

used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowances, and benefits). Fees for duplication will be the same as those charged by the MSPB in its Freedom of Information Act regulations at 5 CFR part 1204.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include cost of time spent by the witness to prepare for testimony, in travel and for attendance in the legal proceeding, plus travel costs.

(d) *Payment of fees.* A requester must pay witness fees for current MSPB employees and any record certification fees by submitting to the Clerk of the Board a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former MSPB employees, the request must pay applicable fees directly to the former MSPB employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* Fees will not be assessed if the total charge would be \$10.00 or less.

Subpart D—Penalties

§ 1216.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the MSPB, or as ordered by a Federal court after the MSPB has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former MSPB employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current MSPB employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action.

Dated: April 4, 2006.

Bentley M. Roberts, Jr.

Clerk of the Board.

[FR Doc. 06-3373 Filed 4-7-06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV06-916/917-1 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 pack requirements for fresh shipments of these fruits, beginning with 2006 season shipments. This rule also authorizes continued shipments of "CA Utility" quality nectarines and peaches, establishes weight-count standards for Peento type nectarines in volume-filled containers, and eliminates the varietal container marking requirements. 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 will enable handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

DATES: Effective April 11, 2006. Comments received by June 9, 2006 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 Internet: <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: Laurel May, 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 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 rule: (1) Revises the nectarine and peach grade, size, maturity, and pack requirements to better reflect current industry operating and marketing practices; (2) authorizes continued shipments of "CA Utility" quality nectarines and peaches during the 2006 and subsequent seasons to meet buyer needs; (3) establishes weight-count standards for Peento type nectarines packed in volume-filled containers to assure pack uniformity; and (4) eliminates the varietal container marking requirements for nectarines and peaches to provide handlers more marketing flexibility.

Sections 916.52 and 917.41 of the orders provide authority for regulating the handling of fresh California nectarines and peaches. The regulations include grade, size, maturity, quality, pack, and container marking requirements. Such regulations 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, meet prior to and during each season to review the 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. 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.

The committees held such meetings on February 3, 2006, and unanimously recommended that the handling requirements be revised for the 2006 season, which expected to begin at the end of March. No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, preliminary estimates indicate that the 2006 crop will be slightly larger than the 2005 crop, which totaled approximately 18,678,400 containers of nectarines and 20,098,100 containers of peaches.

Maturity Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of 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, along with other maturity tests as applied by the inspection service). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed, based upon the most recent information available on the individual characteristics of each nectarine and peach variety.

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

The requirements in the 2006 handling regulations are the same as those that appeared in the 2005 handling regulations with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for seven varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Ruby Fire variety to be regulated at the G maturity guide; for the Burnectten (Spring Flare® 19) variety to be regulated at the H maturity guide, for the Burnecttwelve (Sweet Flare® 21) variety to be regulated at the I maturity guide, for the Burnectseven (Summer Flare® 28) and Zee Fire varieties to be regulated at the J maturity guide, and for the Prima Diamond XIX and Summer Jewel varieties to be regulated at the L maturity guide.

Peaches: Requirements for "well-matured" peaches are specified in § 917.459 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for seven peach varieties. Specifically, SPI recommended adding maturity guides for the Flavor Joy variety to be regulated at the H maturity guide; the King Sweet, Lady Lou, and Sugar Time (214LC68) varieties to be regulated at the I maturity guide; the August Dream variety to be regulated at the J maturity guide; and the Burpeachfive (July Flame®) and Burpeachsix (June Flame®) varieties to be regulated at the L maturity guide.

NAC and 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 nectarine and peach varieties in production.

Size Requirements

Both orders provide authority (in §§ 916.52 and 917.41) 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 to the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific minimum size requirements for nine varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2005 season. This rule also removes the variety-specific minimum size requirements for seven varieties of nectarines whose shipments fell below 5,000 containers during the 2005 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Burnectten (Spring Flare® 19) variety of nectarines, recommended for regulation at a minimum size 96. Studies of the size ranges attained by the Burnectten (Spring Flare® 19) variety revealed that 100 percent of the containers met the minimum size of 96 during the 2004 and 2005 seasons. Sizes ranged from size 40 to size 96, with 0.2 percent of the fruit in the 40 sizes, 4.9 percent of the packages in the 50 sizes, 27.0 percent in the 60 sizes, 35.8 percent in the 70 sizes, 24.4 percent in the 80 sizes, and 7.7 percent in size 96 for the 2005 season.

A review of other varieties with the same harvesting period indicated that the Burnectten (Spring Flare® 19)

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 Burnectten (Spring Flare® 19) variety in the variety-specific minimum size regulation at a minimum size 96 is appropriate. This recommendation results 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 introductory text of paragraph (a)(3) of § 916.356 is revised to include the Burnectten (Spring Flare® 19) variety; the introductory text of paragraph (a)(4) of § 916.356 is revised to include the Gee Sweet variety; and the introductory text of paragraph (a)(6) of § 916.356 is revised to include the Arctic Belle, August Sweet, Autumn Blaze, Giant Pearl, Prima Diamond X, Prince Jim 3, and Summer Jewel nectarine varieties.

This rule also revises the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to remove seven 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 2005 season. Specifically, the introductory text of paragraph (a)(3) of § 916.356 is revised to remove the Early Diamond nectarine variety; the introductory text of paragraph (a)(4) of § 916.356 is revised to remove the Arctic Rose, June Glo, May Diamond and Red Delight nectarine varieties; and the introductory text of paragraph (a)(6) of § 916.356 is revised to remove the Bright Sweet and Emelia nectarine varieties.

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

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This

rule revises § 917.459 to establish variety-specific minimum size requirements for eleven peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2005 season. This rule also removes the variety-specific minimum size requirements for seven varieties of peaches whose shipments fell below 5,000 containers during the 2005 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Island Prince variety of peaches, which was recommended for regulation at a minimum size 88. Studies of the size ranges attained by the Island Prince variety revealed that 100 percent of the containers met the minimum size of 88 during the 2004 and 2005 seasons. The sizes ranged from size 30 to size 88, with 3.8 percent of the containers meeting the size 30, 4.0 percent meeting the size 40, 42.1 percent meeting the size 50, 28.1 percent meeting the size 60, 11.8 percent meeting the size 70, 9.9 percent meeting the size 80, and 0.3 percent meeting the size 88 in the 2005 season.

A review of other varieties with the same harvesting period indicated that the Island Prince 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 the harvesting period, as well. Thus, the recommendation to place the Island Prince variety in the variety-specific minimum size regulation at a minimum size 88 is appropriate.

Historical data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(3) of § 917.459 is revised to include the Island Prince and Snow Peak peach varieties; the introductory text of (a)(5) of § 917.459 is revised to include the Bright Princess, Burpeachnineteen (Spring Flame® 22), Honey Sweet, Sierra Snow, and Sweet Crest peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised

to include the Glacier White, Jasper Treasure, Spring Candy, and Valley Sweet peach varieties.

This rule also revises the introductory text of paragraph (a)(6) of § 917.459 to remove the Autumn Ruby, Cherry Red, Early O'Henry, Gypsy Red, Pretty Lady, Supechfour (Amber Crest), and 244LE379 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 2005 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.

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

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders also 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 standard that included 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 considered "serious damage."

Since 1996, shipments of nectarines and peaches meeting "CA Utility" quality requirements have been permitted each season. "CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements. Nevertheless, the fruit is acceptable in many markets. Use of the "CA Utility" quality option has allowed handlers the opportunity to remove marginal fruit from the U.S. No. 1 containers and pack it in "CA Utility" containers instead, which results in better quality U.S. No. 1 packs without sacrificing fruit.

The committees have recommended continuation of the authorization to ship "CA Utility" quality fruit each year since 1996, and did so again at their meetings on February 3, 2006, for the 2006 and subsequent seasons. This rule

revises paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2006 and subsequent seasons.

Weight-Count Standards

Under the provisions of §§ 916.52 of the order, NAC is authorized to establish weight-count standards for packed containers of nectarines. These standards define a maximum number of nectarines in a 16-pound sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers. In §§ 916.350 of the order's rules and regulations, weight-count standards are established for all varieties of nectarines (except the Peento type), in Tables 1 and 2 of paragraph (a)(5)(iv).

According to NAC, Peento varieties of donut nectarines have traditionally been packed in trays because they have been marketed as a premium variety, whose value justified the added packing costs. However, as the volume has increased, the value of the variety has diminished in the marketplace, and some handlers now desire to pack Peento variety nectarines in volume-filled containers to meet market demands. However, weight-count standards for Peento type nectarines have not been established in the order's rules and regulations. Current weight-count standards for nectarines are for round nectarines. Peento type nectarines are shaped like donuts and fit into volume-filled containers differently, so the current weight count standards are inappropriate.

In an effort to standardize the conversion from tray-packing to volume-filling for Peento type nectarines, the committee staff conducted weight-count surveys during the 2005 season to determine optimum weight-counts for the varieties at various fruit sizes. As a result, the staff prepared a new weight-count table applicable to only the Peento varieties. The Tree Fruit Quality Subcommittee reviewed the weight-counts at their November 10, 2005, meeting. At its February 3, 2006, meeting, NAC approved the recommendation that the new weight-counts be implemented for the 2006 and subsequent seasons.

For those reasons, a new Table 3, establishing the weight-counts for Peento type nectarines, will be added to paragraph (a)(5)(iv) of § 916.350, following Tables 1 and 2. In a conforming change, the titles of Tables 1 and 2 will be revised by adding the words "except Peento type nectarines"

between the words "nectarines" and "packed." Conforming changes will also be made by adding the words "except for Peento type nectarines" at the end of paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(ii) of § 916.356.

The committee staff will continue to conduct weight-count surveys to ensure that the Peento varieties that are packed in volume-filled containers meet the weight-count standards established for tray-packed nectarines, and to ensure that the weight-counts continue to be appropriate.

Varietal Container Markings

Sections 916.350 and 917.442 of the orders' rules and regulations require that all containers and packages of nectarines and peaches (except for consumer packages in master containers or those mailed directly to consumers) shall be marked with the name of the variety of the fruit if it is known, or with "Unknown Variety" if the variety is not known.

Many industry members believe that variety recognition may limit the industry's ability to provide the best quality fruit at any given time during the harvest season. Factors such as weather can contribute to wide variability in harvest dates for individual varieties from year to year, making it difficult to meet customer demands on a timely basis. Eliminating the varietal container marking requirement would ease the transition that occurs when older trees are replaced with newly introduced varieties. New varieties could be substituted for obsolete varieties without risking the loss of market opportunities. Therefore, industry members have suggested that elimination of the varietal container marking requirement would enable them to supply whichever varieties are appropriately mature throughout the season without regard for variety identity.

The Tree Fruit Quality Subcommittee discussed this issue at many of their meetings in 2004 and 2005. They believe that eliminating the requirement that variety names be marked on containers will allow handlers greater flexibility to supply the best possible nectarines and peaches to customers throughout the marketing season without regard to variety. Consumer satisfaction would be raised, which will in turn increase returns to growers and handlers.

Upon recommendation by the Tree Fruit Quality Subcommittee, NAC and PCC voted unanimously at their meetings on February 3, 2006, to

recommend elimination of the requirement that fruit variety be marked on containers of nectarines and peaches. Accordingly, paragraphs (a)(2) of §§ 916.350 and 917.442 have been amended by deleting the words, "and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known, or, when the variety name is not known, the words "unknown variety." A marketing name, trade mark, or brand name may be associated with a variety name, but cannot be substituted for the variety name."

Additionally, paragraph (a)(11) of § 916.350 and paragraph (a)(12) of § 917.442 will be amended by deleting the words "the name of the variety, if known, or if the variety is not known, the words *Unknown Variety*."

This rule reflects the need to revise the handling requirements for California nectarines and peaches, as specified. This rule will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. The changes: (1) Revise the nectarine and peach grade, size, maturity, and pack requirements; (2) authorize continued shipments of "CA Utility" quality nectarines and peaches during the 2006 and subsequent seasons; (3) establish weight-count standards for Peento type nectarines packed in volume-filled containers; and (4) eliminate the varietal container marking requirements for nectarines and peaches. This rule will also help the California nectarine and peach industries to provide fruit desired by consumers. This rule was unanimously recommended by the committees at their meetings on February 3, 2006, and is designed to establish and maintain orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

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 180 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 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 \$6,000,000. 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 fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2005 season, the committees' staff estimated that the average handler price received was \$10.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 600,000 containers to have annual receipts of \$6,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2005 season, the committees' staff estimates that small handlers represent approximately 86 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 10 percent of the producers in the industry could be defined as other than small entities. For the 2005 season, the committees' staff estimated the average producer price received was \$5.25 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 142,858 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 2005 season, the committees' staff estimates that small producers represent more than 90 percent of the producers within the industry.

With an average producer price of \$5.25 per container or container equivalent, and a combined packout of nectarines and peaches of

approximately 38,776,500 containers, the value of the 2005 packout is estimated to be \$203,576,600. Dividing this total estimated grower revenue figure by the estimated number of producers (800) yields an estimated average revenue per producer of about \$254,471 from the sales of peaches and nectarines.

Regulatory Revisions

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. NAC and PCC met on February 3, 2006, and unanimously recommended that these handling requirements be revised for the 2006 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Revise varietal size, maturity, and pack requirements to reflect changes in production and marketing practices; (2) authorize continued shipments of "CA Utility" quality nectarines and peaches during the 2006 and subsequent seasons; (3) establish weight-count standards for Peento type nectarines packed in volume-filled containers; and (4) eliminate the varietal container marking requirements for nectarines and peaches.

Minimum Maturity and Size Levels—Discussions and Alternatives

Sections 916.356 and 917.459 establish minimum fruit maturity levels. This rule makes adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on measurements suggested by maturity guides (e.g., color chips), as reviewed and recommended by SPI annually 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 observed during previous seasons' inspections. Adjustments in the guides utilized ensure acceptable fruit maturity and increased consumer satisfaction while benefiting nectarine and peach producers and handlers.

Sections 916.356 and 917.459 of the orders' rules and regulations also establish minimum sizes for various varieties of nectarines and peaches. This rule makes adjustments to the minimum sizes authorized for certain varieties of each commodity for the 2006 season.

Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by 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; would ultimately increase the amount of less acceptable fruit being marketed to consumers; and would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

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. Although "CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements, it has been accepted in many markets. Between 1996 and 2004, shipments of "CA Utility" quality fruit ranged from 1 to 6 percent of total nectarine and peach shipments. In 2005, shipments of "CA Utility" quality fruit were 8.6 percent and 7.1 percent of total nectarine and peach shipments, respectively.

This rule authorizes continued shipments of "CA Utility" quality nectarines and peaches during the 2006 and subsequent seasons. Not authorizing such shipments would curtail shipments of fruit for which there is an appropriate market. Because "CA Utility" is widely accepted, it is no longer necessary to reconsider this authorization on an annual basis.

Weight-Count Standards—Discussions and Alternatives

Section 916.350 also establishes weight-count standards for nectarines packed in volume-filled containers.

These standards define a maximum number of nectarines in a 16-pound sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers.

Peento type nectarines were formerly packed exclusively in trays because of their high market value. With increased production and lowered market value, retailers have begun requesting that packers place the donut-shaped fruit in volume-filled containers. Peento type nectarines fit into the boxes differently than spherical nectarines, so it is necessary to assign appropriate weight counts for Peento type nectarines in volume-filled containers.

The committee staff was directed to collect data during the 2005 season from which recommendations for change could be made. Extensive sampling of Peento type nectarines of various sizes provided the information needed for the committee to make recommendations regarding the new weight-count standards. The Tree Fruit Quality subcommittee reviewed these standards at their meeting on November 10, 2005. The standards were then presented to NAC, who unanimously recommended adding the new weight count standards for Peento type nectarines to the regulations at their meeting on February 3, 2006.

Without the appropriate weight-counts, Peento type nectarines cannot be packed in volume-filled containers. NAC believes that the recommended weight-count standards will satisfy the stated needs of retailers, will open additional market opportunities for the industry and will provide for uniformity of sizes between nectarines packed in tray- and volume-filled containers.

Varietal Container Marking Requirements—Discussions and Alternatives

Sections 916.350 and 917.442 of the orders' rules and regulations require that all containers of nectarines and peaches be marked with the fruit's varietal name, if known.

Many industry members believe that variety recognition may limit the industry's ability to provide the best quality fruit at any given time during the harvest season. Factors such as weather can contribute to wide variability in harvest dates for individual varieties from year to year, making it difficult to meet customer demands on a timely basis. Eliminating the varietal container marking requirement would ease the transition that occurs when older trees are replaced with newly introduced varieties. New varieties could be substituted for obsolete varieties

without risking the loss of market opportunities. Therefore, industry members have suggested that elimination of the varietal container marking requirement would enable them to supply whichever varieties are appropriately mature throughout the season without regard for variety identity. Consumer satisfaction would be raised, which would in turn increase returns to growers and handlers.

The Tree Fruit Quality Subcommittee discussed the issue at many of their recent meetings. Some members suggested that the requirement be left in place so that marketers and consumers would know what varieties of fruit they purchased and be encouraged to make repeat purchases. But the majority of subcommittee members voted to recommend elimination of the varietal container marking requirement, citing brand and commodity recognition in the market and easier transition to newer varieties as justification for the change. The Tree Fruit Subcommittee made the recommendation to both NAC and PCC, who agreed that varietal markings are no longer necessary or prudent, and in turn recommended at their February 3, 2006, meetings that the varietal container marking requirement be eliminated.

The committees make recommendations regarding 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 Subcommittee, the Size Nomenclature Review Group, the Marketing Order Amendment Task Force, 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 of 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, or call and/or write in their concerns and comments to the staff for presentation at the meetings. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them, and are also available on the committees' Web site, thereby

increasing the availability of this critical information within the industry.

Each of the recommended handling requirement changes for the 2006 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 imposes minimal additional reporting and recordkeeping requirements concerning identification of varieties at inspection that is within the currently approved burden by OMB. 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.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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 in the fall, winter, and spring. During the February 3, 2006, teleconference meeting all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at public subcommittee meetings held on November 30, 2004, and April 19, September 2, October 5, and November 10, 2005. 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 changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

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) This rule should be implemented as soon as possible, since shipments of California nectarines and peaches are expected to begin in early April; (2) this rule relaxes grade requirements for nectarines and peaches; (3) appropriate subcommittees met and made recommendations to the committees, the committees met and unanimously recommended these changes at public meetings, and interested persons had opportunities to provide input at all those 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. Section 916.350 is amended by:
 - A. Revising paragraph (a)(2);
 - B. Revising the titles of Tables 1 and 2 and adding a new Table 3 in paragraph (a)(5)(iv);
 - C. Revising paragraph (a)(11); and
 - D. Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(1) * * *

(2) Each package or container of nectarines shall bear, on one outside end in plain sight and in plain letters, the word “nectarines.”

* * * * *

(5) * * *

(iv) * * *

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES (EXCEPT PEENTO TYPE NECTARINES) PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

* * * * *

TABLE 2.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES (EXCEPT PEENTO TYPE NECTARINES) PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

* * * * *

TABLE 3.—WEIGHT-COUNT STANDARDS FOR PEENTO TYPE NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

| Column A—tray pack size designation | Column B—maximum number of nectarines in a 16-pound sample |
|-------------------------------------|--|
| 80 | 140 |
| 72 | 128 |
| 70 | 111 |
| 64 | 99 |
| 60 | 93 |
| 56 | 87 |
| 54 | 80 |
| 50 | 77 |
| 48 | 74 |
| 44 | 70 |
| 42 | 68 |
| 40 | 59 |
| 36 | 53 |
| 34 | 50 |
| 32 | 39 |
| 30 | 32 |

* * * * *

(11) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of nectarines contained in the package and be marked as specified in paragraph (a)(3) of this section.

* * * * *

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

- 3. Section 916.356 is amended by:
 - A. Revising the introductory text of paragraph (a)(1);
 - B. Revising Table 1 of paragraph (a)(1)(iv);
 - C. Revising paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(ii); and
 - D. Revising the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-covered, fairly smooth scars which exceed an aggregate area of a circle $\frac{3}{8}$ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-covered, fairly smooth scars which exceed an aggregate area of a circle $\frac{1}{2}$ inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 1 through October 31, any handler may handle nectarines if such nectarines meet “CA Utility” quality requirements. The term “CA Utility” means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade,

except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

(iv) * * *

TABLE 1

| Column A variety | Column B maturity guide |
|--|-------------------------------|
| Alshir Red | J |
| Alta Red | J |
| April Glo | H |
| August Fire | L |
| August Glo | L |
| August Lion | J |
| August Red | J |
| Aurelio Grand | F |
| Autumn Delight | L |
| Big Jim | J |
| Burnectone (Spring Ray®) | L |
| Burnectseven (Summer Flare® 28) | J |
| Burnectten (Spring Flare® 19) | H |
| Burnecttwelve (Sweet Flare® 21) | I |
| Candy Gold | L |
| Crimson Baby | G |
| Diamond Bright | J |
| Diamond Jewel | L |
| Diamond Ray | L |
| Earliglo | I |
| Early Diamond | J |
| Early Red Jim | J |
| Early Sungrand | H |
| Emelia | J |
| Fairlane | L |
| Fantasia | J |
| Firebrite | H |
| Fire Sweet | J |
| Flame Glo | L |
| Flamekist | L |
| Flaming Red | K |
| Flavortop | J |
| Gee Sweet | L |
| Grand Candy | J |
| Grand Diamond | L |
| Grand Sweet | J |
| Gran Sun | L |
| Honey Blaze | J |
| Honey Dew | B* |
| Honey Fire | L |
| Honey Kist | I |
| Honey Royale | J |
| July Red | L |
| June Brite | I |
| June Candy | K |
| Juneglo | H |
| Kay Diamond | L |
| Kay Glo | J |
| Kay Sweet | J |
| King Jim | L |
| Kism Grand | J |
| Late Le Grand | L |
| Late Red Jim | J |
| Mango | B* |
| May Diamond | I |
| May Fire | H |

TABLE 1—Continued

| Column A variety | Column B maturity guide |
|--------------------------------|-------------------------------|
| Mayglo | H |
| May Grand | H |
| May Kist | H |
| Mid Glo | L |
| Moon Grand | L |
| Niagra Grand | H |
| P-R Red | L |
| Prince Jim | L |
| Prince Jim I | L |
| Prima Diamond XIII | L |
| Prima Diamond XIX | L |
| Red Delight | I |
| Red Diamond | L |
| Red Fred | J |
| Red Free | L |
| Red Glen | J |
| Red Glo | I |
| Red Jewel | L |
| Red Jim | L |
| Red May | J |
| Red Roy | J |
| Regal Red | K |
| Rio Red | L |
| Rose Diamond | J |
| Royal Giant | I |
| Royal Glo | I |
| Ruby Diamond | L |
| Ruby Fire | G |
| Ruby Grand | J |
| Ruby Sun | J |
| Ruby Sweet | J |
| Scarlet Red | K |
| September Free | J |
| September Grand | L |
| September Red | L |
| Shay Sweet | J |
| Sheri Red | J |
| Sparkling June | L |
| Sparkling May | J |
| Sparkling Red | L |
| Spring Bright | L |
| Spring Diamond | L |
| Spring Red | H |
| Spring Sweet | J |
| Star Brite | J |
| Sugar Queen | L |
| Summer Beaut | H |
| Summer Blush | J |
| Summer Bright | J |
| Summer Diamond | L |
| Summer Fire | L |
| Summer Grand | L |
| Summer Jewel | L |
| Summer Lion | L |
| Summer Red | L |
| Sunburst | J |
| Sun Diamond | I |
| Sunecteight (Super Star) | G |
| Sun Grand | G |
| Sunny Red | J |
| Tom Grand | L |
| Zee Fire | J |
| Zee Glo | J |
| Zee Grand | I |

* * * * *

(2) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph

(a)(2)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 100 nectarines, except for Peento-type nectarines.

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Burnectten (Spring Flare® 19), Crimson Baby, Earliglo, Red Jewel or Zee Fire variety nectarines unless:

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(3)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines, except for Peento-type nectarines.

(4) Any package or container of Arctic Star, Burnectone (Spring Ray®), Diamond Bright, Diamond Pearl, Gee Sweet, June Pearl, Kay Fire, Kay Glo, Kay Sweet, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Roy, Rose Diamond, Royal Glo, or Zee Grand variety nectarines unless:

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(4)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 84 nectarines, except for Peento-type nectarines.

(5) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(5)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 78 nectarines, except for Peento-type nectarines.

(6) Any package or container of Alta Red, Arctic Belle, Arctic Blaze, Arctic Gold, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Fire, August Glo, August Lion, August Pearl, August Red, August Snow, August Sweet, Autumn Blaze, Big Jim, Bright Pearl, Burnectfour (Summer Flare® 35), Burnectseven (Summer Flare® 28), Candy Gold, Diamond Ray, Early Red Jim, Fire Pearl, Fire Sweet, Flaming Red, Giant Pearl, Grand Pearl, Grand Sweet, Honey Blaze, Honey Dew, Honey Fire, Honey Kist, Honey Royale, July Pearl, July Red, Kay Pearl, La Pinta, Late Red Jim, Mike's Red, P-R Red, Prima Diamond IX, Prima Diamond X, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Prima

Diamond XXVIII, Prince Jim 3, Red Diamond, Red Glen, Red Jim, Red Pearl, Regal Pearl, Regal Red, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, September Bright (26P-490), September Free, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Sweet, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Valley Sweet, Terra White, or Zee Glo variety nectarines unless:

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(6)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 72 nectarines or if the nectarines are "well matured" not more than 76 nectarines, except for Peento-type nectarines.

(7) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(7)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 90 nectarines, except for Peento-type nectarines.

(8) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(8)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 84 nectarines, except for Peento-type nectarines.

(9) * * *

(i) * * *

(ii) Such nectarines, when packed other than as specified in paragraph (a)(9)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 72 nectarines or if the nectarines are "well matured" not more than 76 nectarines, except for Peento-type nectarines.

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

■ 4. Section 917.442 is amended by:

■ A. Revising paragraphs (a)(2) and (a)(12) and

■ B. Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(1) * * *

(2) Each package or container of peaches shall bear, on one outside end in plain sight and in plain letters, the word "peaches."

* * * * *

(12) Each individual consumer package shall bear the name and address, including the zip code, of the shipper and the net weight. When a consumer package is not in a master container, it must also bear the number of peaches contained in the package and be marked as specified in paragraph (a)(3) of this section.

* * * * *

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

* * * * *

■ 5. Section 917.459 is amended by:

■ A. Revising the introductory text of paragraph (a)(1);

■ B. Revising Table 1 of paragraph (a)(1)(iv); and

■ C. Revising the introductory text of paragraphs (a)(3), (a)(5), and (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further*, That peaches of the Peento type shall be permitted blossom end cracking that is well healed and does not exceed the aggregate area of a circle $\frac{3}{8}$ inch in diameter, and/or does not exceed a depth that exposes the pit: *Provided further*, That during the period April 1 through November 23, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the peaches in any container meet or exceed the requirement of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall

have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

(iv) * * *

TABLE 1

| Column A variety | Column B maturity guide |
|---|-------------------------------|
| Angelus | I |
| August Dream | J |
| August Lady | L |
| Autumn Flame | J |
| Autumn Gem | I |
| Autumn Lady | H |
| Autumn Red | J |
| Autumn Rose | H |
| Bev's Red | I |
| Blum's Beauty | G |
| Brittney Lane | J |
| Burpeachfive (July Flame®) ... | L |
| Burpeachone (Spring Flame® 21) | J |
| Burpeachsix (June Flame®) ... | L |
| Burpeachthree (September Flame®) | I |
| Burpeachtwo (Henry II®) | J |
| Cal Red | I |
| Candy Red | J |
| Carnival | I |
| Cassie | H |
| Coronet | E |
| Crimson Lady | J |
| Crown Princess | J |
| Country Sweet | J |
| David Sun | I |
| Diamond Princess | J |
| Earlrich | H |
| Earlitreat | H |
| Early Delight | H |
| Early Elegant Lady | L |
| Early May Crest | H |
| Early O'Henry | I |
| Early Top | G |
| Elberta | B |
| Elegant Lady | L |
| Fairtime | G |
| Fancy Lady | J |
| Fay Elberta | C |
| Fire Red | I |
| First Lady | D |
| Flamecrest | I |
| Flavorcrest | G |
| Flavor Joy | H |
| Flavor Queen | H |
| Flavor Red | G |
| Franciscan | G |
| Goldcrest | H |
| Golden Princess | L |
| Honey Red | G |
| Island Princess | H |
| Joanna Sweet | J |
| John Henry | J |
| July Elberta | C |
| June Lady | G |
| June Pride | J |
| Kaweah | L |
| Kern Sun | H |
| Kingscrest | H |
| Kings Lady | I |
| Kings Red | I |

TABLE 1—Continued

| Column A variety | Column B maturity guide |
|--------------------------------|-------------------------------|
| King Sweet | I |
| Lacey | I |
| Lady Lou | I |
| Lady Sue | L |
| Late Ito Red | L |
| Madonna Sun | J |
| Magenta Queen | J |
| May Crest | G |
| May Sun | I |
| May Sweet | I |
| Merrill Gem | G |
| Merrill Gemfree | G |
| Morning Lord | J |
| O'Henry | I |
| Pacifica | G |
| Pretty Lady | J |
| Prima Gattie 8 | L |
| Prima Gattie 10 | J |
| Prima Peach IV | J |
| Prima Peach 23 | J |
| Queencrest | G |
| Ray Crest | G |
| Red Dancer (Red Boy) | I |
| Redhaven | G |
| Red Lady | G |
| Redtop | G |
| Regina | G |
| Rich Lady | J |
| Rich May | H |
| Rich Mike | H |
| Rio Oso Gem | I |
| Royal Lady | J |
| Royal May | G |
| Ruby May | H |
| Ryan Sun | I |
| September Sun | I |
| Shelly | J |
| Sierra Gem | J |
| Sierra Lady | I |
| Sparkle | I |
| Sprague Last Chance | L |
| Springcrest | G |
| Spring Delight | G |
| Spring Gem | J |
| Spring Lady | H |
| Springtreat (60EF32) | I |
| Sugar Time (214LC68) | I |
| Summer Kist | J |
| Summer Lady | L |
| Summerset | I |
| Summer Zee | L |
| Suncrest | G |
| Supechfour (Amber Crest) | G |
| Super Rich | H |
| Sweet Amber | J |
| Sweet Dream | J |
| Sweet Gem | J |
| Sweet Mick | J |
| Sweet Scarlet | J |
| Sweet September | I |
| Topcrest | H |
| Tra Zee | J |
| Vista | J |
| Willie Red | G |
| Zee Diamond | J |
| Zee Lady | L |

(3) Any package or container of Island Prince, Snow Kist, Snow Peak or Super Rich variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Bev's Red, Bright Princess, Brittney Lane, Burpeachone (Spring Flame® 21), Burpeachfourteen (Spring Flame® 20), Burpeachnineteen (Spring Flame® 22), Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Honey Sweet, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sun, May Sweet, Prima Peach IV, Queencrest, Rich May, Scarlet Queen, Sierra Snow, Snow Brite, Snow Prince, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Time (214LC68), Sunlit Snow (172LE81), Supecheight (012-094), Sweet Scarlet, Sweet Crest or Zee Diamond variety peaches unless:

* * * * *

(6) Any package or container of August Lady, Autumn Flame, Autumn Red, Autumn Rich, Autumn Rose, Autumn Snow, Burpeachtwo (Henry II®), Burpeachthree (September Flame®), Burpeachfour (August Flame®), Burpeachfive (July Flame®), Burpeachsix (June Flame®), Burpeachseven (Summer Flame® 29), Coral Princess, Country Sweet, Crimson Queen, Diamond Princess, Earlich, Early Elegant Lady, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Glacier White, Henry III, Henry IV, Ice Princess, Ivory Princess, Jasper Treasure, Jillie White, Joanna Sweet, John Henry, Jupiter, Kaweah, Klondike, Last Tango, Late Ito Red, Magenta Gold, O'Henry, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Princess Gayle, Red Giant, Rich Lady, Royal Lady, Ruby Queen, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Princess, Sprague Last Chance, Spring Candy, Spring Gem, Sugar Crisp, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Kay, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, Zee Lady, or 24-SB variety peaches unless:

* * * * *

Dated: April 5, 2006.

Lloyd C Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06-3420 Filed 4-6-06; 9:41 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV06-923-1 IFR]

Sweet Cherries Grown in Designated Counties in Washington; Removal of Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule removes the container regulations prescribed under the Washington sweet cherry marketing order. Specifically, this rule removes the requirement that dark-colored sweet cherries must be handled in containers having a certain net weight. The marketing order regulates the handling of fresh sweet cherries grown in designated counties in the State of Washington, and is administered locally by the Washington Cherry Marketing Committee (Committee). By eliminating the container requirements, this relaxation will provide handlers with the ability to meet the rapidly changing wholesale, retail, and consumer demand for innovative product packaging. This is expected to enhance industry marketing flexibility and efficiency.

DATES: Effective April 11, 2006.

Comments received by June 9, 2006 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: moab.docketclerk@usda.gov, or Internet: <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 in 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:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, Oregon 97204-2807; Telephone: (503) 326-2724; Fax: (503) 326-7440; or George Kelhart, Technical Advisor,

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