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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV98-916-1 FIR]

#### Nectarines and Peaches Grown in California; Revision of Handling and Reporting Requirements for Fresh Nectarines and Peaches

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, with a few corrections, the provisions of an interim final rule revising the handling and reporting requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements for fresh shipments of these fruits, during the 1998 season shipments. This rule continues in effect the modification of requirements for placement of Federal-State Inspection Service lot stamps, as well as the establishment of a single due date for handlers' shipment reports. 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. This rule also continues in effect the correction of the address of the California Tree Fruit Agreement. **EFFECTIVE DATE:** September 18, 1998.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order

Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 205-6632.

**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 marketing agreements and 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 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.

This rule continues in effect the modifications to language in the orders'

administrative rules and regulations which revised the handling and reporting requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements of these fruits, beginning with 1998 season shipments. This rule also continues in effect the modifications of the requirements for the placement of Federal-State Inspection Service lot stamps, and continues in effect the establishment of a single due date for handlers' shipment reports. This rule also continues in effect a correction to the address of the California Tree Fruit Agreement (CTFA).

Under the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on December 4, 1997, and unanimously recommended that these handling requirements be revised for the 1998 season, which began April 1, to: (1) Correct the address for the CTFA; (2) modify the lot stamping requirements; (3) establish a single date by which handlers must file shipment reports; (4) define and provide dimensions for a new container; (5) simplify size marking requirements for consumer packages and establish marking requirements for the new container; (6) modify weight counts for early varieties; (7) authorize shipments of "CA Utility" quality fruit during the 1998 season; (8) standardize container tolerances for mature and well-matured nectarines; (9) revise varietal maturity and size requirements to reflect recent changes in growing conditions; and (10) revise the names of some patented nectarine varieties to reflect the name changes made by the patent holders.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons are encouraged to express their views at these meetings. The 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.

No official crop estimate was available at the time of the committees' meetings in December because the nectarine and peach trees were dormant. The committees did, however, make crop estimates at their meetings in April. The estimated shipments for the 1998 crop year are 18,600,000 containers of nectarines and 19,300,000 containers of peaches, making the anticipated 1998 crop similar in size and characteristics to the 1997 crop which totaled 20,533,760 boxes of nectarines and 19,882,584 boxes of peaches.

### **Communications (Peaches)**

Section 917.110 of the peach order's rules and regulations provides an address for communications to the CTFA. The Control Committee of Marketing Order 917 provides administrative services for the NAC and PCC. The CTFA is the name used to describe this administrative staff.

The CTFA moved its offices from Sacramento to Reedley, California. For that reason, the PCC recommended that the address for the Control Committee be changed to reflect the current location of the CTFA's offices. The interim final rule corrected the address in § 917.110 and this rule continues that address change.

### **Lot Stamping Requirements**

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that containers of nectarines and peaches be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and prior to shipment to show that the fruit has been inspected. Such requirements apply to all containers of nectarines or peaches unless such containers are loaded directly into railway cars or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, but control of the lot stamps is retained by the inspector assigned to each handler's packing facility. Handlers with full-time inspectors have full-time access to the lot stamp, thus ensuring that each container of nectarines and/or peaches is stamped as required. Handlers without a full-time inspector have access to the lot stamp only when

the inspector is on the premises. Thus, containers packed and placed on pallets in the inspector's absence can be stamped only after the inspector returns and performs an inspection on samples of those containers. However, a new container configuration on the 40 by 48 inch metric pallet is increasingly utilized by the industry. When the new containers are stacked on the standardized pallet, the result is a nine-column configuration of stacked containers; i.e., eight outer columns surrounding a ninth, center column. The center column of containers in that configuration cannot easily be marked with the lot stamp upon the return and approval of the inspector since a portion of the outer columns have to be unstacked from the pallet to expose the containers comprising the center column. After the containers in the center column are marked with the lot stamp, the containers comprising the outer columns must be restacked on the pallet. This unstacking and restacking of containers in an effort to mark the center column of containers with the lot stamp is time-consuming and increases the handler's costs. This cost is borne solely by smaller handlers who do not pack a sufficient number of containers in a day to require the presence of a full-time inspector.

In an effort to decrease handling time and costs for smaller handlers, the NAC and PCC voted unanimously to exempt the containers in the center column of the nine-column configuration from the requirement for a Federal-State Inspection Service lot stamp. This exemption implemented in the interim final rule is still estimated to affect fewer than 10 handlers and less than 10,000 boxes of nectarines and peaches, or approximately .6 percent of handlers and less than .001 percent of the total boxes of nectarines and peaches inspected during the 1997 season. Exempting containers in this center column still meets the intent of the orders' stamping requirements by allowing buyers and the inspection service to positively identify each inspected lot. This rule continues in effect the exemption implemented by the interim final rule.

### **Reporting Procedures**

Sections 916.60 and 917.50 of the orders require shipment reports from nectarine and peach handlers to be submitted to the respective committees. Prior to the implementation of the interim final rule, §§ 916.160(b) and 917.178(b) of the orders' rules and regulations required that handlers report shipments of each nectarine and peach variety by the tenth day of the month

following the month the varieties were shipped.

In prior seasons, handlers were required to file approximately three shipment reports with the committees per season, resulting in approximately 750 shipment reports for nectarine handlers and approximately 900 shipment reports for peach handlers. Each shipment report is estimated to take one hour for handlers to complete.

In an effort to make reporting less burdensome to handlers, the NAC and PCC voted unanimously to establish a single reporting deadline of November 15 of each year, no matter when shipments of each nectarine or peach variety were made. This single reporting deadline implemented by the interim final rule simplifies the reporting requirements so that handlers need only file one report each for nectarine varieties and for peach varieties at the end of the season rather than numerous reports providing the shipments of individual nectarine and peach varieties during the season. This relaxation is estimated to reduce burden hours for nectarine handlers to approximately 250 hours from 750 hours and for peach handlers to approximately 300 from 900 hours. This rule continues in effect the relaxation in reporting requirements implemented by the interim final rule.

### **Container Requirements**

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 containers that may be used in the packaging and handling of these fruits. Sections 916.350 and 917.442 of the orders' rules and regulations specify container and pack requirements for nectarine and peach shipments. In part, the container requirements specify the dimensions of the boxes commonly used by handlers of nectarines and peaches. In recent years, to realize efficiencies in utilizing space, the produce industry has standardized shipment and storage of produce on a pallet measuring 40 by 48 inches. With the adoption of this pallet, some of the boxes commonly utilized by nectarine and peach handlers are being replaced by boxes which more readily conform to the new, standardized pallet. One box that is used more frequently is the No. 32 standard box, which measures 5¾ to 7¼ inches (inside dimensions) by 12 inches by 19¾ inches (outside dimensions). This box is commonly referred to as the "shoebox" because of its distinctive shape. The NAC and PCC believe that new boxes, such as the No. 32, will become increasingly important to the industry

because of their widespread acceptance by retailers and their use in conjunction with the standardized pallet. For those reasons, the NAC and PCC voted unanimously to include the definition and dimensions of the No. 32 standard box within the orders' rules and regulations. The Department implemented these changes in the interim final rule. This rule continues these changes.

Use of the No. 32 standard lug box has also become interchangeable with the No. 22D standard lug box. In part, this is because the capacity of the two containers is similar, so handlers can pack the same number of fruit of a particular size in either box. For that reason, the modification of §§ 916.350 and 917.442 of the orders' rules and regulations continues in effect, specifying that sizes of fruit shall be based on the number that can be packed in accordance with the requirements of standard pack in either a No. 32 standard box or a No. 22D standard lug box.

Sections 916.350 and 917.442 of the orders' rules and regulations also require containers to be marked with certain information, including the size and/or number of pieces of fruit in the container, the name of the variety, if known, the maturity, and the name and address of the shipper. Because the No. 32 standard box is also currently the principal container used for molded forms (tray packs), the No. 32 box has now become the industry standard for determining the sizes in tray-pack packages. Thus, requiring markings for both the size and count of fruit in this container is not necessary. For example, if a No. 32 box is marked "80 size," the buyer already knows it contains 80 pieces of "size 80" fruit because the number of fruit that fit in standard pack configuration is the basis for the size designation.

Another packaging style whose use has become increasingly widespread is the one-layer consumer package. Consumer packages of nectarines and peaches are smaller boxes or bags of fruit suited for display and sale as single units in some retail outlets. Consumer packages of nectarines and peaches are generally smaller units without adequate space on the outside ends for additional markings. Requiring dual markings on consumer boxes would place a burden on handlers who prefer to minimize markings on the outside of these boxes.

Pursuant to the interim final rule, No. 32 boxes and consumer packages are required to be marked with either the size of the fruit, e.g., "88 size" or "80 size," or the count, e.g., "88 count" or

"80 count," but not both. Eliminating the requirement for dual markings on these containers is consistent with the rules and regulations of the orders and with historical practices within the nectarine and peach industries. This rule continues in effect the authority for regulating the No. 32 box and consumer packages.

In a comment to the interim final rule, the Field Director for the CTFA pointed out that the use of the word "cartons" in paragraphs (a)(4)(i) of §§ 916.350 and 917.442 was unnecessarily repeated. According to the commenter, the word "cartons" is synonymous with containers that have a net weight of 35 pounds, regardless of the assigned container number. For that reason, the word "cartons" when used a second time in those paragraphs was duplicative and has been removed.

Table 1 of paragraphs (a)(4)(iv) of §§ 916.350 and 917.442 specify the tray pack size designations which must be marked on containers of nectarines or peaches, respectively, depending on the size of the fruit. The weight-count size designations specify the maximum number of nectarines or peaches in a 16-pound sample for each tray-pack size designation. This rule continues in effect the revision of §§ 916.350 and 917.442 by modifying the weight counts of early-season fruit sizes 56 to 72 in Table 1 of those paragraphs.

According to the information provided by a handler of early-season nectarines and peaches, increasing amounts of early-season nectarines and peaches are currently being converted to volume-filled containers from the traditional tray packs. Early-season nectarines and peaches lack the density of mid-season and late-season fruit, while maintaining overall size. For this reason, early-season nectarines and peaches may adequately fill the tray-pack container molded forms; but, when converted to volume-filled containers without the molded forms, the early-season fruit lacks the weight to adequately meet the requirements of a 16-pound sample. Prior to the implementation of the interim final rule, the handler was required to include an additional nectarine or peach in the 16-pound sample to meet the required sample weight for five sizes of nectarines and peaches when the tray-pack container is converted to the volume-filled container. This resulted in lower returns for the producer and handler of early-season fruit sold in volume-filled containers. The NAC and PCC unanimously recommended modifications to the early-season weight-count standards for five sizes of nectarines and peaches by the addition

of one piece of fruit to each weight-count standard currently in effect for sizes 56 to 72. This rule continues in effect the modifications of Table 1 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 which added an additional nectarine or peach, respectively, to sizes 56, 60, 64, 70, and 72. The changes will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers and decrease the handling costs associated with that conversion.

### Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 of the order's rules and regulations 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 misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, 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 that were not "serious damage."

This rule continues the revision of §§ 916.350, 916.356, 917.442, and 917.459 permitting shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 1998 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 permitted during the 1996 and 1997 seasons only.

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. In 1997, shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 230,000 boxes. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments, or 366,000 boxes in 1996. In 1997, shipments of "CA Utility" peaches represented 1.0 percent of all peach shipments, or approximately 217,000 boxes.

For these reasons, the NAC and PCC unanimously recommended that shipments of "CA Utility" quality nectarines and peaches, respectively, be permitted for the 1998 season with a

continuing in-house statistical review at the end of the season.

#### **Clarification of Container Tolerances (Nectarines)**

As previously indicated, the orders require that, except for "CA Utility" quality fruit, nectarines and peaches meet most of the requirements of the U.S. No. 1 grade. These requirements 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 and for Grades of 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 within the lot. These tolerances may be modified by the orders' rules and regulations.

On December 4, 1997, the NAC recommended a nectarine container tolerance of one and one-half times the lot tolerance in instances where the lot tolerance was 10 percent or more, and a nectarine container tolerance of twice the lot tolerance in instances where the lot tolerance was 9 percent or less. This nectarine container tolerance implemented by the interim final rule is identical to that currently in effect for peaches. Continued standardization of container tolerances between nectarines and peaches should benefit handlers of both fruits. These tolerances are specified in revised paragraph (c) of § 916.356 and continue in effect.

#### **Maturity Requirements**

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. 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 individual 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 as Table 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 1998 handling regulation are the same as those that appeared in the 1997 handling regulation with a few exceptions. Those exceptions were implemented by the interim final rule, are explained in this rule, and continue in effect.

#### **Nectarines**

Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. This rule continues in effect a revision of Table 1 of paragraph (a)(1)(iv) of § 916.356 which added maturity guides for 2 nectarine varieties. Specifically, SPI recommended adding maturity guides for the June Brite nectarine variety at a maturity guide of I; and the Diamond Ray nectarine variety at a maturity guide of L.

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.

A revision of Table 1 of paragraph (a)(1)(iv) of § 916.356 is also continued in effect to remove 15 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 15 of the nectarine varieties previously listed in the maturity guide have not been in production since the 1995 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 included the Ama Lyn, Del Rio Rey, Gold King, Grand Stan, June Grand, Kent Grand, Le Grand, Red June, Regal Grand, Sierra Star/181-119, Spring Grand, Spring Top, Star Bright, Star Grand, and Tasty Free nectarine varieties.

This rule also continues in effect the removal of the 61-61 nectarine variety from all variety-specific regulations, including the requirement for 80 percent surface color, as specified in § 916.350. Similarly, this rule continues in effect the removal of the Fairlane nectarine variety from § 916.350, including the requirement for 80 percent surface color. These two varieties are now being regulated at the requirement for 90 percent surface

color. With the removal of the Fairlane and 61-61 nectarine varieties, the Tom Grand nectarine variety continues as the only variety regulated at the requirement for 80 percent surface color.

#### **Peaches**

Section 917.459 of the order's rules and regulations specifies maturity requirements for fresh peaches being inspected and certified as being "well matured."

This rule continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 917.459 which added maturity guides for 2 peach varieties. Specifically, SPI recommended adding maturity guides for the Rich Mike peach variety to be regulated at the H maturity guide, and the August Lady peach variety to be regulated at the L maturity guide.

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.

This rule continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 917.459 removing 7 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 7 of the peach varieties previously listed in the maturity guide have not been in production since the 1995 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 included the Cardinal, Early Coronet, July Lady, Kearney, May Lady, Prime Crest, and Redglobe peach varieties.

#### **Size Requirements**

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer. This increased growing time not only improves the size of the fruit, but also increases its maturity. Increased size also results in an increased number of packed boxes of nectarines or peaches per acre. Acceptable size fruit also provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to producers and handlers. Varieties recommended for

specific size regulation 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 reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

In the comment received, the commenter requested that the numerical identification of the Prima Diamond IV nectarine variety in the narrative text on page 16035, third column, third paragraph of the interim final rule be corrected to read Prima Diamond VI. The commenter also requested that the numerical identification of the Prima Diamond 13 nectarine variety in the regulatory text on page 16040, third column, paragraph (a)(4) of § 916.356 be corrected to read Prima Diamond XIII. The commenter further requested that the numerical identification of the Prima Peach VIII peach variety in the narrative text on page 16036, second column, paragraph one, and in the regulatory text on page 16043, second column, paragraph (a)(6) of § 917.459 of the interim final rule be corrected to read Prima Peach 13. Such corrections have been incorporated.

#### *Nectarines*

Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule continues in effect the revision of § 916.356 establishing variety-specific 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 1997 season. This rule also continues in effect the modification of the variety-specific size requirements for 3 varieties of nectarines.

For example, one of the varieties recommended for addition to the variety-specific size requirements was the Brite Pearl variety. Studies of the size ranges attained by the Brite Pearl variety revealed all of the nectarines of the Brite Pearl variety met sizes 40, 50, 60, 70, and 80. While the size distribution peaked on the size 60, 100 percent of the fruit sized at a minimum of size 80.

A review of other varieties with the same harvesting period indicated that Brite Pearl was also comparable to those varieties in its size ranges. Thus, the recommendation to place the Brite Pearl nectarine variety in the variety-specific size regulation at a size 80 was 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. In addition, producers of the varieties affected are invited to comment when such size recommendations are deliberated.

For reasons similar to those discussed in the preceding paragraphs, the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect the addition of the following varieties: Diamond Bright, June Pearl, Prima Diamond VI, and Prima Diamond XIII nectarine varieties. In the interim final rule, Prima Diamond VI was incorrectly referred to as Prima Diamond IV and has been corrected. In addition, the revision of the introductory text of paragraph (a)(6) in § 916.356 also continues in effect the addition of the August Snow, Brite Pearl, Crystal Rose, Fire Pearl, Prima Diamond XIX, and Prima Diamond XXIV nectarine varieties.

This rule also continues in effect the revision of the introductory text of paragraph (a)(6) of § 916.356 which removed 3 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 1997 season. Thus, the revision of the introductory text of paragraph (a)(6) continues in effect to remove the Bob Grand, Kism Grand, and 80P-1135 nectarine varieties.

This rule continues in effect the revision of the introductory text of paragraph (a)(4) of § 916.356 which modified the identification of the Prima Diamond II nectarine variety; and continues in effect the revision of the introductory text of paragraph (a)(6) of § 916.356 which modified the identification of the Prima Diamond IV, Prima Diamond VII, Prima Diamond VIII, and 424-195 nectarine varieties. The names have been changed as follows: Prima Diamond II has been changed to Prima Diamond IV, Prima Diamond IV has been changed to Prima Diamond IX, Prima Diamond VII has been changed to Prima Diamond XVI, Prima Diamond VIII has been changed to Prima Diamond XVIII, and 424-195 has been changed to Late How Red, respectively. Such changes are done routinely when the holder of a patented variety of nectarines changes the variety's name. For that reason, all references to these varieties were changed by the implementation of the interim final rule.

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. Such removals continue in effect.

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 continues in effect minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

#### *Peaches*

Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(5), and paragraphs (b) and (c). This rule continues in effect the revision of § 917.459 which established variety-specific size requirements for 10 peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1997 season. This rule also continues in effect the addition of new paragraph (a)(2) to § 917.459(a), and the redesignation of paragraphs (a)(2), (a)(3), (a)(4), (a)(5) as paragraphs (a)(3), (a)(4), (a)(5), and (a)(6). New paragraph (a)(2) is being used to regulate peaches at a minimum size 96. Conforming changes required in paragraphs (b) and (c) of that section because the paragraphs refer to the redesignated paragraphs also continue in effect.

One of the varieties recommended for addition to the variety-specific size requirements was the Spring Snow variety. Studies of the size ranges attained by the Spring Snow variety revealed that none of that variety met the smallest sizes, sizes 96, 88, and 84. While the size distribution peaked on size 50, the minimum size encompassing 100 percent of the variety was size 80.

A review of other varieties of the same harvesting period indicated that Spring Snow was also comparable to those varieties in its size ranges. Thus, the recommendation to place the Spring Snow peach variety in the variety-specific size regulation at a size 80 was appropriate and continues in effect. 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 addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated.

In § 917.459 of the order's rules and regulations, new paragraph (a)(2) is continued in effect and includes the

Earliltreat and Lady Sue peach varieties to be regulated at a minimum size 96. The revision to the introductory text of paragraph (a)(5) is continued in effect. That revision added the Pink Rose, Prima Peach IV, Spring Snow, and White Dream peach varieties to that paragraph. The revision to the introductory text of paragraph (a)(6) is also continued in effect with a minor correction. That revision added the Madonna Sun, Prima Peach VIII, Prima Peach 20, and Saturn (Donut) peach varieties. This rule corrects the numerical identification of the Prima Peach VIII variety to Prima Peach 13 per the comment received.

This rule also continues in effect a revision of § 917.459 removing 6 peach varieties from the variety-specific size requirements previously specified in that section, because less than 5,000 packages of this variety were produced during the 1997 season. In § 917.459, the revision of the introductory text of paragraph (a)(5) is continued in effect. That revision removed the June Sun, Kingscrest, Kings Red, and Snow Flame peach varieties. The revision of the introductory text of paragraph (a)(6) of § 917.459 is continued in effect. That revision removed the Prima Lady and Snow Ball peach varieties.

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. Such removals continue in effect.

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 fruit sizes. 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 has determined that this rule should have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule continues in effect revised 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 final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. Small agricultural producers have been defined as those having annual receipts of less than \$500,000. 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, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This rule continues in effect revisions of the requirements in the interim final rule to: (1) Correct the address for the CTFA; (2) modify the lot stamping requirements; (3) establish a single date by which handlers must file shipment reports; (4) define and provide dimensions for a new container; (5) simplify size marking requirements for consumer packages and establish marking requirements for the new container; (6) modify weight counts for early varieties; (7) authorize shipments of "CA Utility" quality fruit during the 1998 season; (8) standardize container tolerances for mature and well-matured nectarines; (9) revise varietal maturity and size requirements to reflect recent changes in growing conditions; and (10) revise names of some patented nectarine and peach varieties consistent with name changes made by the patent holders. This rule

also makes corrections in the names of some nectarine and peach varieties and corrects an inaccurate use of the word "cartons" in two sections, one each for nectarines and peaches.

In § 917.110 of the peach order's rules and regulations, the address of the CTFA is listed for various communications (reports, applications, submittals, requests, etc.). The CTFA moved its offices from Sacramento to Reedley, California, and the interim final rule corrected the address as recommended by the PCC. This rule continues in effect the changes in the interim final rule. Updating the address of the CTFA is a clarifying change which benefits producers and handlers.

In §§ 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, handlers are required to stamp containers of nectarines and peaches with the Federal-State Inspection Service lot stamp number after inspection and prior to shipment. Such a requirement is relatively easy and cost effective for larger handlers who pack sufficient numbers of containers in a day to warrant the presence of a full-time inspector who maintains control of the handler's lot stamp. However, for smaller handlers who do not pack sufficient numbers of containers in a day to warrant the presence of a full-time inspector assigned to their facility, the requirement for a lot stamp creates an unnecessary burden of increased packing time and costs. Containers packed and placed on pallets in the inspector's absence must be stamped after the inspector returns and performs an inspection on samples of those containers. The increased use of new container styles and a standardized pallet has created a nine-column configuration of stacked containers consisting of eight columns surrounding a ninth, center column. The center column is difficult to mark with the lot stamp since a portion of the other eight columns must be unstacked to allow access to the center column. The interim final rule exempted the containers in the center column of the nine-column configuration from lot stamp marking requirements, thereby decreasing handling time and costs for smaller handlers who have only intermittent inspections in a day. This change should have a positive impact on the affected handlers. This exemption is currently estimated to affect fewer than 10 handlers and less than 10,000 boxes of nectarines and peaches.

Prior to the issuance of the interim final rule, §§ 916.160 and 917.178 of the orders' rules and regulations required handlers to report shipments of each

nectarine and peach variety, respectively, not later than the tenth day of the month following the month in which the varieties were shipped. As a result, handlers filed approximately three shipment reports with the committees per season, resulting in approximately 750 shipment reports for all nectarine handlers and approximately 900 shipment reports for all peach handlers. Each shipment report is estimated to take one hour for handlers to complete. In an effort to make reporting less burdensome to handlers, the NAC and PCC recommended the establishment of a single date of November 15 of each year as a reporting deadline, no matter when shipments of each nectarine or peach variety were made. This single reporting deadline simplifies the reporting requirements so that handlers need only file one report each for nectarine and peach shipments upon conclusion of the handling season. This relaxation of the reporting requirements and burden for the benefit of handlers continues in effect from the interim final rule. This relaxation is estimated to reduce burden hours for nectarine handlers to approximately 250 hours from 750 hours and for peach handlers to approximately 300 from 900 hours.

In §§ 916.350 and 917.442 of the rules regulating nectarines and peaches, respectively, several container types are identified by a name, such as 12B or 22G, and then further defined by their dimensions and weight-holding capacities. This rule continues in effect the definition and description of the new container, the No. 32 (shoebox), which is more easily configured to fit a standard 40 by 48 inch pallet. Both the container and the pallet are increasingly utilized by the industry because they are favored by retailers. The addition of this container to the orders' rules and regulations provides increased flexibility for handlers by providing yet another approved container for shipments of nectarines and peaches.

Sections 916.350 and 917.442 of the orders' rules and regulations require specified container markings. To facilitate the use of the No. 32 standard box and consumer packages, the container marking requirements implemented by the interim final rule continue in effect. These requirements eliminate the need to mark both the count and size of the fruit in the box. Instead, only one marking, either for fruit size or count of fruit, is required. Eliminating the dual marking requirement eases the burden on handlers.

Consumer packages of nectarines and peaches are smaller boxes without

adequate space on the outside ends for marking both the fruit size and count of fruit in the box. The No. 32 box has become the industry standard for tray-pack arrangements. Including both the size and count of fruit on these containers is unnecessary since the number of fruit in the box is also the size of the fruit in the box. Moreover, requiring dual markings on these two boxes placed a burden on handlers who prefer to minimize markings on the outside of the boxes. Prior to the modified marking requirements, the outside of the boxes were marked with the size of the fruit, e.g., "88 size" or "80 size," and the count, e.g., "88 count" or "80 count." Continuing to eliminate the requirement for dual marking on these containers is consistent with the rules and regulations of the orders, and is a relaxation of the marking requirements.

In §§ 916.350 and 917.442 of the orders' rules and regulations concerning nectarines and peaches, respectively, the use of container markings is specified. Container markings based on weight standards differ for early-season nectarines and peaches, compared to those marketed later in the season. The NAC and PCC routinely conduct tests to determine the optimum weight-count standards for such early-season, mid-season, and late-season nectarines and peaches, respectively. Acting upon information from a handler of early-season nectarines and peaches, the NAC and PCC determined that while early-season nectarines and peaches frequently attain a size to adequately fill the molded forms when tray-packed, early-season nectarines and peaches are not as dense as mid-season and late-season nectarines and peaches, and thus, failed to meet the current weight standards set for specified sizes when converted to volume-filled containers. When such tests were performed by the NAC and PCC in 1994 and 1995, early-season nectarines and peaches were not predominately packed in volume-filled containers. More commonly, early-season nectarines and peaches were packed in tray-packs. However, the practice of converting tray-packed containers of early-season nectarines and peaches to volume-filled containers has increased and more information about the characteristics of early-season nectarines and peaches has come to light. In reviewing this information, the NAC and PCC determined that the weight-count standards for five early-season nectarine and peach sizes needed to be adjusted by adding one piece of fruit to the 16-pound sample of fruit of these sizes to accommodate

volume-filled container shipments to the benefit of producers and handlers.

Therefore, the NAC and PCC unanimously recommended, and the interim final rule implemented, modifications to the early-season weight-count standards for five sizes of nectarines and peaches by the addition of one piece of fruit to each weight-count standard then in effect for sizes 56 to 72. Table 1 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations were modified by adding an additional nectarine or peach, respectively, to sizes 56, 60, 64, 70, and 72. The changes permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers and decrease the handling costs associated with that conversion. Thus, the changes continue in effect.

In §§ 916.350 and 917.442 of the orders regulating nectarines and peaches, respectively, lower-quality nectarines and peaches were authorized for shipment as "CA Utility" as an experiment for the 1996 season only. Such authorization was continued during the 1997 season. This rule continues in effect the authority in the interim final rule for the continued use of "CA Utility" quality fruit for the 1998 season with a continued in-house statistical review to be conducted by the NAC and PCC at the end of the 1998 season. During the 1996 season, the Department authorized the shipment of nectarines and peaches which were of a lower quality than the minimum permitted for previous seasons. During 1996, there were approximately 210,000 boxes of nectarines and approximately 366,000 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.9 percent of fresh shipments, respectively. During 1997, there were approximately 230,000 boxes of nectarines and 217,000 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.0 percent of fresh shipments, 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 to be shipped into fresh market channels, without adversely impacting the market for higher quality fruit.

The interim final rule standardized the container tolerances for nectarines with those in effect for peaches. The revision of the container tolerances for nectarines simplified handling requirements for the industry and continues to apply.

Sections 916.356 and 917.442 of the orders' rules and regulations for nectarines and peaches, respectively, currently establish minimum maturity levels. This rule continues in effect the



annual adjustments to the maturity requirements for several varieties of nectarines and peaches implemented by the interim final rule. Maturity requirements are based on maturity measurements generally using maturity guides (e.g., color chips), as reviewed by SPI. Such maturity guides provide producers, handlers, and SPI with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually by SPI 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 maturity, thus ensuring consumer satisfaction while benefitting nectarine and peach producers and handlers.

Currently, in §916.356 of the order's rules and regulations for nectarines and §917.459 of the order's rules and regulations for peaches, minimum sizes for various varieties of nectarines and peaches are established. This rule continues in effect adjustments made by the interim final rule to the minimum sizes authorized for various varieties of nectarines and peaches for the 1998 season. Minimum size regulations are put in place to allow fruit to stay on the tree for a greater length of time. Increased growing time not only improves maturity, but also improves fruit size. Increased fruit size increases the number of packed boxes per acre. Increased fruit size and maturity also provide greater consumer satisfaction and, therefore, more repeat purchases by consumers. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data, and producer and handler information regarding sizes which the different varieties attain.

This action does not impose any additional reporting and recordkeeping requirements on either small or large handlers. In fact, this action continues to reduce the reporting requirements and burden by allowing handlers to file only one report each for nectarine and peach shipments upon conclusion of the handling season. 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. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in Parts 916 and 917 have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Nos. 0581-0072 and 0581-0080, respectively.

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. These meetings are held annually during the first week of December. Like all committee meetings, the December 4, 1997, 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 were invited to submit information on the regulatory and informational impacts of this action on small businesses in the interim final rule. No such comments were received.

An interim final rule concerning this action was published in the **Federal Register** on April 1, 1998. This rule was also made available through the Internet by the Office of the Federal Register. The Committees' staff made copies available to the industry through the publication of the handler bulletins for nectarines and peaches. The bulletins are a compilation of the orders' rules and regulations prepared in a more user-friendly format. That rule provided for a 60-day comment period which ended June 1, 1998. One comment was received from the Field Director for the CTFA. As discussed earlier, the corrections requested by the commenter have been made.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, the comment received, and other information, it is found that finalizing the interim final rule, with

corrections as indicated, as published in the **Federal Register** (63 FR 16032, April 1, 1998), will tend to effectuate the declared policy of the Act.

## **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.

Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 63 FR 16032 on April 1, 1998, is adopted as a final rule with the following changes:

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**

### **§916.350 [Amended]**

2. Section 916.350, paragraph (a)(4)(i) is amended by removing the words "No. 22G standard lug boxes, cartons;" and adding in their place the words "No. 22G standard lug boxes;"

### **§916.356 [Amended]**

3. Section 916.356, paragraph (a)(4) introductory text is amended by revising the words " , Prima Diamond 13," to read " , Prima Diamond XIII,"

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

### **§917.442 [Amended]**

4. Section 917.442, paragraph (a)(4)(i) is amended by removing the words "No. 22G standard lug boxes, experimental containers, cartons;" and adding in their place the words "No. 22G standard lug boxes or experimental containers;"

### **§917.459 [Amended]**

5. Section 917.459, paragraph (a)(6) introductory text is amended by revising the words " , Prima Peach VIII," to read " , Prima Peach 13,"

Dated: August 12, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

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