

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV03-916-2 IFR]

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

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

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

**SUMMARY:** This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements for fresh shipments of these fruits, beginning with 2003 season shipments. This rule also continues a modification of the requirements for placement of Federal-State Inspection Service lot stamps for the 2003 season, establishes a net weight for a style of containers and exempts those containers from the well-filled requirement, and revises the weight-count standards for Peento type peaches. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule would enable handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

**DATES:** Effective April 10, 2003. Comments received by June 9, 2003, will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and

Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491; Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing 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 of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, lot stamping, grade, size, maturity, container, container marking, 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 3, 2002, and unanimously recommended that these handling requirements be revised for the 2003 season, which begins about the first or second week of April. The changes: (1) Continue the lot stamping requirements which have been in effect since the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2003 season; (3) revise weight-count standards for the Peento type peaches; (4) establish a net weight for all five-down containers and exempt those containers from the well-filled requirement; and (5) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices.

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 committees held

such meetings on December 3, 2002. USDA 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 because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, preliminary estimates indicate that the 2003 crop will be similar in size and characteristics to the 2002 crop, which totaled 23,230,000 containers of nectarines and 22,124,000 containers of peaches.

#### 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 all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and before shipment to show that the fruit has been inspected. These requirements apply except for containers that are loaded directly onto railway cars, exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the inspector's corresponding working papers or field notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified to by the inspector at the time of the inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp number and date codes to trace fruit in the container back to the orchard from which it was harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the

"trace back" effort, as it is called, would be jeopardized.

Over the last few years, several new containers have been introduced for use by nectarine and peach handlers. These containers are returnable plastic containers (RPCs). Use of RPCs may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional, single-use, containers. Fruit is packed in the containers by the handler, delivered to the retailer, emptied, and returned to a central clearinghouse for cleaning and redistribution to the handler. However, because these containers are designed for reuse, RPCs do not support markings that are permanently affixed to the container. All markings must be printed on cards that slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient reuse of RPCs.

The cards are a continuing concern for the inspection service and the industries because of their unique portability. There is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industries' "trace back" program.

To address this concern since the 2000 season, the committees have annually recommended that pallets of inspected fruit in RPCs be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on the container. In this way, noted the committees, an audit trail would be created, confirming that the lot stamp number on each container on the pallet corresponds to the lot stamp number on the pallet tag.

The committees and the inspection service presented their concerns to the manufacturers of these types of containers prior to the 2000 season. At that time, one manufacturer indicated a willingness to address the problem by offering an area on the principal display panel where the container markings would adhere to the container. Another possible improvement discussed was for an adhesive for the current style of containers which would securely hold the cards with the lot stamp numbers, yet would be easy for the clearinghouse to remove when the containers are washed. However, the changes offered by the manufacturers were not available for use in the previous three seasons, and there is no assurance that they will be available for the 2003 season.

In a meeting of the Stone Fruit Grade and Size Subcommittee on November 6, 2002, it was determined that given the different styles and configurations of RPCs available, having a standardized display panel or a satisfactory adhesive for placement of the cards may not be realistic and the industry needed to continue the lot stamping requirements in place since the 2000 season.

For those reasons, the subcommittee unanimously recommended to the committees that the regulation in effect since the 2000 season requiring lot stamp numbers on USDA-approved pallet tags, as well as on individual containers on a pallet, be again required for the 2003 season. The committees, in turn, recommended unanimously that such requirement be extended for the 2003 season, as well.

Thus, §§ 916.115 and 917.150 will be amended to require the lot stamp number to be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet, during the 2003 season.

#### Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize establishment of container, pack, and marking requirements for shipments of nectarines and peaches, respectively. Under §§ 916.350 and 917.442 of the orders, the specifications of container markings, net weights, well-filled requirements, weight-count standards for various sizes of nectarines and peaches, and lists of standard containers are provided.

The committees unanimously recommended that a uniform net weight be established for all "five down" boxes (commonly referred to as "Euro" boxes), and that all such containers be exempted from the well-filled requirement. Currently, the net weight requirement of 31 pounds for "five down" boxes and the exemption from the well-filled requirement applies only to RPCs. However, as a handler noted at one meeting, the industry uses boxes of the same "footprint" (length and width dimensions) as the RPCs that are made of more traditional materials, such as corrugated cardboard. "Five down" boxes are containers that lay in a pattern of five containers per layer on each pallet. In other words, each layer of boxes on a pallet contains only five Euro boxes. Other container sizes and footprints may result in nine boxes per layer, etc.

Since applying the well-filled requirements to any five down Euro box

might result in bruising or other damage to fruit packed in it, the Stone Fruit Grade and Size Subcommittee voted unanimously to extend the current requirements applicable to RPCs with regard to net weight and well-filled requirements to all five down Euro containers. This would ensure that all five down Euro containers have a uniform net weight and ensure that the fruit in those containers is handled in such a way to minimize damage.

At the December 3, 2002, meeting, the NAC and PCC also unanimously recommended that all five down Euro boxes have an established net weight of 31 pounds, which is to be printed on the end of the container, and that those containers, like the RPCS, be exempt from the well-filled requirement.

*Nectarines:* For the reasons stated above, paragraphs (a)(1) and (a)(8) of § 916.350 are revised to refer to all five down Euro containers. Such changes will ensure that all five down Euro containers of nectarines are a net weight of 31 pounds and are exempt from the well-filled requirement. The container markings shall be placed on one outside end of the container in plain sight and in plain letters.

*Peaches:* For the reasons stated above, paragraphs (a)(1) and (a)(9) of § 917.442 are revised to refer to all five down Euro containers. Such changes will ensure that all five down Euro containers of peaches are a net weight of 31 pounds and are exempt from the well-filled requirement. The markings shall be placed on one outside end of the container in plain sight and in plain letters.

#### **Weight-Count Standards for Peaches**

Under the requirements of § 917.41 of the order, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches, which may be packed in tray-packed containers, are converted to volume-filled containers. Under § 917.442 of the order's rules and regulations, weight-count standards are established for all varieties of peaches as Tables 1, 2, and 3 of paragraph (a)(5)(iv).

According to the PCC, the Peento type peaches have traditionally been packed in trays because they have been marketed as a premium variety, which justified the added packing costs.

However, as the volume has increased, the value of this peach has diminished in the marketplace, and some handlers converted their tray-packed containers of Peento types to volume-filled containers. Prior to the 2002 season, weight-count standards established for peaches and nectarines

were developed for round fruit. Peento type peaches are shaped like donuts, and those weight-count standards were inappropriate. In an effort to standardize the conversion from tray-packing to volume-filling for Peento type peaches, the committee staff conducted weight-count surveys during the 2001 season to determine the most optimum weight-counts for the varieties at varying fruit sizes.

As a result, a new weight-count table applicable to only the Peento type peaches was added for the 2002 season. However, during the 2002 season, the committee staff continued to conduct further weight-count surveys to ensure that the Peento type peaches packed in volume-filled containers meet the weight-count standards established for tray-packed fruit. During those studies, the committee staff learned that very large Peento type peaches that were not previously converted from tray-packs to volume-filled containers were being packed in volume-filled containers and did not meet the weight-count standards.

For this reason, Table 3 of paragraph (a)(5)(iv) in § 917.442 is being revised to include weight-count standards for two of the larger peach sizes, sizes 32 and 30. Table 3 will also be corrected with regard to the maximum number of fruit in a 16-pound sample for sizes 54 and 50. Also, the maximum number of fruit in a 16-pound sample of size 54 Peento type peaches currently is listed as 77 peaches, and the maximum number of size 50 Peento type peaches is listed as 80 peaches. The maximum numbers of fruit for these sizes were inadvertently reversed, and will be corrected to indicate that the maximum number of fruit in a 16-pound sample of size 54 Peento type peaches is 80, and the maximum number of fruit in a 16-pound sample of size 50 Peento type peaches is 77.

#### **Grade and 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 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except for a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not "serious damage."

This rule revises §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2003 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 have been permitted each season since 1996.

Studies conducted by the NAC and PCC in 1996 indicated that some consumers, retailers, and foreign importers found the lower-quality fruit acceptable in some markets. When shipments of "CA Utility" nectarines were first permitted in 1996, they represented 1.1 percent of all nectarine shipments, or approximately 210,000 containers. Shipments of "CA Utility" nectarines reached a high of 5.3 percent (1,239,000 containers) during the 2002 season, but usually represent approximately 4 percent of total nectarine shipments. Shipments of "CA Utility" peaches totaled 1.9 percent of all peach shipments, or approximately 366,000 containers, during the 1996 season. Shipments of "CA Utility" peaches reached a high of 5.6 percent of all peach shipments (1,231,000 containers) during the 2002 season, but usually represent approximately 4 percent of total peach shipments.

Handlers have also commented that the availability of the "CA Utility" quality option lends flexibility to their packing operations. They have noted that they now have the opportunity to remove marginal nectarines and peaches from their U.S. No. 1 containers and place this fruit in containers of "CA Utility." This flexibility, the handlers note, results in better quality U.S. No. 1 packs without sacrificing fruit.

The Stone Fruit Grade and Size Subcommittee met on November 6, 2002, and did not make a recommendation to the NAC and PCC to continue shipments of "CA Utility" quality nectarines and peaches. Some subcommittee members raised concerns about "CA Utility" quality fruit, including concerns that growers' returns on "CA Utility" quality fruit are lower. The issue of the authorized tolerance of 40 percent U.S. No. 1 fruit in each container of "CA Utility" quality was raised, and there was some discussion that the tolerance should be reduced so that less U.S. No. 1 fruit would be in a box of "CA Utility" quality fruit. However, ultimately no decisions were made by the subcommittee as the result of these discussions.

Subsequently, however, the NAC and PCC voted unanimously at their

December 3, 2002, meetings to authorize continued shipments of "CA Utility" quality fruit during the 2003 season.

Accordingly, based upon the recommendations, paragraph (d) of §§ 916.350 and 917.442, and paragraph (a)(1) of §§ 916.356 and 917.459 are revised to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2003 season, on the same basis as shipments since the 2000 season.

#### Maturity Requirements

In §§ 916.52 and 917.41, authority is provided 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. For most varieties, "well-matured" determinations for nectarines and peaches 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 upon the most-recent information available on the individual characteristics of each nectarine and peach 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 2003 handling regulations are the same as those that appeared in the 2002 handling regulations with a few exceptions. Those exceptions are explained in this rule.

**Nectarines:** Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for four varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Mango variety to be regulated at the B maturity guide, for the Honey Royale and the Sunny Red varieties at the J maturity guide, and the Prince Jim variety to be regulated at the L maturity guide.

The NAC recommended these maturity guide 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.

**Peaches:** Requirements for "well-matured" peaches are specified in

§ 917.459 of the order's rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for six peach varieties. Specifically, SPI recommended adding maturity guides for the September Flame variety to be regulated at the I maturity guide; Autumn Red, Magenta Queen, Pretty Lady, and the Prima Gattie 10 varieties to be regulated at the J maturity guide; and the Golden Princess variety to be regulated at the L maturity guide.

In addition, SPI requested that the language in paragraph (a)(1)(vi) of § 917.459 be revised with regard to the Joanna Sweet variety. Currently, the Joanna Sweet variety is required to have a one hundred percent surface color requirement for meeting the assigned color chip. SPI requested that the language be changed to reflect that any of the fruit surface that is not red shall meet the color guide established for the variety, including any color found in the stem cavity. This recommendation is based upon SPI's experience with the maturity characteristics of this variety.

Thus, paragraph (a)(1)(iv) of § 917.459 will be revised to reflect this recommendation.

The PCC recommended these maturity guide 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.

**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, which improves both size and maturity of the fruit. Acceptable fruit size provides greater consumer satisfaction and promotes repeat purchases; and, therefore, increases returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, also a benefit to producers and handlers.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes attained by the regulated varieties and those varieties with the potential to become regulated, and determine whether revisions and additions to the size requirements are appropriate.

**Nectarines:** Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through

(a)(9). This rule revises § 916.356 to establish variety-specific minimum size requirements for four varieties of nectarines that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2002 season. This rule also removes the variety-specific minimum size requirements for 11 varieties of nectarines whose shipments fell below 5,000 containers during the 2002 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Red Roy variety of nectarines, recommended for regulation at a minimum size 88. Studies of the size ranges attained by the Red Roy variety revealed that 100 percent of the containers met the minimum size of 88 during the 2002 season. Sizes ranged from size 40 to size 88, with 1.5 percent of the fruit in the 40 sizes, 22.2 percent of the packages in the 50 sizes, 55.8 percent in the 60 sizes, 14.6 percent in the 70 sizes, 5.4 in the 80 sizes, with .5 percent in the size 88.

A review of other varieties with the same harvesting period indicated that the Red Roy variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Red Roy variety in the variety-specific minimum size regulation at a minimum size 88 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical 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 and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(4) of § 916.356 is revised to include the Red Roy variety; and the introductory text of paragraph (a)(6) of § 916.356 is revised to include the Candy Gold, Candy Sweet, and Honey Royale nectarine varieties.

This rule also revises the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to remove 11 varieties from the variety-specific minimum size

requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2002 season. Specifically, the introductory text of paragraph (a)(3) of § 916.356 is revised to remove the Johnny's Delight and May Jim nectarine varieties; the introductory text of paragraph (a)(4) of § 916.356 is revised to remove the Scarlet Jewels and Star Brite nectarine variety; and the introductory text of paragraph (a)(6) of § 916.356 is revised to remove the Arctic Gold, Kay Diamond, Prima Diamond XVI, Spring Diamond, Spring Red, Summer Beaut, and Sunecight (Super Star) nectarine varieties.

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

*Peaches:* Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific minimum size requirements for 12 peach varieties that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2002 season. This rule also removes the variety-specific minimum size requirements for 10 varieties of peaches whose shipments fell below 5,000 containers during the 2002 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Springtreat (60EF32) variety of peaches, which was recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Springtreat (60EF32) variety revealed that 100 percent of the containers met the minimum size of 80 during the 2002 season. The sizes ranged from size 50 to size 80, with 8.2 percent of the containers meeting the size 50, 41.2 percent meeting the size 60, 37.6 percent meeting the size 70, and 12.9 percent meeting the size 80.

A review of other varieties with the same harvesting period indicated that the Springtreat (60EF32) variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Springtreat (60EF32) variety in the variety-specific minimum size

regulation at a minimum size 80 is appropriate. This recommendation, as with all other size recommendations for peaches, results from size studies conducted over a three-year period.

Historical 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 and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(5) of § 917.459 is revised to include the Happy Dream, Magenta Queen, Springtreat (60EF32), and Spring Flame 21 peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised to include the August Flame, Henry II, June Flame, Pink Giant, Prima Peach XV, Red Giant, Snow Beauty, and Snow Princess peach varieties.

This rule also revises the introductory text of paragraph (a)(3) of § 917.459 to remove the Topcrest peach variety; revises the introductory text of paragraph (a)(5) of § 917.459 to remove the White Dream peach variety; and revises the introductory paragraph (a)(6) of § 917.459 to remove the Cal Red, Champagne, Flaming Dragon, Garnet Jewel, Lacey, Madonna Sun, Morning Lord, and Red Sun peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties was produced during the 2002 season.

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

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

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

handlers, and consumers of fresh California nectarines and peaches.

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

#### **Initial Regulatory Flexibility Analysis**

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

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

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 121.201) as those whose annual receipts are less than \$5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than \$750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. For the 2002 season, the committees' staff estimated that the average handler price received was \$9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 556,000 containers to have annual receipts of \$5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2002

season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. For the 2002 season, the committees' estimated the average producer price received was \$4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of \$750,000. Given data maintained by the committees' staff and the average producer price received during the 2002 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry. With an average producer price of \$4.00 per container or container equivalent, and a combined packout of nectarines and peaches of 45,354,000 containers, the value of the 2002 packout level is estimated to be \$181,416,000. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimate of average revenue per producer of about \$101,000 from the sales of peaches and nectarines.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on December 3, 2002, and unanimously recommended that these handling requirements be revised for the 2003 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Continue the lot stamping requirements for reusable plastic containers that have been in effect since the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2003 season; (3) revise weight-count standards for the Peento type peaches; (4) establish a net weight for all five-down containers and exempt those containers from the well-filled requirement; and (5) revise varietal maturity, quality, and size requirements to reflect changes in growing and marketing practices.

This rule authorizes continuation of the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that have been in effect for such

containers since the 2000 season for nectarine and peach shipments. The modified requirements of §§ 916.115 and 917.150 mandated that the lot stamp numbers be printed on a USDA-approved pallet tag, in addition to the requirement that the lot stamp number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet. Continuation of such requirements for the 2003 season would help the inspection service safeguard the identity of inspected and certified containers of nectarines and peaches, and would help the industry by keeping in place the information necessary to facilitate their "trace-back" program.

The Stone Fruit Grade and Size Subcommittee met on November 6, 2002, and considered possible alternatives to this action. Other alternatives were rejected because it was determined that given the different styles and configurations of RPCs available, having a satisfactory adhesive for placement of the cards may not be realistic, at least for the time being, given the reluctance of box manufacturers to respond to the industry's requests.

For those reasons, the subcommittee and the committees unanimously recommended extending the requirement for the lot stamp number to be printed on the cards on each container and for each pallet to be marked with a USDA-approved pallet tag, also containing the lot stamp number. Such safeguards are intended to ensure that all the containers on each pallet have been inspected and certified in the event a card on an individual container or containers is removed, misplaced, or lost.

The Stone Fruit Grade and Size Subcommittee also discussed the 31-pound net weight requirement for all five down Euro containers at its meeting on November 6, 2002. At that time, it was noted by one handler that the current net weight of 31 pounds and exemption from the well-filled requirement are applicable to only the RPCs. The handler noted, however, that the industry also currently uses five down Euro boxes that are not RPCs. He further suggested that all five down Euro boxes should be required to meet the net weight of 31 pounds and be exempted from the requirement to be well-filled. The subcommittee agreed and unanimously recommended the change to the committees. The alternative would have meant that only the RPC five down Euro containers would have been subject to the minimum regulated with a net weight of 31 pounds, and exempted from the

requirement to be well-filled. In consideration of uniformity for five down Euro containers, this alternative was rejected.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of "CA Utility" quality nectarines and peaches as an experiment during the 1996 season only. Such shipments have subsequently been permitted each season. Since 1996, shipments of "CA Utility" have ranged from 1 to 5 percent of total nectarine and peach shipments. This rule authorizes continued shipments of "CA Utility" quality nectarines and peaches during the 2003 season.

The Grade and Size Subcommittee met on November 6, 2002, and briefly discussed "CA Utility" quality nectarines and peaches. The subcommittee ultimately did not make a recommendation to the NAC and PCC regarding continued shipments of "CA Utility" quality nectarines and peaches. The subcommittee did, however, request that the results of a grower survey on attitudes toward "CA Utility" quality fruit conducted in December of 2001 by the committees be provided to the committees at the December 3, 2002, meeting.

However, at their meetings on December 3, 2002, the NAC and PCC unanimously recommended to continue to allow shipments of "CA Utility" quality nectarines and peaches.

Sections 916.350 and 917.442 establish container, pack, and marking requirements for shipments of nectarines and peaches, respectively. This rule makes changes to the pack and container marking requirements of the orders' rules and regulations to establish a net weight of 31 pounds for all types of five down Euro boxes, and exempt such boxes from the well-filled requirement.

Section 917.442 also establishes minimum weight-count standards for containers of peaches. Under these requirements, containers of peaches are required to meet weight-count standards for a maximum number of peaches in a 16-pound sample when such peaches are packed in a tray-packed container. Those same maximum numbers of peaches are also applicable to volume-filled containers, based upon the tray-packed standard. The weight-count standard was developed so handlers may convert tray-packed peaches to volume-filled containers and be assured that fruit of a specific size in the volume-filled container will be the same as that in the tray-packed container.

When the Stone Fruit Grade and Size Subcommittee met, they discussed the recent changes in the packing and

marketing of Peento type peaches. When these varieties were first introduced and marketed, they were generally tray-packed because they were a novel and premium product. As production has increased, the value of the varieties has diminished in the marketplace, and some handlers have converted their tray-packed containers of Peento type peaches to volume-filled containers. Weight-count standards provide a basis for volume filling containers of other varieties of peaches. Currently, Peento type peaches are regulated under a new table of weight-count standards applicable to only these uniquely-shaped peaches.

The staff continued to conduct weight-count studies during the 2002 season so that weight-count standards could be perfected, thus ensuring that all handlers are handling a standard maximum number of peaches in a 16-pound sample. During the studies, the staff learned that all available sizes of Peento type peaches were being packed in volume-filled containers, including sizes for which there were not yet minimum weight-count standards. For that reason, modifications to Table 3 in paragraph (a)(5)(vi) of § 917.442 are made to include additional sizes 30 and 32, which are larger-sized Peento peaches.

Sections 916.356 and 917.459 establish minimum maturity levels. This rule makes annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (e.g., color chips), as recommended by Shipping Point Inspection. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect refinements in measurements of the maturity characteristics of nectarines and peaches as experienced over previous seasons' inspections. Adjustments in the guides utilized ensure that fruit has met an acceptable level of maturity, ensuring consumer satisfaction while benefiting nectarine and peach producers and handlers.

Currently, in § 916.356 of the nectarine order's rule and regulations, and in § 917.459 of the peach order's rule and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2003 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for

a longer period of time. This increased growing time not only improves maturity, but also increases fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, fostering repeat purchases. Such improved consumer satisfaction and repeat purchases benefit both producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the NAC and PCC based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' practices and represent a significant change in the regulations as they currently exist; would ultimately increase the amount of less acceptable fruit being marketed to consumers; and, thus, would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

The committees make recommendations regarding all the revisions in handling and lot stamping requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Stone Fruit Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years' of experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Stone Fruit Grade and Size Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations. In addition, minutes of all subcommittee meetings are distributed to committee members and others who have requested them, thereby increasing

the availability of information within the industry.

Each of the recommended handling requirement changes for the 2003 season is expected to generate financial benefits for producers and handlers through increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

This rule 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.

USDA 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 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually during the last week of November or first week of December. Like all committee meetings, the December 3, 2002, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at a subcommittee meeting held on November 6, 2002. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on changes to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments

received will be considered prior to finalization of this rule.

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

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible, since shipments of these fruits are expected to begin in early April; (2) this rule relaxes grade requirements for nectarines and peaches; (3) the committees unanimously recommended these changes at public meetings and interested persons had opportunities to provide input at these meetings; and (4) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

**List of Subjects**

*7 CFR Part 916*

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

*7 CFR Part 917*

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

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

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

Authority: 7 U.S.C. 601-674.

**PART 916—NECTARINES GROWN IN CALIFORNIA**

■ 2. Section 916.115 is revised to read as follows:

**§ 916.115 Lot stamping.**

Except when loaded directly into railway cars, exempted under § 916.110, or for nectarines mailed directly to consumers in consumer packages, all exposed or outside containers of nectarines, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment,

with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 916.55: *Provided*, That for the period April 1 to October 31, 2003, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

■ 3. Section 916.350 is amended by:

- A. Revising paragraph (a)(1);
- B. Revising paragraph (a)(8); and
- C. Revising paragraph (d) to read as follows:

**§ 916.350 California nectarine container and pack regulation.**

(a) \* \* \*

(1) Such nectarines, when packed in any closed package or container, except master containers of consumer packages, individual consumer packages, and five down Euro containers, shall conform to the requirements of standard pack: *Provided*, That nectarines in any such volume-filled container need only be filled to within one-inch of the top of the container.

\* \* \* \* \*

(8) Each five down Euro container of loose-filled nectarines shall bear on one outside end in plain sight and in plain letters the words “31 pounds net weight.”

\* \* \* \* \*

(d) During the period April 1 through October 31, 2003, each container or package when packed with nectarines meeting the “CA Utility” quality requirements, shall bear the words “CA Utility,” along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as “CA Utility,” along with all other required markings, in letters at least 3/8 inch in height.

■ 4. Section 916.356 is amended by:

- A. Revising paragraph (a)(1) introductory text;
- B. Revising Table 1; and
- C. Revising the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) to read as follows:

**§ 916.356 California nectarine grade and size regulation.**

(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 all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 1 through October 31, 2003, any handler may handle nectarines if such nectarines meet “CA Utility” quality requirements. The term “CA Utility” means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

\* \* \* \* \*

(iv) \* \* \*

TABLE 1

Column A variety	Column B maturity guide
Alshir Red .....	J
April Glo .....	H
August Glo .....	L
August Lion .....	J
August Red .....	J
Aurelio Grand .....	F
Autumn Delight .....	L
Autumn Grand .....	L
Big Jim .....	J
Diamond Bright .....	J
Diamond Jewel .....	L
Diamond Ray .....	L
Earliglo .....	I
Early Diamond .....	J
Early May .....	F
Early May Grand .....	H
Early Red Jim .....	J
Early Sungrand .....	H
Fairlane .....	L
Fantasia .....	J
Firebrite .....	H
Fire Sweet .....	J
Flame Glo .....	L
Flamekist .....	L
Flaming Red .....	K
Flavortop .....	J
Grand Diamond .....	L
Gran Sun .....	L
Honey Blaze .....	J
Honey Kist .....	I

TABLE 1—Continued

Column A variety	Column B maturity guide
Honey Royale .....	J
Independence .....	H
July Red .....	L
June Brite .....	I
Juneglo .....	H
Kay Diamond .....	L
King Jim .....	L
Kism Grand .....	J
Late Le Grand .....	L
Late Red Jim .....	J
Mango .....	B
May Diamond .....	I
May Fire .....	H
Mayglo .....	H
May Grand .....	H
May Jim .....	I
May Kist .....	H
May Lion .....	J
Mid Glo .....	L
Moon Grand .....	L
Niagra Grand .....	H
P-R Red .....	L
Prince Jim .....	L
Prima Diamond XIII .....	L
Red Delight .....	I
Red Diamond .....	L
Red Fred .....	J
Red Free .....	L
Red Glen .....	J
Red Glo .....	I
Red Grand .....	H
Red Jewel .....	L
Red Jim .....	L
Red May .....	J
Rio Red .....	L
Rose Diamond .....	J
Royal Delight .....	F
Royal Giant .....	I
Royal Glo .....	I
Ruby Diamond .....	L
Ruby Grand .....	J
Ruby Sun .....	J
Ruby Sweet .....	J
Scarlet Red .....	K
September Free .....	J
September Grand .....	L
September Red .....	L
Sheri Red .....	J
Sparkling June .....	L
Sparkling May .....	J
Sparkling Red .....	L
Spring Bright .....	L
Spring Diamond .....	L
Spring Ray .....	L
Spring Sweet .....	J
Spring Red .....	H
Star Brite .....	J
Summer Beaut .....	H
Summer Blush .....	J
Summer Bright .....	J
Summer Diamond .....	L
Summer Fire .....	L
Summer Grand .....	L
Summer Lion .....	L
Summer Red .....	L
Sunburst .....	J
Sun Diamond .....	I
Sunecteight (Super Star) .....	G
Sun Grand .....	G
Sunny Red .....	J

TABLE 1—Continued

Column A variety	Column B maturity guide
Tom Grand .....	L
Zee Glo .....	J
Zee Grand .....	I

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

\* \* \* \* \*

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Crimson Baby, Earliglo, Early Diamond, Grand Sun, or May Kist variety nectarines unless:

\* \* \* \* \*

(4) Any package or container of Arctic Rose, Arctic Star, Diamond Bright, Juneglo, June Pearl, Kay Glo, Kay Sweet, May Diamond, May Grand, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Delight, Red Glo, Red Roy, Rose Diamond, Royal Glo, Sparkling May, White Sun, or Zee Grand variety nectarines unless:

\* \* \* \* \*

(6) Any package or container of Alta Red, Arctic Blaze, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Pearl, August Red, August Snow, Big Jim, Bright Pearl, Bright Sweet, Candy Gold, Candy Sweet, Diamond Ray, Early Red Jim, Firebrite, Fire Pearl, Fire Sweet, Flame Glo, Flaming Red, Grand Diamond, Grand Pearl, Grand Sweet, Honey Blaze, Honey Kist, Honey Royale, July Pearl, July Red, June Lion, Kay Pearl, King Jim, Late Red Jim, P-R Red, Prima Diamond IX, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Prima Diamond XXVIII, Red Diamond, Red Glen, Red Jim, Regal Pearl, Regal Red, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, Scarlet Red, September Bright (26P-490), September Free, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Sweet, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunny Red, Sun Valley Sweet, Sweet White, Terra White, or Zee Glo variety nectarines unless:

\* \* \* \* \*

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

■ 5. Section 917.150 is revised to read as follows:

**§ 917.150 Lot stamping.**

Except when loaded directly into railway cars, exempted under § 917.143, or for peaches mailed directly to consumers in consumer packages, all exposed or outside containers of peaches, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 917.45: *Provided*, That for the period April 1 through November 23, 2003, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

- 5. Section 917.442 is amended by:
- A. Revising paragraph (a)(1);
- B. Revising Table 3;
- C. Revising paragraph (a)(9); and
- D. Revising paragraph (d) to read as follows:

**§ 917.442 California peach container and pack regulation.**

(a) \* \* \*

(1) Such peaches, when packed in any closed package or container, except master containers of consumer packages, individual consumer packages, and five down Euro containers, shall conform to the requirements of standard pack: *Provided*, That peaches in any such volume-filled container need only be filled to within one-inch of the top of the container.

\* \* \* \* \*

(5) \* \* \*

(iv) \* \* \*

TABLE 3.—WEIGHT-COUNT STANDARDS FOR PEENTO TYPE PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A— Tray pack size designation	Column B— Maximum number of peaches in a 16-pound sample
80 .....	140
72 .....	128
70 .....	111
64 .....	99
60 .....	93
56 .....	87
54 .....	80
50 .....	77
48 .....	74
44 .....	70

TABLE 3.—WEIGHT-COUNT STANDARDS FOR PEENTO TYPE PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS—Continued

Column A— Tray pack size designation	Column B— Maximum number of peaches in a 16-pound sample
42 .....	68
40 .....	59
36 .....	53
34 .....	50
32 .....	39
30 .....	32

\* \* \* \* \*

(9) Each five down Euro container of loose-filled peaches shall bear on one outside end in plain sight and in plain letters the words “31 pounds net weight.”

\* \* \* \* \*

(d) During the period April 1 through November 23, 2003, each container or package when packed with peaches meeting “CA Utility” quality requirements, shall bear the words “CA Utility,” along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as “CA Utility,” along with all other required markings, in letters at least 3/8 inch in height.

- 7. Section 917.459 is amended by:
- A. Revising the introductory text of paragraph (a)(1);
- B. Revising the introductory text of paragraph (a)(1)(iv);
- C. Revising Table 1; and
- D. Revising the introductory text of paragraphs (a)(3), (a)(5), and (a)(6) 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 further*, That peaches of the Peento type shall be permitted a 10 percent tolerance for healed, non-serious, blossom-end growth cracks: *Provided further*, That during the period April 1 through November 23, 2003, any handler may handle peaches if such peaches meet “CA Utility” quality requirements. The

term “CA Utility” means that not more than 40 percent of the peaches in any container meet or exceed the requirement of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

(iv) The Federal or Federal-State Inspection Service shall make the final determinations on maturity through the use of color chips or other tests as determined appropriate by the inspection agency. The Federal or Federal-State Inspection Service will use the maturity guides listed in Table 1 in making maturity determinations for the specified varieties when inspecting to the “well matured” level of maturity. For these varieties, not less than 90 percent of any lot shall meet the color guide established for the variety, and an aggregate area of not less than 90 percent of the fruit surface shall meet the color guide established for the variety, except that for the Joanna Sweet variety of peaches, any of the fruit surface that is not red shall meet the color guide established for the variety, including any color noted in the stem cavity. For varieties not listed, the Federal or Federal-State Inspection Service will use such tests as it deems proper. A variance for any variety from the application of the maturity guides specified in Table 1 may be granted during the season to reflect changes in crop, weather, or other conditions that would make the specified guides an inappropriate measure of “well matured.”

TABLE 1

Column A variety	Column B maturity guide
Angelus .....	I
August Lady .....	L
Autumn Flame .....	J
Autumn Gem .....	I
Autumn Lady .....	H
Autumn Red .....	J
Autumn Rose .....	H
Blum's Beauty .....	G
Brittney Lane .....	J
Cal Red .....	I
Carnival .....	I
Cassie .....	H
Coronet .....	E
Crimson Lady .....	J
Crown Princess .....	J
David Sun .....	I
Diamond Princess .....	J
Earlrich .....	H

TABLE 1—Continued

Column A variety	Column B maturity guide
Earliltreat .....	H
Early Delight .....	H
Early Elegant Lady .....	L
Early May Crest .....	H
Early O'Henry .....	I
Early Top .....	G
Elberta .....	B
Elegant Lady .....	L
Fairtime .....	G
Fancy Lady .....	J
Fay Elberta .....	C
Fire Red .....	I
First Lady .....	D
Flamecrest .....	I
Flavorcrest .....	G
Flavor Queen .....	H
Flavor Red .....	G
Franciscan .....	G
Goldcrest .....	H
Golden Princess .....	L
Honey Red .....	G
Joanna Sweet .....	J
John Henry .....	J
July Elberta .....	C
June Lady .....	G
June Pride .....	J
Kern Sun .....	H
Kingscrest .....	H
Kings Lady .....	I
Kings Red .....	I
Lacey .....	I
Lady Sue .....	L
Late Ito Red .....	L
Madonna Sun .....	J
Magenta Queen .....	J
May Crest .....	G
May Sun .....	I
Merrill Gem .....	G
Merrill Gemfree .....	G
Morning Lord .....	J
O'Henry .....	I
Pacifica .....	G
Pretty Lady .....	J
Prima Gattie 8 .....	L
Prima Gattie 10 .....	J
Queencrest .....	G
Ray Crest .....	G
Red Dancer (Red Boy) .....	I
Redhaven .....	G
Red Lady .....	G
Redtop .....	G
Regina .....	G
Rich Lady .....	J
Rich May .....	H
Rich Mike .....	H
Rio Oso Gem .....	I
Royal Lady .....	J
Royal May .....	G
Ruby May .....	H
Ryan Sun .....	I
September Flame .....	I
September Sun .....	I
Sierra Crest .....	H
Sierra Lady .....	I
Sparkle .....	I
Sprague Last Chance .....	L
Springcrest .....	G
Spring Delight .....	G
Spring Lady .....	H
Springtreat .....	I

TABLE 1—Continued

Column A variety	Column B maturity guide
Summer Lady .....	L
Summerset .....	I
Summer Zee .....	L
Suncrest .....	G
Supechfour (Amber Crest) .....	G
Super Rich .....	H
Sweet Dream .....	J
Sweet Gem .....	J
Sweet Mick .....	J
Sweet Scarlet .....	J
Topcrest .....	H
Tra Zee .....	J
Vista .....	J
Willie Red .....	G
Zee Lady .....	L

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

\* \* \* \* \*

(3) Any package or container of Snow Kist or Super Rich variety peaches unless:

\* \* \* \* \*

(5) Any package or container of Babcock, Bev's Red, Brittney Lane, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Happy Dream, June Lady, Kern Sun, Kingscrest, Magenta Queen, May Crest, May Sun, May Sweet, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Snow Prince, Springcrest, Spring Flame 21, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar May, Sunlit Snow (172LE81), Sweet Scarlet, Zee Diamond, 012-094, or 172LE White Peach (Crimson Snow/Sunny Snow) variety peaches unless:

\* \* \* \* \*

(6) Any package or container of August Flame, August Lady, Autumn Flame, Autumn Red, Autumn Rose, Autumn Snow, Cassie, Coral Princess, Country Sweet, Diamond Princess, Earlririch, Early Elegant Lady, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, Full Moon, Henry II, Ivory Princess, Jillie White, Joanna Sweet, John Henry, July Flame, June Flame, June Pride, Kaweah, Kings Lady, Klondike, Late Ito Red, O'Henry, Pink Giant, Pretty Lady, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXV, Prima Peach XXVII, Princess Gayle, Queen Lady, Red Dancer, Red Giant, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Flame, September Snow, September Sun, Sierra Gem, Sierra Lady, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow

Jewel, Snow King, Snow Princess, Sprague Last Chance, Spring Gem, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Supechfour (Amber Crest), Sweet Dream, Sweet Gem, Sweet Kay, Sweet September, Tra Zee, Vista, White Lady, Zee Lady, or 24-SB variety peaches unless:

\* \* \* \* \*

Dated: April 3, 2003.

**A.J. Yates,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 03-8650 Filed 4-4-03; 1:33 pm]

**BILLING CODE 3410-02-P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 993**

[Docket No. FV02-993-3 FR]

**Dried Prunes Produced in California; Revising the Regulations Pertaining to a Voluntary Prune Plum Diversion Program**

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

**ACTION:** Final rule.

**SUMMARY:** This rule changes the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Prune Marketing Committee (Committee). The changes made reflect changes in industry structure and current economic conditions, and modify administrative procedures used in connection with implementing a diversion program. These changes will provide for more timely and efficient implementation of a diversion program if recommended in the future.

**EFFECTIVE DATE:** This final rule becomes effective May 9, 2003.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237,

Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA will rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the administrative rules and regulations pertaining to a voluntary prune plum diversion program under the California prune marketing order (order). The order regulates the handling of dried prunes produced in California and is administered by the Committee. The changes made reflect changes in industry structure and current economic conditions, and modify administrative