

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV95-916-5-PR]

#### Nectarines and Peaches Grown in California; Relaxation of Quality Requirements for Fresh Nectarines and Peaches

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would relax, for the 1996 season only, the quality requirements for California nectarines and peaches. This proposal would establish a California Tree Fruit Agreement (CTFA) Utility quality requirement. California nectarines and peaches are currently subject to a minimum requirement of a modified U.S. No. 1 grade. The CTFA Utility quality requirement would be the same as a U.S. No. 2 except that misshapened fruit and fruit with serious damage due to scarring would be permitted. This proposed rule would also require that containers of nectarines and peaches meeting the CTFA Utility quality requirement be clearly marked "CTFA Utility." This proposed rule is intended to allow more nectarines and peaches into fresh market channels.

**DATES:** Comments must be received by April 3, 1996.

**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, P.O. 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:

Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2861; or 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.

**SUPPLEMENTARY INFORMATION:** This proposed 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 proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. 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 about 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, and small agricultural service firms 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.

The Department is proposing to establish, for the 1996 season only, a California Tree Fruit Agreement (CTFA) Utility quality requirement and a container marking requirement for shipments of fruit meeting CTFA Utility.

Minimum grade requirements for fresh nectarines and peaches grown in California are in effect under § 916.356 and § 917.459, respectively. This rule would amend §§ 916.356 and 917.459 by revising paragraph (a)(1) under each section, to permit shipments of fruit meeting CTFA Utility. CTFA Utility quality requirements are the same as the U.S. No. 2 grade requirements as set forth in the U.S. Standards for Grades of Nectarines [7 CFR 51.3145 through 51.3160] and the U.S. Standards for Grades of Peaches [7 CFR 51.1210 through 51.1223], except that misshapened fruit and fruit with serious damage due to scarring would be permitted. All other applicable size and maturity requirements would remain in effect. CTFA Utility fruit would be inspected by the Federal-State Inspection Service as meeting the CTFA Utility quality requirements. CTFA

Utility fruit would be subject to assessment and all other requirements of the orders. This rule would also amend §§ 916.350 and 917.442 by adding a paragraph to each section to specify that each package or container of nectarines and peaches shipped, meeting the requirements of the newly established CTFA Utility quality requirements, must be conspicuously marked with the words "CTFA Utility".

Shipments of California nectarines and peaches are subject to minimum grade, size, and maturity requirements under the provisions of Federal Marketing Orders 916 (section 916.356) during the period April 1 through October 31 each year and 917 (section 917.459) during the period April 1 through November 23 each year. Currently, nectarine shipments are required to meet the requirements of U.S. No. 1 except less scarring is permitted than the U.S. No. 1 Grade but the tolerance for fruit not well formed is greater than the U.S. No. 1 Grade. Different minimum size requirements are in effect for different groupings of nectarine varieties. Currently peach shipments are required to meet the requirements of U.S. No. 1 Grade except there is an additional tolerance for fruit damage caused by open sutures. Also, different minimum size requirements are in effect for different groupings of peach varieties. Both the nectarine and peach regulations allow the shipment of fruit one size smaller than the specified minimum if the fruit meets higher maturity requirements. Both nectarine and peach shipments are subject to container, pack, and container marking requirements.

Prior to the 1995 shipping season the Nectarine Administrative and Peach Commodity Committees (Committees) considered recommending a change in the nectarine and peach regulations to allow a utility grade for these fruits (Utility grade is a lower quality fruit than U.S. No. 1). During the 1995 season, changes were made to allow use of the utility grade for California plums which are regulated under a State program. The plum utility grade was based on the California Agricultural Code requirements. The Committees voted not to recommend a utility grade for nectarines and peaches in the 1995 season. The Committees did, however, hire Dr. Dennis Nef, California State University, Fresno, to conduct a research project to study the impact of a utility grade for nectarines and peaches. The Committees also believed that the industry experiences from the plum utility grade would be helpful in making future recommendations for a utility grade for nectarines and peaches.

The report prepared by Dr. Nef was presented to the Nectarine and Peach Grade and Size Subcommittees in October 1995. The report found that about 22 percent of the peaches sampled in packinghouse cull bins in 1995 would have met California agricultural code requirements. Of the nectarines sampled from packinghouse culls in that year, about 6 percent would have met California agricultural code requirements and an additional 14 percent failed marketing order quality requirements but would have met U.S. No. 1 Grade (as indicated previously, the nectarine grade requirements under the marketing order permit less fruit scarring than allowed under U.S. No. 1). The report pointed out that these findings were based on a crop season which was marked by unusual crop and weather conditions. After reviewing the report, the nectarine and peach subcommittees voted to not recommend to the full Committees that a utility grade be implemented in 1996 for nectarines and peaches citing the unusual weather conditions that resulted in below normal crops. They believed that Dr. Nef's research project should be continued for another year to allow for the collection of data based on a more normal year.

On November 29, 1995, the Department wrote to the Committees recommending that a utility grade be adopted for nectarines and peaches for the 1996 season beginning April 1, 1996. These Committees met on December 6–7, 1995, to discuss possible implementation of a utility grade for nectarines and peaches for the 1996 season. Committee members and others in attendance at the meetings expressed views in opposition to and in support of implementing a utility grade.

Commenters in opposition to a utility grade for nectarines and peaches stated that the 1995 season was not a normal season for plums, nectarines, or peaches and should not be used as a basis for recommending a utility grade. They also said that the tree fruit industry is facing competition in both domestic and in foreign markets. One commenter stated that utility grade fruit would damage the reputation of California-produced tree fruit and another stated that poor quality California plums had been shipped to Hong Kong last year and that these plums had damaged the reputation of California plums. One commenter stated that allowing a utility grade would result in inspections of fruit which only serve to verify that the fruit in the container is poor quality. Others stated that lower quality fruit is not wasted and may be used for cattle feed. Another stated that the results of

the recent grower referendum indicated support for the continuation of the program and the continuation of the quality standards.

One commenter in support of a utility grade for nectarines stated that the implementation of a utility grade for plums in 1995 resulted in a \$10 million increase in plum grower revenue. Commenters noted that less than 10 percent of the plum pack was utility grade. One commenter stated that while less than one percent of his organization's plum pack was utility grade, this lower grade should be available for use by nectarine and peach handlers if a market exists. Others commented that the Department had recommended a utility grade for nectarines and peaches for one year only—1996.

Data on recent production of California nectarines and peaches in relation to season average producer prices appears to indicate that lesser quality fruit could be marketed successfully without interfering with sales of higher quality fruit. The limited quantity expected to be available would be expected to have a minimal effect on consumer purchases and season average producer prices for California nectarines and peaches. Sales of lesser quality fruit to a niche market could increase producer revenue and promote consumer satisfaction.

The Department's proposal to implement the "CTFA Utility" quality requirement for the 1996 season would authorize fruit meeting this requirement to be shipped to market and provide actual information on consumer and retailer acceptability of such fruit. This information could then be used to supplement information collected by Dr. Nef and assist the respective industries in developing their quality requirements for the 1997 season.

Based on the foregoing, the Department proposes that a utility grade for nectarines and peaches should be implemented on an experimental basis for the 1996 season. The Department proposes, for purposes of this regulation, to define "CTFA Utility" to mean fruit which meets the requirements of U.S. No. 2 Grade defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) and the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223) except that misshapened fruit and fruit with serious damage due to scarring would be permitted.

Committee members and others who commented at the December 6–7 Committee meetings indicated that a niche market may exist for utility grade

fruit and that the opportunity should be made available to market lower quality fruit to meet demand. This proposal could allow more fruit to be marketed.

In order to prevent confusion in the marketplace and to clearly differentiate shipments of "CTFA Utility" fruit from better quality fruit, this proposal requires that containers of "CTFA Utility" fruit be conspicuously marked with the words "CTFA Utility". In addition, shipments of such fruit would be required to meet the same container, pack, and container marking requirements in effect for shipments of higher quality fruit.

This proposed rule reflects the Department's appraisal of the need to revise the quality and container requirements for California nectarines and peaches as specified. The Department believes that this rule may have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on these matters.

#### 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 proposed to be amended as follows:

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

1. The authority citation for 7 CFR Part 916 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 916.350 is amended by adding a new paragraph (d) to read as follows:

##### **§ 916.350 California Nectarine Container and Pack Regulation.**

\* \* \* \* \*

(d) During the period April 1 through October 31, 1996, each container or package when packed with nectarines meeting CTFA Utility requirements,

shall bear the words "CTFA Utility" marked on all containers and packages, along with all other required container markings, in letters of 3/4 inch minimum height on the principal display panel. Consumer bags or packages must also be clearly marked on the bag or package as "CTFA Utility" along with other required markings.

3. Section 916.356 is amended by revising paragraph (a)(1) 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 misshapen. Provided further, that, during the period April 1 through October 31, 1996, any handler may handle nectarines if such nectarines meet CTFA Utility quality requirements. The term CTFA Utility means nectarines that have been inspected by the Federal or Federal-State Inspection Service and meet the requirements of the U.S. No. 2 grade as defined in the United States Standards for Grades of Nectarines [7 CFR 51.3145 through 51.3160], except that misshapened fruit and fruit with serious damage due to scarring would be permitted. The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color guides or such other tests as determined appropriate by the inspection agency.

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

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 917.442 is amended by adding and reserving a new paragraph (c) and adding paragraph (d) to read as follows:

##### **§ 917.442 California Peach Container and Pack Regulation.**

\* \* \* \* \*

(d) During the period April 1 through November 23, 1996, each container or package when packed with peaches meeting CTFA Utility requirements, shall bear the words "CTFA Utility" marked on all containers and packages, along with all other required container markings, in letters of 3/4 inch minimum height on the principal display panel. Additional consumer bags or packages must also be clearly marked on the bag or package as "CTFA Utility" along with other required markings.

3. Section 917.459 is amended by revising paragraph (a)(1) 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, 1996, any handler may handle peaches if such peaches meet CTFA Utility quality requirements. The term CTFA Utility means peaches that have been inspected by the Federal or Federal State Inspection Service and meet the requirements of the U.S. No. 2 grade as defined in the United States Standards for Grades of Peaches [7 CFR 51.1210 through 51.1223], except that misshapened fruit and fruit with serious damage due to scarring would be permitted. The Federal or Federal-State Inspection Service shall make final determinations on maturity through the use of color chips or other tests as determined appropriate by the inspection agency.

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Dated: February 26, 1996.

Sharon Bomer Lauritsen,  
Deputy Director, Fruit and Vegetable Division.  
[FR Doc. 96–4871 Filed 3–1–96; 8:45 am]

BILLING CODE 3410–02–P

#### **DEPARTMENT OF TRANSPORTATION**

##### **Coast Guard**

##### **33 CFR Part 100**

[CGD01–95–168]

RIN 2115–AE46

**Special Local Regulation: World's Fastest Lobster Boat Race, Moosabec Reach, Jonesport, ME**

AGENCY: Coast Guard, DOT.