NDT inspection.

The FAA has been advised that the one-time detailed inspections have already been accomplished for both of the U.S.-registered airplanes. Therefore, the future economic cost impact of this AD on U.S. is estimated to be only \$325 per airplane, per each of the repetitive NDT inspections.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking