

Marketing order issues and programs are discussed at public meetings, and all interested persons are allowed to express their views. All comments are considered in the decision making process by the Committee and the AMS before any program changes are implemented.

In considering the order's complexity, AMS has determined that the order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the marketing order for Florida citrus. The Florida Department of Citrus, a state organization, is authorized to conduct marketing promotion programs and research for the Florida citrus industry. The marketing order currently does not have authority for marketing promotion and research.

The order was established in 1939 and was last amended in September, 1989. During the 68 years the order has been effective, AMS and the Florida citrus industry have continuously monitored marketing operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of periodic evaluations is to ensure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets several times a year to discuss the order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, regulatory changes have been made numerous times over the years to address industry operation changes and to improve program administration. In addition, in May 2007, the Committee voted to amend the order, recommending several changes including adding the authority for research and promotion under the order. Currently, there is an on-going formal rulemaking proceeding to amend the order (see 73 FR 5130).

Based on the potential benefits of the order to producers, handlers, and consumers, AMS has determined that the Florida citrus marketing order should be continued. The order was established to help the Florida citrus industry work with USDA to solve marketing problems. The order's regulations on grade, size, quality, and maturity continue to be beneficial to producers, handlers, and consumers. AMS will continue to work with the

Florida citrus industry in maintaining an effective marketing order program.

Dated: March 12, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. AMS-FV-07-0160; FV08-916/917-1 IFR]

#### Nectarines and Peaches Grown in California; Changes in Handling Requirements for Fresh Nectarines and Peaches

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule changes the handling requirements applicable to well matured fruit covered under the nectarine and peach marketing orders (orders). The 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 updates the variety-specific size requirements to reflect changes in commercially significant varieties. This 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 March 19, 2008; comments received by May 19, 2008 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 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.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or E-mail: [Jen.Garcia@usda.gov](mailto:Jen.Garcia@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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 Order Nos. 916 and 917, both as amended (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 changes the handling requirements applicable to well matured fruit covered under the nectarine and

peach orders. This rule updates the variety-specific size requirements to reflect changes in commercially significant varieties. These changes 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.

Sections 916.52 and 917.41 of the orders provide authority for handling regulations for fresh California nectarines and peaches. The regulations may include grade, size, maturity, quality, pack, and container requirements. The orders also provide that whenever such requirements are in effect, the fruit subject to such regulation must be inspected by the Federal or Federal-State Inspection Service (Inspection Service) and certified as meeting the applicable requirements.

The nectarine order has been in effect since 1939, and the peach program has been in effect since 1958. The orders have been used over the years to establish a quality control program that includes minimum grades, sizes, and maturity standards. That program has helped improve the quality of product moving from the farm to market, and has helped growers and handlers more effectively market their crops.

Additionally, the orders have been used to ensure that only satisfactory quality nectarines and peaches reach the consumer. This has helped increase and maintain market demand over the years.

Sections 916.53 and 917.42 authorize the modification, suspension, or termination of regulations issued under §§ 916.52 and 917.41, respectively. Changes in regulations have been implemented to reflect changes in industry operating practices and to solve marketing problems as they arise. The committees meet whenever needed, but at least annually, to discuss the orders and the various regulations in effect and to determine if, or what, changes may be necessary to reflect industry needs. As a result, regulatory changes have been made numerous times over the years to address industry changes and to improve program operations.

Currently, handling requirements are in effect for nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured." The term "well matured" is defined in the orders' rules and regulations, and has been used for many years by the industry to describe a level of maturity higher than the definition of "mature" in the United States Standards for Grades of Nectarines (7 CFR 51.3145

through 51.3160) and United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223). Other handling requirements were suspended in 2007 to reduce handler inspection costs.

The committees met on December 18, 2007, and unanimously recommended that the handling requirements be revised for the 2008 season, which is expected to begin in April. 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.

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 the size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases, thereby increasing returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, which is 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 committees 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 paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to establish variety-specific minimum size requirements for 11 varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2007 season. This rule also removes the variety-specific minimum size requirements for four varieties of nectarines whose shipments fell below 5,000 containers during the 2007 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Burnecteleven (Summer Flare® 30) variety of nectarines, recommended for regulation at a minimum size 84. A minimum size of 84 means that a packed standard lug box will contain not more than 84

nectarines. Studies of the size ranges attained by the Burnecteleven (Summer Flare® 30) variety revealed that 100 percent of the containers met the minimum size of 84 during the 2006 and 2007 seasons. Sizes ranged from size 30 to size 70, with 9.6 percent of the fruit in the 30 sizes, 50 percent of the packages in the 40 sizes, 32.9 percent in the 50 sizes, 6.2 percent in the 60 sizes, and 1.3 percent in the 70 sizes.

A review of other varieties with the same harvesting period indicated that the Burnecteleven (Summer Flare® 30) 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 Burnecteleven (Summer Flare® 30) variety in the variety-specific minimum size regulation at a minimum size 84 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical data such as this provides the committee 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 committee and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph(a)(3) of § 916.356 is revised to include the Polar Ice and Polar Light nectarine varieties; paragraph (a)(4) of § 916.356 is revised to include the Burnecthirteen (Snow Flare® 22), Burnectfourteen (Snow Flare® 21), and White Sun nectarine varieties; and paragraph (a)(6) of § 916.356 is revised to include the Burnecteleven (Summer Flare® 30), Burnectfifteen (Summer Flare® 27), Grand Bright, La Reina, Saucer, and Sugar Pearl™ nectarine varieties.xxx

This rule also revises paragraph (a)(6) of § 916.356 to remove the August Snow, Prima Diamond XVIII, Sparkling Red, and Summer Grand nectarine varieties from the variety-specific minimum size requirements because fewer than 5,000 containers of each of these varieties were produced during the 2007 season. 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 paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) of § 917.459 to establish variety-specific minimum size requirements for 15 peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2007 season. This rule also removes the variety-specific minimum size requirements for eight varieties of peaches whose shipments fell below 5,000 containers during the 2007 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Super Lady variety of peaches, which was recommended for regulation at a minimum size 96. A minimum size of 96 means that a packed standard lug box contains not more than 96 peaches. Studies of the size ranges attained by the Super Lady variety revealed that 98.9 percent of the containers met the minimum size of 96 during the 2006 and 2007 seasons. The sizes ranged from size 40 to size 96, with 6.9 percent of the containers meeting the size 40, 4 percent meeting the size 50, 20.5 percent meeting the size 60, 29.8 percent meeting the size 70, 15.6 percent meeting the size 80, 4.5 percent meeting the size 84, 4.9 percent meeting the size 88, and 12.7 percent meeting the size 96 in the 2007 season.

A review of other varieties with the same harvesting period indicated that the Super Lady 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 Super Lady variety in the variety-specific minimum size regulation at a minimum size 96 is appropriate.

Historical data such as this provides the committee 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 committee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(2) of § 917.459 is revised to include the Supechfifteen and Super Lady peach varieties; paragraph (a)(5) of § 917.459 is revised to include the Crimson Queen, Sauzee Queen, and Supechnine peach varieties; and paragraph (a)(6) of § 917.459 is revised to include the Burpeachtwentyone (Summer Flame® 26), Candy Princess, Jasper Flame, Natures #10, Peach-N-Cream, Queen Jewel, September Blaze, Strawberry, Summer Fling, and Sweet Henry peach varieties.

This rule also revises paragraph (a)(2) of § 917.459 to remove the Sugar Snow peach variety; paragraph (a)(3) of § 917.459 to remove the May Snow peach variety; paragraph (a)(5) of § 917.459 to remove the Raspberry, Sugar Jewel, and Sunlit Snow peach varieties; and paragraph (a)(6) of § 917.459 to remove the Late Ito Red, Magenta Gold, and Scarlet Snow peach varieties from the variety-specific minimum size requirements because less than 5,000 containers of each of these varieties was produced during the 2007 season. Peach varieties removed from the peach variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The committees recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine and peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh nectarines and peaches consistent with expected crop and market conditions. This should help 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 145 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 550 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than \$6,500,000. Small agricultural producers are defined by the SBA 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 30 handlers in the industry who would not be considered small entities. For the 2007 season, the committees' staff estimated that the average handler price received was \$9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 722,223 containers to have annual receipts of \$6,500,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2007 season, the committees' staff estimates that small handlers represent approximately 80 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 65 producers in the industry would not be considered small entities. For the 2007 season, the committees estimated the average producer price received was \$4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 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 2007 season, the committees' staff estimates that small producers represent more than 88 percent of the producers within the industry.

With an average producer price of \$4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 42,382,098 containers, the value of the 2007 packout is estimated to be \$190,719,441. Dividing this total estimated grower revenue figure by the estimated number of producers (550) yields an estimate of average revenue per producer of about \$346,763 from the sales of peaches and nectarines.

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.

Sections 916.356 and 917.459 of the orders' rules and regulations 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 2008 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 the committees 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' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all 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.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industry and all interested parties were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the December 18, 2007, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the committees have a number of appointed subcommittees to review certain issues and make recommendations to the committees. The committees' Tree Fruit Quality Subcommittee met on December 11, 2007, and discussed this issue in detail. Finally, interested persons are invited to submit information on this interim final rule, including 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 timely received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committees' recommendation, 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) the committees met and unanimously recommended these changes at public meetings, and interested persons had opportunities to provide input at all those meetings; and (3) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

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

■ For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

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

**Authority:** 7 U.S.C. 601–674.

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

■ 2. Section 916.356 is amended by 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.**

\* \* \* \* \*

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Burnectfive (Spring Flare® 21), Burnectten (Spring Flare® 19), Crimson Baby, Earliglo, Polar Ice, Polar Light, Red Jewel or Zee Fire variety nectarines unless:

\* \* \* \* \*

(4) Any package or container of Arctic Star, Burnectone (Spring Ray®), Burnecttwelve (Sweet Flair® 21), Burnectthirteen (Snow Flare® 22), Burnectfourteen (Snow Flare® 21), Diamond Bright, Diamond Pearl, Early 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 Bright, Rose Diamond, Royal Glo, White Sun, or Zee Grand variety nectarines unless:

\* \* \* \* \*

(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 Bright, August Fire, August Glo, August Lion, August Pearl, August Red, August Sweet, Autumn Blaze, Big Jim, Bright Pearl, Burnectfour (Summer Flare® 35), Burnectseven (Summer Flare® 28), Burnecteleven (Summer Flare® 30), Burnectfifteen (Summer Flare® 27), Burnectseventeen (Summer Flare® 32), Candy Gold, Candy Pearl, Diamond Ray, Early Red Jim, Fire Pearl, Fire Sweet, Flaming Red, Giant Pearl, Grand Bright, Grand Candy, Grand Pearl, Grand Sweet, Honey Blaze, Honey Dew, Honey Diva, Honey Fire, Honey Kist, Honey Royale, July Pearl, July Red, Kay Pearl, La Pinta, La Reina, Larry's Red, Late Red Jim, Mike's Red, P-R Red, Prima Diamond VII, Prima Diamond IX, Prima Diamond X, 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, Saucer, September Bright (26P-490), September Free, September Red, Sparkling June, Spring Bright, Spring Pearl™, Spring Sweet, Sugar Pearl™, Sugarine, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Valley Sweet, Terra White, Zee Glo or Zephyr variety nectarines unless:

\* \* \* \* \*

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

■ 3. Section 917.459 is amended by revising the introductory text of paragraphs (a)(2), (a)(3), (a)(5) and (a)(6) to read as follows:

##### § 917.459 California peach grade and size regulation.

\* \* \* \* \*

(2) Any package or container of April Snow, Earlitreat, Snow Angel, Supeachsix (91002), Supechfifteen, or Super Lady variety peaches unless:

\* \* \* \* \*

(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), Candy Red, Crimson Lady, Crimson Queen, Crown Princess, David Sun, Early May Crest, Flavorcrest, Honey Sweet, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sweet, Prima Peach IV, Queencrest, Rich May, Sauzee Queen, Scarlet Queen, Sierra Snow, Snow Brite, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Time (214LC68), Supecheight (012-094), Supechnine, 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), Burpeachfifteen (Summer Flame® 34), Burpeachsixteen, Burpeachtwenty (Summer Flame®), Burpeachtwentyone (Summer Flame® 26), Candy Princess, Coral Princess, Country Sweet, Diamond Princess, Earlirich, Early Elegant Lady, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Galaxy, Glacier White, Henry III, Henry IV, Ice Princess, Ivory Princess, Jasper Flame, Jasper Treasure, Jillie White, Joanna Sweet, John Henry, Kaweah, Klondike, Last Tango, Natures #10, O'Henry, Peach-N-Cream, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Princess Gayle, Queen Jewel, Rich Lady, Royal Lady, Ruby Queen, Ryan Sun, Saturn (Donut), September Blaze, September Snow, September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Magic, Snow Princess, Sprague Last Chance, Spring Candy, Strawberry, Sugar Crisp, Sugar Giant, Sugar Lady, Summer Dragon, Summer Fling, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Henry, Sweet Kay, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, or Zee Lady variety peaches unless:

\* \* \* \* \*

Dated: March 12, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E8-5357 Filed 3-17-08; 8:45 am]

**BILLING CODE 3410-02-P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Chapter I

RIN 3150-AH84

#### Expanded Definition of Byproduct Material; Notification of Impending Waiver Termination

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of impending waiver termination.

**SUMMARY:** Section 651(e) of the Energy Policy Act of 2005 (EPAct) authorized the U.S. Nuclear Regulatory Commission (Commission or NRC) to issue a time-limited waiver (70 FR 51581; August 31, 2005) to allow continued use and possession of naturally-occurring and accelerator-produced radioactive materials (NARM) while the Commission developed a regulatory framework for regulation of the new byproduct material. The Commission has begun terminating the time-limited waiver in phases in accordance to the provisions of the "Plan for the Transition of Regulatory Authority Resulting from the Expanded Definition of Byproduct Material" (transition plan) issued by the Commission on October 19, 2007 (72 FR 59157). The first phase of waiver terminations occurred on November 30, 2007.

This document provides advance notification that on September 30, 2008, the Commission will terminate the time-limited waivers for the following non-Agreement States and remaining U.S. Territories that have been included in Phase 2.

Guam, Idaho, Missouri, South Dakota, Vermont, West Virginia, and all territories and possessions of the U.S. that were not identified as part of the first phase of waiver terminations.

As provided in the transition plan, users of NARM in non-Agreement States and U.S. Territories will be required to (1) apply for license amendments for the new byproduct material within 6 months from the date the waiver is terminated, if they hold an NRC specific byproduct materials license; or (2) submit a license application for the new byproduct material within 12 months from the date the waiver is terminated for their State or territory.

**FOR FURTHER INFORMATION CONTACT:** Kim K. Lukes, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6701 or e-mail [KXK2@NRC.GOV](mailto:KXK2@NRC.GOV).