

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 916 and 917****[Docket No. FV98-916-1 IFR]****Nectarines and Peaches Grown in California; Revision of Handling and Reporting 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 and reporting requirements for California nectarines and peaches by modifying the grade, size, maturity, and container requirements for fresh shipments of these fruits, beginning with 1998 season shipments. This rule modifies requirements for placement of Federal-State Inspection Service lot stamps, as well as establishing a single due date for handlers' shipment reports. This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits. This rule also corrects the address of the California Tree Fruit Agreement.

**DATES:** Effective April 1, 1998; comments received by June 1, 1998 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, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; Fax: (202) 205-6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487-5901, Fax: (209) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-

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

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

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

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

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

Under the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on December 4, 1997, and unanimously

recommended that these handling requirements be revised for the 1998 season, which begins April 1. The changes: (1) correct the address for the California Tree Fruit Agreement (CTFA); (2) modify the lot stamping requirements; (3) establish a single date by which handlers must file shipment reports; (4) define and provide dimensions for a new container; (5) simplify size marking requirements for consumer packages and establish marking requirements for the new container; (6) modify weight counts for early varieties; (7) authorize shipments of "CA Utility" quality fruit during the 1998 season; (8) standardize container tolerances for mature and well-matured nectarines; (9) revise varietal maturity and size requirements to reflect recent changes in growing conditions; and (10) revise the names of some patented nectarine varieties to reflect the name changes made by the patent holders.

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

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 1998 crop will be similar in size and characteristics to the 1997 crop which totaled 20,533,760 boxes of nectarines and 19,882,584 boxes of peaches.

**Communications (Peaches)**

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

The CTFA moved its offices from Sacramento to Reedley, California, thereby making the address published in this section no longer accurate. For that reason, the PCC recommended that the address for the Control Committee be changed to reflect the current location of the CTFA's offices.

### Lot Stamping Requirements

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

Lot stamp numbers are assigned to each handler by the inspection service, but control of the lot stamps is retained by the inspector assigned to each handler's packing facility. Handlers with full-time inspectors have full-time access to the lot stamp, thus ensuring that each container of nectarines and/or peaches is stamped as required. Handlers without a full-time inspector have access to the lot stamp only when the inspector is on the premises. Thus, containers packed and placed on pallets in the inspector's absence can be stamped only after the inspector returns and performs an inspection on samples of those containers. However, a new container configuration on the 40 by 48 inch metric pallet is increasingly utilized by the industry. When the new containers are stacked on the standardized pallet, the result is a nine-column configuration of stacked containers; i.e., eight outer columns surrounding a ninth, center column. The center column of containers in that configuration cannot easily be marked with the lot stamp upon the return and approval of the inspector since a portion of the outer columns have to be unstacked from the pallet to expose the containers comprising the center column. After the containers in the center column are marked with the lot stamp, the containers comprising the outer columns must be restacked on the pallet. This unstacking and restacking of containers in an effort to mark the center column of containers with the lot stamp is time-consuming and increases the handler's costs. This cost is borne solely by smaller handlers who do not pack a sufficient number of containers in a day to require the presence of a full-time inspector.

In an effort to decrease handling time and costs for smaller handlers, the NAC and PCC voted unanimously to exempt the containers in the center column of

the nine-column configuration from the requirement for a Federal-State Inspection Service lot stamp. This exemption is currently estimated to affect fewer than 10 handlers and less than 10,000 boxes of nectarines and peaches, or approximately .6 percent of handlers and less than .001 percent of the total boxes of nectarines and peaches inspected during the 1997 season. Exempting containers in this center column should still meet the intent of the orders' stamping requirements by allowing buyers and the inspection service to positively identify each inspected lot.

### Reporting Procedures

Sections 916.60 and 917.50 of the orders require shipment reports from nectarine and peach handlers to be submitted to the respective committees. Sections 916.160(b) and 917.178(b) of the orders' rules and regulations currently require that handlers report shipments of each nectarine and peach variety by the tenth day of the month following the month the varieties were shipped.

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

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

### Container Requirements

Sections 916.52 and 917.41 of the nectarine and peach orders, respectively, provide authority to fix the size, capacity, weight, dimensions, markings, or pack of containers that may be used in the packaging and handling of these fruits. Sections 916.350 and 917.442 of the orders' rules and regulations specify container and pack requirements for nectarine and peach

shipments. In part, the container requirements specify the dimensions of the boxes commonly used by handlers of nectarines and peaches. In recent years, to realize efficiencies in utilizing space, the produce industry has standardized shipment and storage of produce on a pallet measuring 40 by 48 inches. With the adoption of this pallet, some of the boxes commonly utilized by nectarine and peach handlers are being replaced by boxes which more readily conform to the new, standardized pallet. One box that is used more frequently is the No. 32 standard box, which measures 5 $\frac{3}{4}$  to 7 $\frac{1}{4}$  inches (inside dimensions) by 12 inches by 19 $\frac{3}{4}$  inches (outside dimensions). This box is commonly referred to as the "shoebox" because of its distinctive shape. The NAC and PCC believe that new boxes, such as the No. 32, will become increasingly important to the industry because of their widespread acceptance by retailers and their use in conjunction with the standardized pallet. For those reasons, the NAC and PCC voted unanimously to include the definition and dimensions of the No. 32 standard box within the orders' rules and regulations.

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

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

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

Thus, No. 32 boxes and consumer packages are required to be marked with either the size of the fruit, e.g., "88 size" or "80 size," or the count, e.g., "88 count" or "80 count," but not both, eliminating the requirement for dual markings on these containers. This is consistent with the rules and regulations of the orders and with historical practices within the nectarine and peach industry.

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

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

PCC unanimously recommended modifications to the early-season weight-count standards for five sizes of nectarines and peaches by the addition of one piece of fruit to each weight-count standard currently in effect for sizes 56 to 72. Such a change modifies Table 1 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 by adding an additional nectarine or peach, respectively, to sizes 56, 60, 64, 70, and 72. The change will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers and decrease the handling costs associated with that conversion.

#### Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures that were not "serious damage."

This rule revises § 916.350, § 916.356, § 917.442, and § 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 1998 season. ("CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements were permitted during the 1996 and 1997 seasons only.

Preliminary studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign importers found the lower quality fruit acceptable in some markets. Shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. In 1997, shipments of "CA Utility" nectarines represented 1.1 percent of all nectarines shipments, or approximately 230,000 boxes. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments, or 366,000 boxes in 1996. In 1997, shipments of "CA Utility" peaches represented 1.0 percent of all peach shipments, or approximately 217,000 boxes.

For these reasons, the NAC and PCC unanimously recommended that

shipments of "CA Utility" quality nectarines and peaches, respectively, be permitted for the 1998 season with a continuing in-house statistical review.

#### Clarification of Container Tolerances (Nectarines)

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

For those grade factors included in the U.S. Standards for Grades of Nectarines and for Grades of Peaches (standards), tolerances are provided for fruit that fail to meet those factors to allow for variations incident to proper grading and handling. Tolerances are specified for both entire lots of fruit and for individual containers within the lot. These tolerances may be modified by the orders' rules and regulations.

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

#### Maturity Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. Additionally, both orders' rules and regulations provide for a higher, "well matured" classification. For most varieties, "well-matured" fruit determinations are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most recent information available on the individual characteristics of each variety. These maturity guides established under the handling regulations of the California tree fruit

marketing orders have been codified in the Code of Federal Regulations as Table 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 1998 handling regulation are the same as those that appeared in the 1997 handling regulation with a few exceptions. Those exceptions 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 2 nectarine varieties. Specifically, Shipping Point Inspection (SPI) recommended adding maturity guides for the June Brite nectarine variety at a maturity guide of I; and the Diamond Ray nectarine variety at a maturity guide of L.

The NAC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for nectarine varieties in production.

Table 1 of paragraph (a)(1)(iv) of § 916.356 is also revised to remove 15 nectarine varieties which are no longer in production. The NAC routinely reviews the status of nectarine varieties listed in these maturity guides. The most recent review revealed that 15 of the nectarine varieties currently listed in the maturity guide have not been in production since the 1995 season. Typically, the NAC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Ama Lyn, Del Rio Rey, Gold King, Grand Stan, June Grand, Kent Grand, Le Grand, Red June, Regal Grand, Sierra Star/181-119, Spring Grand, Spring Top, Star Bright, Star Grand, and Tasty Free nectarine varieties.

In addition, the 61-61 nectarine variety is removed from all variety-specific regulations, including the requirement for 80 percent surface color, as specified in § 916.350. Similarly, the Fairlane nectarine variety is removed. The varieties will be regulated at the requirement for 90 percent surface color. With the removal of the Fairlane and 61-61 nectarine varieties, the Tom Grand nectarine variety will remain as the only variety regulated at the requirement for 80 percent surface color.

**Peaches:** Section 917.459 of the order's rules and regulations specifies

maturity requirements for fresh peaches being inspected and certified as being "well matured."

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

The PCC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for peach varieties in production.

Table 1 of paragraph (a)(1)(iv) of § 917.459 is also revised to remove 7 peach varieties which are no longer in production. The PCC routinely reviews the status of peach varieties listed in these maturity guides. The most recent review revealed that 7 of the peach varieties currently listed in the maturity guide have not been in production since the 1995 season. Typically, the PCC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Cardinal, Early Coronet, July Lady, Kearney, May Lady, Prime Crest, and Redglobe peach varieties.

#### Size Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations encourage producers to leave fruit on the tree longer. This increased growing time not only improves the size of the fruit, but also increases its maturity. Increased size also results in an increased number of packed boxes of nectarines or peaches per acre. Acceptable size fruit also provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to producers and handlers. Varieties recommended for specific size regulation have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

**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 size requirements for 10 nectarine varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1997 season. This rule also modifies the variety-specific size requirements for 3 varieties of nectarines.

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

A review of other varieties with the same harvesting period indicated that Brite Pearl was also comparable to those varieties in its size ranges. Thus, the recommendation to place the Brite Pearl nectarine variety in the variety-specific size regulation at a size 80 is appropriate. Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers of the varieties affected are invited to comment when such size recommendations are deliberated.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(4) of § 916.356 is revised to include the Diamond Bright, June Pearl, Prima Diamond IV, and Prima Diamond XIII nectarine varieties; and the introductory text of paragraph (a)(6) in § 916.356 is revised to include the August Snow, Brite Pearl, Crystal Rose, Fire Pearl, Prima Diamond XIX, and Prima Diamond XXIV nectarine varieties.

This rule also revises the introductory text of paragraph (a)(6) of § 916.356 to remove 3 nectarine varieties from the variety-specific size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1997 season. Thus, the introductory text of paragraph (a)(6) is revised to remove the Bob Grand, Kism Grand, and 80P-1135 nectarine varieties.

This rule also revises the introductory text of paragraph (a)(4) of § 916.356 to modify the identification of the Prima Diamond II nectarine variety; and revises the introductory text of paragraph (a)(6) of § 916.356 to modify the identification of the Prima Diamond IV, Prima Diamond VII, Prima Diamond VIII, and 424-195 nectarine varieties. The names have been changed as follows: Prima Diamond II has been

changed to Prima Diamond IV, Prima Diamond IV has been changed to Prima Diamond IX, Prima Diamond VII has been changed to Prima Diamond XVI, Prima Diamond VIII has been changed to Prima Diamond XVIII, and 424-195 has been changed to Late How Red, respectively. Such changes are done routinely when the holder of a patented variety of nectarines changes the variety's name. For that reason, all references to these varieties have been changed.

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

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

*Peaches:* Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(5), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific size requirements for 10 peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1997 season. This rule adds one paragraph to § 917.459(a), and redesignates the other paragraph numbers. Current paragraphs (a)(2), (a)(3), (a)(4), (a)(5) are redesignated as paragraphs (a)(3), (a)(4), (a)(5), and (a)(6), while a new paragraph (a)(2) is added. Paragraph (a)(2) of § 917.459 is used to regulate peaches at a minimum size 96. A conforming change is required at paragraphs (b) and (c) which refer to these redesignated paragraphs.

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

A review of other varieties of the same harvesting period indicated that Spring Snow was also comparable to those varieties in its size ranges. Thus, the recommendation to place the Spring Snow peach variety in the variety-specific size regulation at a size 80 is

appropriate. Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated.

In § 917.459 of the order's rules and regulations, paragraph (a)(2) is added to include the Earlitreat and Lady Sue peach varieties to be regulated at a minimum size 96. The introductory text of paragraph (a)(5) is revised to include the Pink Rose, Prima Peach IV, Spring Snow, and White Dream peach varieties; and the introductory text of paragraph (a)(6) is revised to include the Madonna Sun, Prima Peach VIII, Prima Peach 20, and Saturn (Donut) peach varieties.

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

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

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

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

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

designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

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

Accordingly, AMS has prepared this 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 includes handlers, are defined as those whose annual receipts are less than \$5,000,000. 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. A majority of these handlers and producers may be classified as small entities.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This rule revises current requirements to: (1) correct the address for the CTFA; (2) modify the lot stamping requirements; (3) establish a single date by which handlers must file shipment reports; (4) define and provide dimensions for a new container; (5) simplify size marking requirements for the new container; (6) modify weight counts for early varieties; (7) authorize shipments of "CA Utility" quality fruit during the 1998 season; (8) standardize container inspection tolerances for mature and well-matured nectarines; (9) revise varietal maturity and size requirements to reflect recent changes in growing conditions; and (10) revise names of some patented nectarine and peach varieties consistent with name changes made by patent holders.

In § 917.110 of the peach order's rules and regulations, the address of the CTFA is listed for various communications (reports, applications,

submittals, requests, etc.). However, since the rule was published, the CTFA moved its offices from Sacramento to Reedley, California. Updating the address of the CTFA is a clarifying change which will have no practical impact on producers or handlers.

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

In §§ 916.160 and 917.178 of the orders' rules and regulations, handlers are required to report shipments of each nectarine and peach variety, respectively, not later than the tenth day of the month following the month in which the varieties were shipped. Currently, handlers file approximately three shipment reports with the committees per season, resulting in approximately 750 shipment reports for nectarine handlers and approximately 900 shipment reports for peach handlers. Each shipment report is estimated to take one hour for handlers

to complete. In an effort to make reporting less burdensome to handlers, the NAC and PCC recommended the establishment of a single date as a reporting deadline, no matter when shipments of each nectarine or peach variety were made. This single reporting deadline simplifies the reporting requirements so that handlers need only file one report each for nectarine and peach shipments upon conclusion of the handling season. This is a relaxation of the reporting requirements and burden for the benefit of handlers. This relaxation is estimated to reduce burden hours for nectarine handlers to approximately 250 hours from 750 hours and for peach handlers to approximately 300 from 900 hours.

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

Sections 916.350 and 917.442 of the orders' rules and regulations require specified container markings. To facilitate the use of the No. 32 standard box and consumer packages, these container marking requirements are clarified by referencing the containers and simplified by eliminating one marking requirement for use on these containers. Eliminating the dual marking requirement will ease the burden on handlers.

Consumer packages of nectarines and peaches are smaller boxes without adequate space on the outside ends for marking both the fruit size and count of fruit in the box. The No. 32 box has become the industry standard for tray-pack arrangements. Including both the size and count of fruit on these containers would be unnecessary since the number of fruit in the box is also the size of the fruit in the box. Requiring dual markings on these two boxes would place a burden on handlers who prefer to minimize markings on the outside of the boxes. Such markings on the outside of the boxes would be either the size of the fruit, e.g., "88 size" or "80 size," or the count, e.g., "88 count" or "80 count," but not both, eliminating

the requirement for dual markings on these containers. This is consistent with the rules and regulations of the orders and is a relaxation of the marking requirements.

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

Therefore, the NAC and PCC unanimously recommended modifications to the early-season weight-count standards for five sizes of nectarines and peaches by the addition of one piece of fruit to each weight-count standard currently in effect for sizes 56 to 72. Such a change modifies TABLE 1 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations by adding an additional nectarine or peach, respectively, to sizes 56, 60, 64, 70, and 72. The change will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers and decrease

the handling costs associated with that conversion.

In §§ 916.350 and 917.442 of the orders regulating nectarines and peaches, respectively, lower-quality nectarines and peaches were authorized for shipment as "CA Utility" as an experiment for the 1996 season only. Such authorization was continued during the 1997 season. This rule permits the continued use of "CA Utility" quality fruit for the 1998 season with a continued in-house statistical review to be conducted by the NAC and PCC. During the 1996 season, the Department authorized the shipment of nectarines and peaches which were of a lower quality than the minimum permitted for previous seasons. During 1996, there were 210,443 boxes of nectarines and 365,761 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.9 percent of fresh shipments, respectively. During 1997, there were 230,275 boxes of nectarines and 216,562 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.0 percent of fresh shipments, respectively. Continued availability of "CA Utility" quality fruit is expected to have a positive impact on producers, handlers, and consumers by permitting more nectarines and peaches to be shipped into fresh market channels, without adversely impacting the market for higher quality fruit.

This rule also standardizes the container tolerances for nectarines, with those currently in effect for peaches. Thus, the revision of the container tolerance for nectarines simplifies handling requirements for the industry.

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

satisfaction while benefitting nectarine and peach producers and handlers.

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

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

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

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues.

These meetings are held annually during the first week of December. Like all committee meetings, the December 4, 1997, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers, the majority of whom are small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible, since early shipments of these fruits are expected to begin about April 1; (2) this rule relaxes grade requirements for nectarines and peaches and size requirements for several nectarine and peach varieties;

(3) California nectarine and peach handlers are aware of these revised requirements recommended by the committees at public meetings, and they will need no additional time to comply with such requirements; and (4) the rule provides a 60-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

#### **List of Subjects**

##### **7 CFR Part 916**

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### **7 CFR Part 917**

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

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

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

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

**PART 916—NECTARINES GROWN IN CALIFORNIA**

2. Section 916.115 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.

3. Section 916.160, paragraph (b) is revised to read as follows:

**§ 916.160 Reporting procedure.**

\* \* \* \* \*

(b) *Recapitulation of shipments.* Each shipper of nectarines shall furnish to the manager of the Nectarine Administrative Committee not later than November 15 of each year a recapitulation of shipments of each variety shipped during the just-completed season. The recapitulation shall show: The name of the shipper, the shipping point, the district of origin, the variety, and the number of packages, by size, for each container type.

**§ 916.350 [Amended]**

4. Section 916.350 is amended by:

- (A) Revising paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii);
- (B) Revising Table 1 in paragraph (a)(4)(iv);
- (C) Revising paragraph (a)(5);
- (D) Revising paragraph (b); and
- (E) Revising paragraph (d) to read as follows:

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

(a) \* \* \*

(4) \* \* \*

(i) The size of nectarines packed in molded forms (tray-packs) in the No. 22D and the No. 32 standard boxes, cartons, or consumer packages; No. 22G standard lug boxes, cartons; or the No. 12B fruit (peach) boxes or flats; and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as "80 count," "88 count," etc.

(ii) The size of nectarines in molded forms (tray-packs) in the No. 22G standard lug boxes shall be indicated according to the number of such nectarines when packed in molded

forms in the No. 22D standard lug box or the No. 32 standard box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with count requirements in paragraph (a)(4)(i) of this section.

(iii) The size of nectarines loose-filled or tight-filled in any container shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D or No. 32 standard lug box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(iv) \* \* \*

TABLE 1.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF NECTARINES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of § 916.356
108 .....	100
96 .....	90
88 .....	83
84 .....	78
80 .....	75
72 .....	68
70 .....	61
64 .....	56
60 .....	50
56 .....	47
54 .....	40
50 .....	39
48 .....	35
42 .....	31
40 .....	30
36 .....	25
34 .....	23
32 .....	22
30 .....	19

\* \* \* \* \*

(5) Each No. 22D standard lug box, No. 22G standard lug box, or No. 32 standard box of loose-filled nectarines shall bear on one outside end, in plain sight and in plain letters, the words "25 pounds net weight."

\* \* \* \* \*

(b) As used in this section, "standard pack" and "fairly uniform in size" shall have the same meaning as set forth in the U.S. Standards for Grades of Nectarines (§§ 51.3145 to 51.3160) and all other terms shall have the same

meaning as when used in the amended marketing agreement and order. A No. 12B standard fruit box measures  $2\frac{3}{8}$  to  $7\frac{1}{8}$  x  $11\frac{1}{2}$  x  $16\frac{1}{8}$  inches, No. 22D standard lug box measures  $2\frac{7}{8}$  to  $7\frac{1}{8}$  x  $13\frac{1}{2}$  x  $16\frac{1}{8}$  inches, No. 22E standard lug box measures  $8\frac{3}{4}$  x  $13\frac{1}{2}$  x  $16\frac{1}{8}$  inches, No. 22G standard lug box measures  $7\frac{3}{8}$  to  $7\frac{1}{2}$  x  $13\frac{1}{4}$  x  $15\frac{7}{8}$  inches, No. 32 standard box measures  $5\frac{3}{4}$  to  $7\frac{1}{4}$  x  $12$  x  $19\frac{3}{4}$  inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions). "Individual consumer packages" means packages holding 15 pounds or less net weight of nectarines. "Tree ripe" means "tree ripened" and fruit shipped and marked as "tree ripe," "tree ripened," or any similar terms using the words "tree" and "ripe" must meet the minimum California Well Matured standards.

\* \* \* \* \*

(d) During the period April 1 through October 31, 1998, each container or package when packed with nectarines meeting the CA Utility requirements, shall bear the words "CA Utility," along with all other required container markings, in letters of  $\frac{3}{4}$  inch minimum height on the visible display panel. Consumer bags or packages must also be clearly marked on the bag or package as "CA Utility" along with other required markings.

\* \* \* \* \*

5. Section 916.356 is amended by:

- A. Revising paragraph (a)(1) introductory text;
- B. Revising paragraph (a)(1)(iv) and Table 1 to paragraph (a)(1)(iv);
- C. Revising paragraphs (a)(2)(i), (a)(3)(i), (a)(4) introductory text, (a)(4)(i), (a)(5)(i), (a)(6) introductory text, (a)(6)(i), (a)(7)(i), (a)(8)(i), and (a)(9)(i); and
- D. Revising paragraph (c) 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  $\frac{3}{8}$  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  $\frac{1}{2}$  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, 1998, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade and that such nectarines are mature and are:

(iv) 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. The Federal or Federal-State Inspection Service will use the maturity guides listed in Table 1 to Paragraph (a)(1)(iv) 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 Tom Grand variety of nectarines, not less than an aggregate area of 80 percent of the fruit surface shall meet the color guide established for the variety. 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 to paragraph (a)(1)(iv) 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 TO PARAGRAPH (A)(1)(IV)

Column A variety	Column B maturity guide
Alshir Red .....	J
Apache .....	G
April Glo .....	H
Arm King .....	B
August Glo .....	L
August Lion .....	J
August Red .....	J
Aurelio Grand .....	F
Autumn Delight .....	L
Autumn Grand .....	L
Big Jim .....	J
Bob Grand .....	L
Diamond Ray .....	L
Earliglo .....	I
Early Diamond .....	J

TABLE 1 TO PARAGRAPH (A)(1)(IV)—  
Continued

Column A variety	Column B maturity guide
Early May .....	F
Early May Grand .....	H
Early Red Jim .....	J
Early Sungrand .....	H
Fairlane .....	L
Fantasia .....	J
Firebrite .....	H
Flamekist .....	L
Flaming Red .....	K
Flavor Grand .....	G
Flavortop .....	J
Flavortop I .....	K
Grand Diamond .....	L
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
Maybelle .....	F
May Diamond .....	I
May Fire .....	H
Mayglo .....	H
May Grand .....	H
May Jim .....	I
May Kist .....	H
May Lion .....	J
Mid Glo .....	L
Mike Grand .....	H
Moon Grand .....	L
Niagara Grand .....	H
Pacific Star .....	G
P-R Red .....	L
Red Diamond .....	L
Red Delight .....	I
Red Fred .....	J
Red Free .....	L
Red Glen .....	J
Red Glo .....	I
Red Grand .....	H
Red Jim .....	L
Red 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
Scarlet Red .....	K
September Grand .....	L
September Red .....	L
Sheri Red .....	J
Son Red .....	L
Sparkling June .....	L
Sparkling May .....	J
Sparkling Red .....	L
Spring Bright .....	L
Spring Diamond .....	L
Spring Red .....	H
Star Brite .....	J
Summer Beaut .....	H
Summer Blush .....	J
Summer Bright .....	J
Summer Diamond .....	L

TABLE 1 TO PARAGRAPH (A)(1)(IV)—  
Continued

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

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

\* \* \* \* \*

(2) \* \* \*

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 108 nectarines in the box; or

\* \* \* \* \*

(3) \* \* \*

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the box; or

\* \* \* \* \*

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Diamond Bright, Early May, June Brite, Juneglo, June Pearl, Kay Glo, May Diamond, May Grand, May Lion, Pacific Star, Prima Diamond IV, Prima Diamond VI, Prima Diamond 13, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Sparkling May, Star Brite, or Zee Grand variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the box; or

\* \* \* \* \*

(5) \* \* \*

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a

standard pack, not more than 84 nectarines in the box; or

\* \* \* \* \*

(6) Any package or container of Alshir Red, Alta Red, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Red, August Snow, Autumn Delight, Big Jim, Brite Pearl, Crystal Rose, Diamond Ray, Early Red Jim, Fairlane, Fantasia, Firebrite, Fire Pearl, Flame Glo, Flamekist, Flaming Red, Flavor Grand, Flavortop, Flavortop I, Grand Diamond, Honey Kist, How Red, July Red, Kay Diamond, King Jim, Late How Red, Late Red Jim, Mid Glo, Moon Grand, Niagara Grand, P-R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XVIII, Prima Diamond XXIV, Prima Diamond XIX, Red Diamond, Red Fred, Red Free, Red Glen, Red Jim, Rio Red, Royal Giant, Ruby Diamond, Ruby Grand, Scarlet Red, September Grand, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Summer Star, Sunburst, Sun Diamond, Super Star, or Zee Glo variety nectarines unless:

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the box, or if the nectarines are "well matured," not more than 84 nectarines in the box; or

\* \* \* \* \*

(7) \* \* \*

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 96 nectarines in the box; or

\* \* \* \* \*

(8) \* \* \*

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 88 nectarines in the box; or

\* \* \* \* \*

(9) \* \* \*

(i) Such nectarines, when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box, are of a size that will pack, in accordance with the requirements of a standard pack, not more than 80 nectarines in the box or, if the

nectarines are "well matured," not more than 84 nectarines in the box; or

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

6. Section 917.110 is revised to read as follows:

### § 917.110 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, or a particular commodity committee, all reports, applications, submittals, requests, and communications in connection with the marketing agreement and order shall be addressed as follows:

Control Committee, California Tree Fruit Agreement, P.O. Box 968, Reedley, CA, 93654-0968.

7. 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, but 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.

8. Section 917.178, paragraph (b) is revised to read as follows:

### § 917.178 Peaches.

\* \* \* \* \*

(b) *Recapitulation of shipments.* Each shipper of peaches shall furnish to the manager of the Control Committee not

later than November 15 of each year a recapitulation of shipments of each variety shipped during the just-completed season. The recapitulation shall show: The name of the shipper, the shipping point, the district of origin, the variety, and the number of packages, by size, for each container type.

9. Section 917.442 is amended by:

(A) Revising paragraphs (a)(4)(i), (a)(4)(ii), and (a)(4)(iii);

(B) Revising Table 1 in paragraph

(a)(4)(iv);

(C) Revising paragraph (a)(6);

(D) Revising paragraph (b); and

(E) Revising paragraph (d) to read as follows:

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

(a) \* \* \*

(4) \* \* \*

(i) The size of peaches packed in molded forms (tray-packs) in the No. 22D and No. 32 standard boxes, cartons, or consumer packages; No. 22G standard lug boxes, experimental containers, cartons; or No. 12B fruit (peach) boxes or flats; and the size of wrapped peaches packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of peaches in each container, such as "80 count," "88 count," etc.

(ii) The size of peaches in molded forms in experimental containers shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with the count requirements in paragraph (a)(4)(i) of this section.

(iii) The size of peaches loose-filled or tight-filled in any container shall be indicated according to the number of such peaches when packed in molded forms in No. 22D or No. 32 standard boxes, in accordance with the requirements of standard pack, such as "80 size," "88 size," etc.

(iv) \* \* \*

TABLE 1—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A <sup>1</sup>	Column B <sup>2</sup>
96 .....	96
88 .....	92
84 .....	83
80 .....	76
72 .....	69
70 .....	65
64 .....	57

TABLE 1—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS—Continued

Column A <sup>1</sup>	Column B <sup>2</sup>
60 .....	51
56 .....	47
54 .....	44
50 .....	39
48 .....	35
42 .....	31
40 .....	30
36 .....	27
34 .....	25
32 .....	23
30 .....	21

<sup>1</sup> Tray Pack Size Designation.

<sup>2</sup> Maximum Number of Peaches in a 16-pound Sample Applicable to Varieties Specified in Paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(iii), (a)(5)(ii), and (b)(3) of § 917.459.

\* \* \* \* \*

(6) Each No. 22D standard lug box or No. 32 standard box of loose-filled peaches shall bear on one outside end, in plain sight and in plain letters, the words "25 pounds net weight."

\* \* \* \* \*

(b) As used in this section, "standard pack" and "fairly uniform in size" shall have the same meaning as set forth in the U.S. Standards for Grade of Peaches (§§ 51.1210 to 51.1223) and all other terms shall have the same meaning as when used in the amended marketing agreement and order. A No. 12B standard fruit box measures  $2\frac{3}{8}$  to  $7\frac{1}{8}$  ×  $11\frac{1}{2}$  ×  $16\frac{1}{8}$  inches, No. 22D standard lug box measures  $2\frac{7}{8}$  to  $7\frac{1}{8}$  ×  $13\frac{1}{2}$  ×  $16\frac{1}{8}$  inches, No. 22E standard lug box measures  $8\frac{3}{4}$  ×  $13\frac{1}{2}$  ×  $16\frac{1}{8}$  inches, No. 22G standard lug box measures  $7\frac{3}{8}$  to  $7\frac{1}{2}$  ×  $13\frac{1}{4}$  ×  $15\frac{7}{8}$  inches, No. 32 standard box measures  $5\frac{3}{4}$  to  $7\frac{1}{4}$  ×  $12$  ×  $19\frac{3}{4}$  inches. All dimensions are given in depth (inside dimensions) by width by length (outside dimensions).

"Individual consumer packages" means packages holding 15 pounds or less net weight of peaches. "Tree ripe" means "tree ripened" and fruit shipped and marked as "tree ripe," "tree ripened," or any similar terms using the words "tree" and "ripe" must meet the minimum California Well Matured standards.

\* \* \* \* \*

(d) During the period April 1 through November 23, 1998, each container or package when packed with peaches meeting CA Utility requirements, shall bear the words "CA Utility," along with all other required container markings, in letters of  $\frac{3}{4}$  inch minimum height on the visible display panel. Consumer bags or packages must also be clearly

marked on the bag or package as "CA Utility" along with other required markings.

\* \* \* \* \*

10. Section 917.459 is amended by:  
(A) Revising paragraph (a)(1) introductory text;

(B) Revising Table 1 to paragraph (a)(1)(iv);  
(C) Redesignating paragraphs (a)(2), (a)(3), (a)(4), and (a)(5), as paragraphs (a)(3), (a)(4), (a)(5), and (a)(6), respectively, and adding a new paragraph (a)(2); and

(D) Revising newly redesignated paragraphs (a)(3)(i), (a)(5) introductory text, (a)(5)(i), (a)(6) introductory text, (a)(6)(i), and paragraph (b) introductory text, (b)(1), (c) introductory text, and (c)(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 further*, That during the period April 1 through November 23, 1998, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 30 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade and that such peaches are mature and are:

\* \* \* \* \*

(iv) \* \* \*

Table 1 to paragraph (a)(1)(iv)

Column A—Variety	Column B—Maturity guide
Ambercrest .....	G
Angelus .....	I
August Lady .....	L
August Sun .....	I
Autumn Crest .....	I
Autumn Gem .....	I
Autumn Lady .....	H
Autumn Rose .....	I
Belmont (Fairmont) .....	I
Berenda Sun .....	I
Blum's Beauty .....	G
Cal Red .....	I
Carnival .....	I
Cassie .....	H
Coronet .....	E
Crimson Lady .....	J
Crown Princess .....	J
David Sun .....	I
Diamond Princess .....	J
Early Delight .....	H

Table 1 to paragraph (a)(1)(iv)—Continued

Column A—Variety	Column B—Maturity guide
Early Elegant Lady .....	L
Early May Crest .....	H
Early O'Henry .....	I
Early Top .....	G
Elberta .....	B
Elegant Lady .....	L
Fairtime .....	G
Fancy Lady .....	J
Fay Elberta .....	C
Fayette .....	I
Fire Red .....	I
First Lady .....	D
Flamecrest .....	I
Flavorcrest .....	G
Flavor Queen .....	H
Flavor Red .....	G
Franciscan .....	G
Goldcrest .....	H
Golden Crest .....	H
Golden Lady .....	F
Honey Red .....	G
John Henry .....	J
July Elberta .....	C
June Lady .....	G
June Pride .....	J
June Sun .....	H
Kern Sun .....	H
Kingscrest .....	H
Kings Lady .....	I
Kings Red .....	I
Lacey .....	I
Mary Anne .....	G
May Crest .....	G
May Sun .....	I
Merrill Gem .....	G
Merrill Gemfree .....	G
O'Henry .....	I
Pacifica .....	G
Parade .....	I
Pat's Pride .....	D
Prima Lady .....	J
Queencrest .....	G
Ray Crest .....	G
Red Cal .....	I
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
Scarlet Lady .....	F
September Sun .....	I
Sierra Crest .....	H
Sierra Lady .....	I
Sparkle .....	I
Springcrest .....	G
Spring Lady .....	H
Springgold .....	D
Sugar Lady .....	J
Summer Lady .....	L
Summerset .....	I

Table 1 to paragraph (a)(1)(iv)—  
Continued

Column A—Variety	Column B—Maturity guide
Suncrest .....	G
Topcrest .....	H
Tra Zee .....	J
Willie Red .....	G
Zee Lady .....	L

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

\* \* \* \* \*

(2) Any package or container of Earlitreat or Lady Sue variety peaches unless:

(i) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

(ii) Such peaches in any container when packed other than as specified in paragraph (a)(2)(i) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 96 peaches.

(3) \* \* \*

(i) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more than 88 peaches in the box; or

\* \* \* \* \*

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Golden Crest, Honey Red, June Lady, Kern Sun, May Crest, May Sun, Merrill Gemfree, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Springcrest, Spring Lady, Spring Snow, Sugar May, Sweet Gem, Sweet Scarlet, or White Dream variety of peaches unless:

(i) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

\* \* \* \* \*

(6) Any package or container of Amber Crest, August Lady, August Sun, Autumn Crest, Autumn Flame, Autumn Gem, Autumn Lady, Autumn Rose, Belmont (Fairmont), Berenda Sun, Blum's Beauty, Cal Red, Carnival, Cassie, Champagne, Diamond Princess, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Fire Red, Flamecrest, John Henry, July Sun, June Pride, Kaweah, Kings Lady, Lacey, Late Ito Red, Madonna Sun, Mary Anne, O'Henry, Prima Gattie, Prima Peach VIII, Prima Peach 20, Red Dancer, Red Sun, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Lady, Snow Diamond, Snow Giant, Snow King, Sparkle, Sprague Last Chance, Sugar Giant, Sugar Lady, Summer Lady, Summer Sweet, Summer Zee, Suncrest, Tra Zee, Vista, White Lady, or Zee Lady variety of peaches unless:

(i) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more than 72 peaches in the box, or, if the peaches are "well matured," not more than 80 peaches in the box; or

\* \* \* \* \*

(b) During the period April 1 through June 30 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(1) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more than 96 peaches in the box; or

\* \* \* \* \*

(c) During July 1 through October 31 of each fiscal period, no handler shall handle any package or container of any variety of peaches not specifically named in paragraphs (a)(2), (a)(3), (a)(4), (a)(5), or (a)(6) of this section unless:

(1) Such peaches when packed in molded forms (tray packs) in a No. 22D standard lug box or a No. 32 standard box are of a size that will pack, in accordance with the requirements of standard pack, not more than 80 peaches in the box; or

\* \* \* \* \*

Dated: March 26, 1998

**Robert C. Keeney**,  
Deputy Administrator, Fruit and Vegetable Programs.

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