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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV96-916-3-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 interim final rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements for fresh shipments of these fruits, beginning with 1997 season shipments. This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

DATES: Effective April 1, 1997. Comments which are received by May 1, 1997, 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523-S, Washington, DC 20090-6456; or by facsimile at 202-720-5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division,

AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487-5901; or Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2861. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, 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 (Department) is issuing this rule in conformance with Executive Order 12866.

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

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

later than 20 days after the date of the entry of the ruling.

Under the orders, grade, size, maturity, container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) met December 4, 1996, and unanimously recommended that these handling requirements be revised prior to the 1997 season, which begins April 1. The changes (1) authorize continued use of a container first used in 1996; (2) authorize shipments of "CA Utility" quality fruit during the 1997 season; (3) clarify container tolerances for mature and well matured fruit; and (4) revise varietal maturity and size requirements to reflect recent growing conditions.

The committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

Container Requirements (Nectarines and Peaches)

Sections 916.52 and 917.41 of the nectarine and peach orders, respectively, provide authority to fix the size, capacity, weight, dimensions, markings, or pack of the container or containers that may be used in the packaging and handling of these fruits. Section 916.350 specifies container and pack requirements for fresh nectarine shipments. Section 917.442 specifies container and pack requirements for fresh peach shipments. Included in these sections are requirements that all containers be marked with specific information (e.g., the name of the handler, and the maturity, size, and variety of the fruit) and that such markings be applied to the outside ends of the container.

Prior to the 1996 season, the NAC and PCC recommended that a new container, permitted to be marked on its lid, be approved for nectarine and peach

shipments during the 1996 season only. The revised requirements became effective on April 1, 1996. The NAC and PCC then reviewed the impact of the use of this container at the conclusion of the 1996 season.

The new container is recyclable and reusable. The design of some styles of the container, which has cooling slots in all of its sides, is such that the markings cannot be placed on the outside ends of the container. Furthermore, in order to ensure and facilitate its reuse, container markings on the permanent outside ends of the new container are not desirable. Instead, placement of markings on the disposable lid is preferable. Thus, markings on the new container have been permitted for either the lid or the outside ends.

In the 1996 season, approximately 450,000 recyclable, reusable boxes were used by nectarine and peach handlers. This represents approximately 1 percent of the total number of packages of nectarines and peaches shipped in that season. Users of the recyclable, reusable boxes reported good acceptance by retailers and expect increased demand for their use in the coming years. Industry sources reported the boxes will likely be used for other commodities as awareness and acceptance of the boxes increase. It was also noted that the nectarine and peach industries could improve their competitive edge by continued and increased use of the new recyclable, reusable plastic box.

The NAC and PCC believe that continuing to permit container markings to be placed either on the container lid or the outside ends will continue to facilitate the use of this plastic, reusable, and recyclable container. Authorizing the continued use of this container will allow handlers to reduce their container costs through the continued reuse of the container. Such reduced container costs could result in increased returns to producers as well.

When the container requirements for nectarines and peaches were changed on April 1, 1996, the revised provisions did not specify that the change was effective only for the 1996 season. Thus, no changes in the regulatory text of §§ 916.350 and 917.442 are necessary.

Quality Requirements (Nectarines and Peaches)

Sections 916.52 and 917.41 authorize the establishment of grade and quality requirements for nectarines and peaches. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for

scarring and a more liberal allowance for misshapened fruit. Under § 917.459, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures not serious damage.

This rule revises paragraph (a)(1) of § 916.356 and paragraph (a)(1) of § 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 1997 season. ("CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements were first permitted during the 1996 season for that season only. By unanimous vote, the NAC and PCC recommended that fruit meeting "CA Utility" quality requirements be permitted to be shipped for an additional year. The NAC and PCC will continue to monitor retailer and consumer perceptions of "CA Utility" nectarines and peaches in-house to determine whether such fruit should continue to be marketed.

Preliminary studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign importers found the lower quality fruit acceptable in some markets. Shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments in 1996, or approximately 365,000 boxes.

Dr. Dennis Nef, California State University, Fresno, studied samples of culled fruit at handler facilities in the 1995 and 1996 seasons. Results from the 1996 season were compared to the 1995 season. Preliminary data indicates that a smaller percentage of culled nectarines and peaches met the marketing order grade (modified U.S. No. 1) and size requirements in 1996 than in 1995. In 1995, approximately 8 percent of the nectarines in the cull stream met those requirements, while in 1996, approximately 1 percent of the nectarines in the cull stream met those requirements. In 1995, approximately 7 percent of the peaches in the cull stream met the order's grade and size requirements, while in 1996, approximately 1 percent of the peaches in the cull stream met those requirements. (The "cull stream" includes all fruit which is removed from the packing line by the handler's quality control personnel and not placed in a container for shipment.) The decrease in the amount of fruit in the cull stream seems to indicate a greater utilization of

available fruit rather than its disposal. With the option of packing "CA Utility" quality fruit, it appears that the handlers' quality control personnel were less inclined to be overly critical and to exclude acceptable modified U.S. No. 1 fruit. However, not all of this increased utilization can be attributed to the implementation of "CA Utility" quality requirements. The 1995 season, which was the first in which cull data was obtained, was plagued by adverse weather and hail storms. The damage inflicted by the storms created conditions which decreased the quality of available nectarines and peaches and increased somewhat the percentage of fruit in the cull stream which would have met marketing order requirements. It is probable that the implementation of "CA Utility" quality requirements increased the utilization of fruit which might have been disposed of otherwise. Such utilization benefitted producers, handlers, and consumers. For that reason, the NAC and PCC recommended that "CA Utility" quality requirements be continued for the 1997 season. The NAC and PCC will continue to monitor the impact of shipping "CA Utility" nectarines and peaches to determine whether such shipments continue to be in the interests of producers, handlers, and consumers.

In conforming changes, paragraph (d) of § 916.350 and paragraph (d) of § 917.442 are revised to continue the requirement that "CA Utility" quality fruit be labeled as such. This marking requirement was in effect during the 1996 season, and is intended to enable customers to differentiate between the different qualities of available fruit.

Clarification of Container Tolerances (Nectarines and Peaches)

As previously indicated, the orders require that, except for "CA Utility" quality fruit, nectarines or peaches meet most of the requirements of the U.S. No. 1 grade; these include the requirement that such fruit is "mature." ("CA Utility" fruit is also required to be "mature.") A second, higher maturity standard of "well matured" is also defined in the rules and regulations for both nectarines and peaches.

For those grade factors included in the U.S. Standards for Grades of Nectarines or Peaches (standards), tolerances are provided for fruit that fail to meet those factors to allow for variations incident to proper grading and handling. Tolerances are specified for both entire lots of fruit and for individual containers in the lot.

The container tolerances in the standards are applicable to both mature and well-matured nectarines and

peaches since those tolerances are not modified by the orders' rules and regulations. However, the NAC and PCC voted to clarify the requirements for affected parties. Clarifying these container tolerances will not have a regulatory impact on nectarine and peach handlers because these tolerances are the same as those applied in past seasons.

Maturity Requirements (Nectarines and Peaches)

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. Additionally, both orders' rules and regulations provide for a higher, "well matured" classification. For most varieties, "well matured" fruit determinations are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most recent information available on the characteristics of each 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 prior to 1996. Those guides appeared in Table 1 of §§ 916.356 and 917.459, respectively. Those tables were inadvertently removed in 1996. This rule adds those Tables to the handling regulations under the respective marketing orders.

The requirements in the 1997 handling regulation are the same as those that appeared in the 1996 handling regulation with a few exceptions. Those exceptions are explained in this rule.

Nectarines

Requirements for "well matured" nectarines are specified in paragraph (a)(1) of § 916.356. This rule adds TABLE 1 of paragraph (a)(1)(i) of § 916.356 for nectarines to add maturity guides for 12 nectarine varieties. Specifically, an addition to the maturity guides was recommended for Earliglo, May Jim, Red Glo, Royal Glo, and Zee Grand nectarine varieties at a maturity guide of I; Big Jim, Early Red Jim, Late Red Jim, May Lion, and Red Fred nectarine varieties at a maturity guide of J; and Kay Diamond and Ruby Diamond nectarine varieties at a maturity guide of L.

TABLE 1 of paragraph (a)(1)(i) of § 916.356 contains the current maturity guides for the following eight nectarine varieties: Autumn Delight, Fairlane, Moon Grand, Red Diamond, Sparkling June, Spring Diamond, Summer

Diamond, and Summer Lion. The current maturity guide for these eight varieties is M, which is changed to L. The M maturity guide is no longer deemed suited to nectarine varieties currently in production by SPI, while the L maturity guide more accurately reflects the background color of modern nectarine varieties under production at this time. For this reason, the NAC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well matured" level of maturity for nectarine varieties in production.

Paragraph (a)(1) of § 916.356 is revised to remove 14 nectarine varieties which are no longer in production. The NAC routinely reviews the status of nectarine varieties listed in these maturity guides. The most recent review revealed that 13 of the nectarine varieties currently listed in the maturity guide have not been in production since the 1993 season. Typically, the NAC recommends removing a variety after non-production for three seasons or if trees of that variety are known to have been pulled out because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Clinton-Strawberry, Desert Dawn, Early Star, Gee Red, Granderli, Hi Red, Larry's Grand, Late Tina Red, Mayfair, May Red, Red June, Stan Grand, and 61-61 nectarine varieties.

TABLE 1 of paragraph (a)(1)(i) of § 916.356 corrects the identification of the Red Lion nectarine variety. The name "Red Lion" has been changed to "August Lion." For that reason, all references to Red Lion have been changed to August Lion. In addition, three nectarine varieties are currently incorrectly identified as June Glo, May Glo, and Spring Brite. The correct spelling of these three varieties is Juneglo, Mayglo, and Spring Bright, respectively.

Peaches

Paragraph (a)(1) of § 917.459 specifies maturity requirements for fresh peaches being inspected and certified as being "well matured."

TABLE 1 of paragraph (a)(1)(i) of § 917.459 includes maturity guides for the Kingcrest peach variety to be regulated at the H maturity guide, the Red Dancer peach variety to be regulated at the I maturity guide, and the Early Elegant Lady peach variety to be regulated at the L maturity guide.

TABLE 1 of paragraph (a)(1)(i) of § 917.459 contains the maturity guide assignment for the Summer Lady peach variety from the M maturity guide to the

L maturity guide. The M maturity guide is no longer deemed suited to peach varieties currently in production by SPI, while the L maturity guide more accurately reflects the background color of modern peach varieties under production at this time. For this reason, the PCC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well matured" level of maturity for peach varieties in production.

The maturity requirements for these peach varieties are based on the PCC's continuing review of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for each such variety.

Paragraph (a)(1)(i) of § 917.459 is also revised to remove 19 peach varieties which are no longer in production. The PCC routinely reviews the status of peach varieties listed in these maturity guides. The most recent review revealed that 19 of the peach varieties currently listed in the maturity guide have not been in production since the 1993 season. Typically, the PCC recommends removing a variety after non-production for three seasons or if trees of that variety are known to have been pulled out because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Armgold, Bella Rosa, Bonjour, Desertgold, Early Fairtime, Early Royal May, Fortyniner, Jody Gaye, June Crest, Mardigras, Morning Sun, Preuss Suncrest, Prima Fire, Royal April, Sun Lady, Toreador, Treasure, Windsor, and 50-178 peach varieties.

TABLE 1 of paragraph (a)(1)(i) includes changes to the spelling of two varieties of peaches. Previously, the Judy Elberta and Mary Ann varieties appeared on TABLE 1. However, the spelling of these two names needs to be corrected to read "July Elberta" and "Mary Anne."

Size Requirements (Nectarines and Peaches)

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations allow fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity and, therefore, the quality of the product, but also the size of the fruit. Increased size results in increases in the number of packed boxes of nectarines per acre. Acceptable size fruit also provides greater consumer satisfaction, more repeat purchases, and, therefore,

increases returns to producers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

Nectarines

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific size requirements for 10 nectarine varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1996 season. This rule also modifies the variety-specific size requirements for five varieties of nectarines.

For example, one of the varieties being added to the variety-specific size requirements is the Kay Glo variety. Studies of the size ranges attained by the Kay Glo variety revealed that .5 percent of that variety met the smallest size, size 96, while 1.6 percent met the largest size, size 40. Approximately 45 percent of the nectarines of the Kay Glo variety met the next larger size, size 50.

A review of other varieties with the same harvesting period indicated that Kay Glo was comparable to those varieties in its size ranges. Thus, the recommendation to place the Kay Glo nectarine variety in the variety-specific size regulation at a size 88 is appropriate. Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties.

Paragraph (a)(3) of § 916.356 is revised to include the Grand Sun nectarine variety; paragraph (a)(4) is revised to include the Arctic Star, Kay Glo, Prima Diamond II, and Prince Jim nectarine varieties; and paragraph (a)(6) in § 916.356 is revised to include the Arctic Pride, Arctic Sweet, Diamond Ray, and Honey Kist nectarine varieties.

This rule also amends § 916.356 to remove six nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1996 season. Paragraph (a)(4) of that section is revised to remove the Mike Grand nectarine variety. Paragraph (a)(6) is revised to remove the Early Sungrand, Nectarine 23, Prima Diamond III, Tasty Gold, and Tom Grand nectarine varieties.

Paragraph (a)(4) of § 916.356 is also revised to include the Arctic Glo and

Red Glo nectarine varieties which were inadvertently removed from the variety-specific size requirement prior to the 1996 season.

In a conforming change, paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 are also revised to correct the spelling of the Mayglo, Juneglo, and Spring Bright nectarine varieties, respectively. Paragraph (a)(6) is also revised to include the Autumn Lion variety in place of the Red Lion variety.

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

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

Peaches

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule amends § 917.459 to establish variety-specific size requirements for nine peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1996 season.

For example, one of the varieties being added to the variety-specific size requirements is the August Lady variety. Studies of the size ranges attained by the August Lady variety revealed that none of that variety met the smallest size, size 96, while 36 percent of the peach the August Lady variety met the largest size, size 30.

A review of other varieties of the same harvesting period indicated that August Lady was comparable to those varieties in its size ranges. Thus, the recommendation to place the August Lady peach variety in the variety-specific size regulation at a size 72 is appropriate. Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties.

In § 917.459, paragraph (a)(5) is revised to include the Rich Mike, Sweet Gem, and Sweet Scarlet peach varieties; and paragraph (a)(6) is revised to include the August Lady, Autumn Flame, Red Sun, Scarlet Snow, Snow Diamond, Summer Zee, and Vista peach varieties.

This rule also amends § 917.459 to remove one peach variety from the

variety-specific size requirements specified in that section, because less than 5,000 packages of this variety were produced during the 1996 season. In § 917.459, paragraph (a)(5) is revised to remove the Regina peach variety.

In a conforming change, paragraph (a)(6) of § 917.459 is also revised to correct the spelling of the Mary Anne peach variety.

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

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

This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

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

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000. Small agricultural service firms, which includes handlers, are defined as those whose annual receipts are less than \$5,000,000. A majority of these handlers and producers may be classified as small entities.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. This rule revises current requirements to: (1) Authorize continued use of a container first used in 1996; (2) authorize shipments of "CA Utility" quality fruit during the 1997 season; (3) clarify container tolerances for mature and well-matured fruit; and (4) revise varietal maturity and size requirements to reflect recent growing conditions.

Section 916.350 (c) and § 917.442 (c) currently authorize the use of a recyclable, reusable plastic container for the 1996 season only. This rule authorizes the continued use of such a container beyond the 1996 season. This rule also continues to permit markings on such containers to be placed on the disposable lids rather than on the outside ends of the containers. Use of this container will continue to offer a cheaper and more environment-friendly alternative to currently-used disposable boxes. In addition, use of this container is advocated by retailers who desire to decrease their costs of disposing of packing boxes. Approximately 450,000 recyclable, reusable boxes were used by handlers of nectarines and peaches during the 1996 season, representing more than 1 percent of total nectarine shipments of 19,561,227 boxes and peach shipments of 19,481,624 boxes.

The increased use of this container is expected to result in decreased handling costs for handlers, and thereby improve returns to producers. Generally, under current industry practices, handlers' costs of packaging nectarines and peaches are passed onto producers by handlers via a deduction from total returns. Such costs include pre-cooling of received fruit, costs of boxes, costs of packing materials, costs of palletizing packed boxes, cold storage, inspection costs, etc. A decrease in the cost of boxes, then, has the potential for

decreased handling costs passed on to all producers.

In §§ 916.350 and 917.442 of the orders regulating nectarines and peaches, respectively, use of lower-quality nectarines and peaches was authorized for shipment as "CA Utility" as an experiment for the 1996 season only. This rule permits the continued use of "CA Utility" quality fruit for the 1997 season while further data is obtained. During the 1996 season, the Department authorized the use of nectarines and peaches which were of a lower quality than the minimum permitted for previous seasons. During 1996, there were 210,443 boxes of nectarines and 365,761 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.9 percent, respectively. Continued availability of "CA Utility" quality fruit is expected to have a positive impact on producers, handlers, and consumers by permitting more nectarines and peaches into fresh market channels, without adversely impacting the market for higher quality fruit.

This rule also clarifies the container tolerances for mature and well-matured nectarines and peaches. Under the orders, the container tolerances in the standards have been applied to mature and well-matured fruit, although the tolerances were not specifically detailed in the standards or the marketing orders' rules and regulations. Thus, this is a clarifying change which will have no practical impact on growers or handlers.

Sections 916.356 and 917.442 for nectarines and peaches, respectively, currently establish minimum maturity levels. This rule makes annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (e.g., color chips). Such maturity guides provide producers and handlers with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of ripeness, thus ensuring consumer satisfaction and benefitting nectarine and peach growers and handlers.

Currently, in § 916.356 for nectarines and § 917.459 for peaches, minimum sizes for various varieties of nectarines and peaches are established. This rule makes annual adjustments to the

minimum sizes authorized for various varieties of nectarines and peaches beginning with the 1997 season. Minimum size regulations are put in place to allow fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity, but also improves fruit size. Increased fruit size increases the number of packed boxes per acre to the benefit of both producers and handlers. Increased fruit size also provides greater consumer satisfaction and, therefore, more repeat purchases by consumers. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data regarding sizes which the different varieties attain.

This rule clarifies some of the orders' requirements and relaxes others. Accordingly, this action does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. Like all committee meetings, the December 4, 1996, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers, the majority of whom are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible, since early shipments of these fruits are expected to begin about April 1; (2) this rule relaxes grade requirements for nectarines and peaches and size requirements for several nectarine and peach varieties; (3) California nectarine and peach handlers are aware of these revised requirements recommended by the committees at public meetings, and they will need no additional time to comply with such requirements; and (4) the rule provides a 30-day comment period, and any written comments 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 916.350 is amended by revising paragraph (d) to read as follows:

§ 916.350 California Nectarine Container and Pack Regulation.

* * * * *

(d) During the period April 1 through October 31, 1997, each container or package when packed with nectarines meeting CA Utility requirements, shall bear the words "CA Utility," along with all other required container markings, in letters of 3/4 inch minimum height on the visible display panel. Consumer bags or packages must also be clearly marked on the bag or package as "CA Utility" along with other required markings.

* * * * *

3. Section 916.356 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(iii), (a)(3) introductory text, (a)(4) introductory text, (a)(5) introductory text, and (a)(6) introductory text, and adding a new Table 1 to paragraph (a)(1)(i) with a note immediately following it to read as follows:

§ 916.356 California Nectarine Grade and Size Regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: Provided, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 3/8 inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 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 misshapened: Provided further, That during the period April 1 through October 31, 1997, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade and that such nectarines are mature and are:

(i) * * *

Table 1

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
Ama Lyn	G
Apache	G
April Glo	H
Arm King	B
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Bob Grand	L
Del Rio Rey	G
Earliglo	I
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Flamekist	L

TABLE 1—Continued

Column A variety	Column B maturity guide
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Gold King	H
Grand Diamond	L
Grand Stan	F
Independence	H
July Red	L
Juneglo	H
June Grand	G
Kay Diamond	L
Kent Grand	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
Le Grand	H
Maybelle	F
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Mike Grand	H
Moon Grand	L
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	L
Red Delight	I
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Grand	H
Red Jim	L
Red June	G
Red May	J
Regal Grand	L
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Sierra Star/181-119	G
Son Red	L
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Grand	G
Spring Red	H
Springtop	B
Star Bright	G
Star Brite	J
Star Grand	H
Summer Beaut	H
Summer Blush	J

TABLE 1—Continued

Column A variety	Column B maturity guide
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G
Super Star	G
Tasty Free	J
Tasty Gold	H
Tom Grand	L
Zee Glo	J
Zee Grand	I

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

(ii) * * *

(iii) Container tolerances. A package may contain not more than double any specified tolerance except that at least two defective specimens may be permitted in any package: Provided, That the averages for the entire lot are within the tolerances specified in this part.

* * * * *

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

* * * * *

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Early May, June Brite, Juneglo, Kay Glo, May Diamond, May Grand, May Lion, Pacific Star, Prima Diamond II, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Sparkling May, Star Brite, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Pride, Arctic Queen, Arctic Sweet, August Glo, August Lion, August Red, Autumn Delight, Big Jim, Bob Grand, Diamond Ray, Early Red Jim, Fairlane, Fantasia, Firebrite, Flame Glo, Flamekist, Flaming Red, Flavor Grand, Flavortop, Flavortop I, Grand Diamond, Honey Kist, How Red, July Red, Kay Diamond, King Jim, Kism Grand, Late Red Jim, Mid Glo, Moon Grand, Niagara Grand, P-R Red, Prima Diamond IV, Prima Diamond VII, Prima Diamond VIII, Red Diamond, Red Fred, Red Free, Red Glen, Red Jim, Rio Red, Royal Giant, Ruby Diamond, Ruby

Grand, Scarlet Red, September Grand, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Summer Star, Sunburst, Sun Diamond, Super Star, White Jewels (Arctic Snow), Zee Glo, 80P-1135, or 424-195 variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

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

§ 917.442 California Peach Container and Pack Regulation.

* * * * *

(d) During the period April 1 through November 23, 1997, each container or package when packed with peaches meeting CA Utility requirements, shall bear the words "CA Utility," along with all other required container markings, in letters of 3/4 inch minimum height on the visible display panel. Consumer bags or packages must also be clearly marked on the bag or package as "CA Utility" along with other required markings.

* * * * *

5. Section 917.459 is amended by revising paragraphs (a)(1) introductory text, (a)(1)(iii), (a)(5) introductory text, and (a)(6) introductory text, and adding a new Table 1 to paragraph (a)(1)(i) with a note immediately following it 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, That during the period April 1 through November 23, 1997, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 30 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade and that such peaches are mature and are:

(i) * * *

TABLE 1

Column A variety	Column B maturity guide
Angelus	I
Ambercrest	G
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Belmont (Fairmont)	I
Berenda Sun	I
Blum's Beauty	G
Cardinal	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Early Coronet	D
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
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
John Henry	J
July Elberta	C
July Lady	G
June Lady	G
June Pride	J
June Sun	H
Kearney	I
Kern Sun	H
Kingcrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Mary Anne	G
May Crest	G
May Lady	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Prima Lady	J
Prime Crest	H
Queencrest	G
Ray Crest	G
Red Cal	I
Red Dancer (Red Boy)	I

TABLE 1—Continued

Column A variety	Column B maturity guide
Redglobe	C
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
Scarlet Lady	F
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Springold	D
Sugar Lady	J
Summer Lady	L
Summerset	I
Suncrest	G
Topcrest	H
Tra Zee	J
Willie Red	G
Zee Lady	L

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

(ii) * * *

(iii) Container tolerances. The contents of individual packages in the lot are subject to the following limitations, provided the averages for the entire lot are within the tolerances specified in this part:

(A) For packages which contain more than 10 pounds, and a tolerance of 10 percent or more is provided, individual packages shall have not more than one and one-half times the tolerance specified. For packages which contain more than 10 pounds and a tolerance of less than 10 percent is provided, individual packages shall have not more than double the tolerance specified.

(B) For packages which contain 10 pounds or less, individual packages are not restricted as to the percentage of defects.

* * * * *

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Golden Crest, Honey Red, June Lady, June Sun, Kern Sun, Kingcrest, Kings Red, May Crest, May Sun, Merrill Gemfree, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Snow Flame, Springcrest,

Spring Lady, Sugar May, Sweet Gem, or Sweet Scarlet variety of peaches unless:

* * * * *

(6) Any package or container of Amber Crest, August Lady, August Sun, Autumn Crest, Autumn Flame, Autumn Gem, Autumn Lady, Autumn Rose, Belmont (Fairmont), Berenda Sun, Blum's Beauty, Cal Red, Carnival, Cassie, Champagne, Diamond Princess, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Fire Red, Flamecrest, John Henry, July Sun, June Pride, Kaweah, Kings Lady, Lacey, Late Ito Red, Mary Anne, O'Henry, Prima Gattie, Prima Lady, Red Dancer, Red Sun, Rich Lady, Royal Lady, Ryan Sun, Scarlet Snow, September Snow, September Sun, Sierra Lady, Snow Ball, Snow Diamond, Snow Giant, Snow King, Sparkle, Sprague Last Chance, Sugar Giant, Sugar Lady, Summer Lady, Summer Sweet, Summer Zee, Suncrest, Tra Zee, Vista, White Lady, or Zee Lady variety of peaches unless:

* * * * *

Dated: March 24, 1997.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97-8346 Filed 3-28-97; 11:32 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Executive Office for Immigration Review

8 CFR Parts 3, 208 and 236

[INS 1788-96; AG Order No. 2071-97]

RIN 1115-AE47

Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures; Correction

AGENCY: Immigration and Naturalization Service and Executive Office for Immigration Review.

ACTION: Correction to interim regulation.

SUMMARY: This document contains corrections to the interim regulation, published Thursday, March 6, 1997 (62 FR 10312), relating to inspection and expedited removal of aliens, detention and removal of aliens, conduct of removal proceedings, and asylum procedures.

EFFECTIVE DATE: April 1, 1997.

FOR FURTHER INFORMATION CONTACT: Margaret M. Philbin (703) 305-0470 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Background

The interim regulation that is the subject of these corrections amends the regulations of the Immigration and Naturalization Service (INS) and Executive Office for Immigration Review (EOIR) to implement the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) governing expedited and regular removal proceedings, handling of asylum claims, and other activities involving the apprehension, determination, hearing of claims and ultimately the removal of inadmissible and deportable aliens. This rule also incorporates a number of changes which are part of the Administration's reinvention and regulation streamlining effort.

Need for Correction

As published, the interim regulation contains errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on March 6, 1997 of the interim regulation (INS No. 1788-96; AG ORDER No. 2071-97), which was the subject of FR Doc. 97-5250, is corrected as follows:

§ 3.1 [Corrected]

1. On page 10330 in the third column, in § 3.1(b)(7), line 4, the words "and 8 CFR part 240, subpart E" are deleted.

§ 3.23 [Corrected]

2a. On page 10333, in the third column, in § 3.23(b)(4)(ii), lines 1 and 2, the words "in asylum proceedings or" are deleted and in lines 4 through 6, the words "in asylum proceedings pursuant to § 208.2(b) of this chapter or" are deleted.

2b. On page 10334, in the first column, in § 3.23(b)(4)(ii), lines 5 and 6, the words "pursuant to § 208.2(b) of this chapter or" are deleted.

§ 3.26 [Corrected]

3. On page 10334, in the third column, in § 3.26(c), paragraph (2), the words "or the alien's counsel of record" are added before the period at the end of the paragraph.

§ 208.2 [Corrected]

4. On page 10337, in the third column, in § 208.2(b)(2)(i), line 2, the words "Except as provided in this section," are added before the word "Proceedings" and the capital "P" in "Proceedings" is changed to a lower case "p."