

will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

PART 911—LIMES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 911 which was published at 63 FR 37475 on July 13, 1998, is adopted as a final rule without change.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 53 FR 37475 on July 13, 1998, is adopted as a final rule without change.

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-29936 Filed 11-6-98; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV98-916-2 FIR]

Nectarines and Peaches Grown in California; Relaxation of Quality 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, without change, the provisions of an interim final rule relaxing "CA Utility" quality requirements for California nectarines and peaches for the remainder of the 1998 season. The "CA Utility" quality requirements are based on minimum quality requirements established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be present in each container marked "CA Utility."

The interim final rule increased that percentage to not more than 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. A non-scoreable blemish is a defect that does not cause fruit to fail U.S. No. 1 grade requirements. This rule continues in effect this relaxation for the remainder of the 1998 season. This rule allows more U.S. No. 1 nectarines and peaches to be packed in containers marked "CA Utility." The added packing flexibility provided by this rule is expected to benefit growers, handlers, and consumers.

EFFECTIVE DATE: November 10, 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, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632, or E-mail: Jay_N_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR Parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12866, 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, for the remainder of the 1998 season, the modification to the orders' administrative rules and regulations relaxing the "CA Utility" quality requirement by allowing more U.S. No. 1 grade nectarines and peaches in containers marked "CA Utility." Prior to the publication of an interim final rule (63 FR 50461, September 22, 1998), the term "CA Utility" meant that not more than 30 percent of the nectarines and peaches in any container could meet or exceed the requirements of the U.S. No. 1 grade, and that the fruit meet other specified requirements. The interim final rule increased that percentage to 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. A non-scoreable blemish is a defect that will not cause the fruit to fail to meet the requirements of U.S. No. 1. This relaxation is in effect for the remainder of the 1998 season only, and allows more No. 1 grade fruit to be packed as "CA Utility" quality.

The Nectarine Administrative Committee (NAC) and Peach Commodity Committee (PCC) (committees) met on September 15, 1998, to discuss this relaxation. At that time, the NAC voted without opposition to recommend the increased percentage of U.S. No. 1 nectarines with non-scoreable blemishes. The PCC voted with eight in favor and one opposed to recommend a similar change. The member opposed believed that it was too late in the season to make such a change, that such a change would disadvantage those who had already

shipped "CA Utility" fruit in 1998, and that more study and analysis of the situation was needed.

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."

The minimum grade, size, and maturity requirements in § 916.356 applicable to shipments of California nectarines apply during the period April 1 through October 31 each year. The minimum grade, size, and maturity requirements in § 917.459 applicable to shipments of California peaches apply during the period April 1 through November 23 each year.

Since the 1996 shipping season, the nectarine and peach regulations have allowed "CA Utility" quality to be shipped during the regulatory periods. Utility quality is a lower-quality fruit than U.S. No. 1.

Containers marked as "CA Utility" must be inspected by the Federal or Federal-State Inspection Service and certified as meeting the "CA Utility" quality requirements. Part of the inspection process is to evaluate containers of fruit in accordance with the requirements of the U.S. Standards for Grades of Nectarines, the U.S. Standards for Grades of Peaches, and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be "scored" as defects which are damaging to the grade of the fruit, while some other blemishes are not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed "scoreable" defects; and in the second instance, the blemishes are termed "non-scoreable." It was the recommendation of the committees that such non-scoreable blemishes must be present on at least one-quarter of the 40 percent of the fruit grading U.S. No. 1 in boxes marked "CA Utility."

While containers marked "CA Utility" fruit are subject to relaxed quality requirements, all other requirements of the orders must be met.

In addition to the grade requirements, §§ 916.350 and 917.442 require each package or container of nectarines and peaches, respectively, shipped which meets the requirements of "CA Utility," to be conspicuously marked with the words "CA Utility" on a visible display panel.

Through August 31 of the 1998 season, shipments of "CA Utility" quality nectarines and peaches averaged about 4 percent of total shipments. In prior seasons, utility quality shipments have been less than 2 percent. The increase this season has been attributed to quality problems resulting from heavy early season rains. Also, hail storms later during the season damaged some fruit and rendered it unsalable, while some fruit sustained only moderate scarring. This was especially true for nectarines, whose smooth skin does not provide the same protection as the fuzzy exterior of peaches.

Preliminary studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign buyers 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. By contrast, shipments of "CA Utility" nectarines represented 4.0 percent of all nectarine shipments, or approximately 694,881 boxes by August 31 of the 1998 season. Shipments of "CA Utility" peaches represented 4.0 percent of all peach shipments, or approximately 544,065 boxes by August 31 of the 1998 season.

The interim final rule amended §§ 916.356 and 917.459 by revising paragraph (a)(1) under each section to allow not more than 40 percent U.S. No. 1 grade fruit to be packed in containers marked as "CA Utility" except that at least one-quarter of the fruit grading U.S. No. 1 in such container must have non-scoreable blemishes. This final rule continues in effect that revision.

At the September 15, 1998, committee meetings, comments supporting the recommendation were made by handlers who had experienced incidents where the percentage of U.S. No. 1 fruit contained in their "CA Utility" boxes was found to be higher than permitted by the orders' rules and

regulations. In those instances, they were forced to repack the boxes, move blemished fruit to boxes containing all U.S. No. 1 fruit, or discard or donate the fruit.

At least one handler complained that the fruit with non-scoreable blemishes was unsightly in the type of U.S. No. 1 box he offered to the marketplace and to his customers. His preference was to place the fruit with non-scoreable blemishes in boxes marked "CA Utility." The limitation of not more than 30 percent U.S. No. 1 fruit in boxes marked "CA Utility" became a greater hindrance as the season progressed. The handler also noted that an unseasonable morning rain in late summer caused dark stains on the skin of nectarines, rendering them unsuitable for inclusion in his U.S. No. 1 boxes. He preferred including such fruit in the "CA Utility" boxes, but doing so caused the "CA Utility" boxes to contain more than the 30 percent U.S. No. 1 fruit permissible.

A niche market exists for utility quality fruit and the relaxation provided by the interim final rule presented an opportunity for handlers to market somewhat better quality "CA Utility" fruit to meet demand. Allowing ten percent more U.S. No. 1 grade fruit to be packed as "CA Utility" quality requirements allowed more fruit to be marketed as "CA Utility" if handlers prefer to do so. "CA Utility" quality fruit is generally made available at lower prices to especially benefit lower-income consumers.

Some committee members initially continued to support limiting the amount of U.S. No. 1 grade fruit that can be included in a utility pack to 30 percent of the total in any container to maintain distinct differences between U.S. No. 1 containers and "CA Utility" containers. However, after further discussion, it was agreed that a greater percentage of U.S. No. 1 in a "CA Utility" container would not be confusing if such fruit were also blemished. It was, therefore, agreed that an additional 10 percent U.S. No. 1 would be permitted except that every piece of fruit in that 10 percent must possess a non-scoreable blemish. This relaxation is in effect for the remainder of the 1998 season. Boxes marked "CA Utility" should be clearly distinct from boxes containing U.S. No. 1 grade. Failure to provide a clear distinction could cause confusion in the marketplace and would not meet the goal of providing low-cost fruit to low-income consumers. It was the opinion of the committees that this relaxation would not cause confusion among buyers.

Data on recent production and shipments of California nectarines and peaches appear to indicate that "CA Utility" quality fruit can be marketed successfully without interfering with sales of higher quality fruit. In fact, some handlers noted that they used the "CA Utility" box as a "safety net." Fruit which was not good enough to meet their own criteria for packing in U.S. No. 1 boxes could be better utilized in boxes of "CA Utility." The advent of "CA Utility" quality requirements has given handlers the increased flexibility to improve the overall appearance of their U.S. No. 1 shipments.

For these reasons, the NAC and PCC recommended, for the remainder of the 1998 season, that the percentage of U.S. No. 1 nectarines and peaches permitted in containers marked as "CA Utility" quality be increased from 30 percent to 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. This relaxation remains in effect for the remainder of the 1998 season. The committees also voted to review the percentages during the winter.

Pursuant to the 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 include 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 §§ 916.356 and 917.459 of the orders, grade and size requirements are established for fresh shipments of California nectarines and peaches,

respectively. Such requirements are in effect during the period April 1 through October 31 each year for nectarines, and April 1 through November 23 for peaches. The interim final rule relaxed, for the remainder of the 1998 season only, the definition of "CA Utility" quality for California nectarines and peaches. The "CA Utility" quality requirements are based on minimum quality requirements established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be contained in the utility pack. Prior to the publication of the interim final rule, the "CA Utility" quality requirement permitted not more than 30 percent of the nectarines or peaches in any container to meet or exceed the requirements of a U.S. No. 1. The interim final rule increased that percentage to not more than 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such container must have non-scoreable blemishes. A non-scoreable blemish is a defect that does not cause the fruit to fail to meet U.S. No. 1 grade requirements. This rule continues this relaxation and is expected to benefit growers, handlers, and consumers.

Since the 1996 shipping season, the nectarine and peach regulations have allowed "CA Utility" quality fruit to be shipped during the regulatory periods. 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." "CA Utility" quality is a lower-quality fruit than U.S. No. 1 and has been regulated since its inception in the 1996 season. Through August 31 of the 1998 season, shipments of utility quality for both nectarines and peaches have averaged about 4 percent of total shipments. In prior seasons, utility quality shipments have been in the 1 to 2 percent range. The increase so far this season is mostly attributed to quality problems resulting from heavy early season rains.

A niche market exists for "CA Utility" quality fruit and the relaxation provided by the interim final rule presented an opportunity for handlers to market somewhat better quality "CA Utility" fruit to meet demand.

According to comments made at the meeting on September 15, 1998, changing the requirements to allow additional U.S. No. 1 fruit to be packed in "CA Utility" containers did not disadvantage those handlers who had already finished for the season. Those handlers were able to put fruit grading U.S. No. 1 into their U.S. No. 1 containers. Since they would have likely wanted to pack such fruit in these containers to receive the higher return anticipated for U.S. No. 1 fruit, they have not been harmed economically. Therefore, no harm was done by implementing this relaxation that late in the season.

Therefore, the NAC and PCC recommended changing the "CA Utility" quality at their September 15, 1998, meetings by modifying the percentage of U.S. No. 1 fruit in each box. The committees also voted to review the percentages during the winter.

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 and 1998 seasons. The interim final rule increased the percentage of U.S. No. 1 nectarines and peaches which could be packed in a container marked "CA Utility" for the remainder of the 1998 season except that the fruit grading U.S. No. 1 must have a specified percentage of non-scoreable blemishes.

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. By contrast, shipments of "CA Utility" nectarines represented 4.0 percent of all nectarine shipments, or approximately 694,881 boxes by August 31 of the 1998 season. Shipments of "CA Utility" peaches represented 4.0 percent of all peach shipments, or approximately 544,065 boxes by August 31 of the 1998 season. Continued availability of "CA Utility" quality fruit with the increased percentage of non-scoreable defects 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 committees considered several alternatives at the meeting. One alternative was to leave the percentage of U.S. No. 1 nectarines and peaches permitted in "CA Utility" containers unchanged. It was determined that alternative would not address the problem which faced the industry. The NAC and PCC also considered increasing the 30 percent U.S. No. 1 tolerance to not more than 40 percent or to not more than 50 percent, but determined that such a relaxation could render "CA Utility" boxes less distinctive from U.S. No. 1 and create confusion in the marketplace. Another alternative included a requirement that at least 90 percent of the individual fruits in all boxes marked with "CA Utility" possess defects. Such a requirement would create a box of fruit which would be distinct from U.S. No. 1 due to a greater number of defects present. However, this alternative was determined to be unacceptable because it represented too radical a change of "CA Utility" quality given the emergency nature of the recommendation. This alternative failed to offer a sound basis for comparison with the requirement of not more than 30 percent U.S. No. 1 because it did not reference the U.S. No. 1 grade. Such comparison may be necessary as the committees continue to study marketplace reaction to changes in quality requirements of "CA Utility."

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. 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. Like all committee meetings, the September 15, 1998, 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.

An interim final rule concerning this action was published in the **Federal Register** on September 22, 1998. Copies of the rule were made available to all committee members and nectarine and peach handlers by the committees' staff. The rule was also made available through the Internet by the Office of the Federal Register. That rule provided for a 15-day comment period which ended October 7, 1998. No comments were received.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees, and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 50461, September 22, 1998) will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the changes made to the regulations were to relax the "California Utility" quality requirements for California nectarines and peaches for the remainder of the 1998 season and the season has ended or will end shortly for these commodities. Accordingly, this rule should be made final as soon as possible. Also, a 15-day comment period was provided for in the interim final rule and no comments were received.

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.

PART 916—NECTARINES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 916 which was

published at 63 FR 50461 on September 22, 1998, is adopted as a final rule without change.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 917 which was published at 63 FR 50461 on September 22, 1998, is adopted as a final rule without change.

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98-29937 Filed 11-6-98; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 318

Defense Threat Reduction Agency (DTRA)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This rule changes the name "Defense Special Weapons Agency" to "Defense Threat Reduction Agency (DTRA)". This name change is made to reflect the organization restructuring as defined in DoD Directive 5105.62.

EFFECTIVE DATE: November 9, 1998.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703-697-4111.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 318

Privacy.

PART 318—[AMENDED]

1. The authority citation for part 318 continues to read as follows:

Authority: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

2. The heading of 32 CFR part 318 is revised to read "Defense Threat Reduction Agency (DTRA)".

3. Sections 318.1(b)(1), 318.4(a), 318.5(a), 318.6(a), 318.9(a), 318.11(a) are amended by revising "Defense Special Weapons Agency" to read "Defense Threat Reduction Agency".

4. Sections 318.1 (b)(1) and (d), 318.2, 318.3 (b), (c), and (d), 318.9 (a), (b) introductory text, (b)(1) and (b)(4), 318.10, 318.11 (b), (d) introductory text, and (d)(3)(1), are amended by revising "DSWA" to read "DTRA".

5. Sections 318.1(c), 318.2, and 318.3(a) are amended by revising