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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV01-916-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with minor changes, an interim final rule that revised the handling requirements for California nectarines and peaches by modifying the grade, size, and maturity requirements for fresh shipments of these fruits, beginning with 2001 season shipments. This rule also continues in effect the requirements for placement of Federal-State Inspection Service lot stamps for the 2001 season. 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 enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interests of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: August 2, 2001.

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

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Small businesses may request information on complying 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) 720-8938, or E-mail: 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 marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

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

Under the orders, lot stamping, grade, size, maturity, 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 5, 2000, and unanimously recommended that the handling requirements be revised for the 2001 season, which began April 1. The changes: (1) Continue the lot stamping requirements which were in effect for the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2001 season; and (3) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions. These changes continue in effect as published in the interim final rule, with minor changes.

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

No official crop estimate was available at the time of the committees' December meetings because the nectarine and peach trees were dormant. The committees subsequently recommended a crop estimate at their meetings in early spring. Preliminary estimates indicate that the 2001 crop will be slightly smaller than the 2000 crop, which totaled 20,645,000 containers of nectarines and 21,491,000 containers of peaches. The 2001 crop is estimated to be 19,351,000 containers or container equivalents of nectarines and 19,976,000 containers or container equivalents 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 where 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.

Recently, several new containers have been introduced for use by nectarine and peach handlers. These containers are returnable plastic containers. Use of these containers 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 they were designed for reuse, these containers 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 the container.

The cards are a concern for the inspection service and the industries. Because of their unique portability, 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 for the 2000 season, the committees recommended that pallets of inspected fruit 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 the containers on each 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 would not be in effect for the 2000 season, but were anticipated to be in effect for the 2001 season.

In a meeting of the Returnable Plastic Container Task Force on November 1, 2000, it was determined that while such a display panel might be available for placement of the cards on some containers, there was no assurance from container manufacturers that such a panel would be available for all returnable plastic containers utilized by the industries. In addition, an adhesive is reportedly currently available, which may hold the cards securely in place while affording the ease of removal necessary for cleaning and redistribution. However, as the subcommittee found, the adhesive has yet to be tested under current conditions and may not be widely available.

For those reasons, the task force recommended to the committees that the regulation in effect for 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 2001 season. The committees, in turn, recommended

unanimously that such requirement be extended for the 2001 season, as well.

Thus, the amendment of §§ 916.115 and 917.150 continues in effect 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.

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 continues in effect the revision of §§ 916.350, 916.356, 917.442, and 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2001 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 indicate that some consumers, retailers, and foreign importers find 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 4.5 percent (928,500 containers) during the 2000 season, but usually represent approximately 3 to 3.5 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 4.1 percent of all peach shipments (872,500 containers) during the 2000 season, but usually range from 3 to 3.5 percent of total peach shipments.

Handlers have also commented that the availability of "CA Utility" 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 making the contents of their U.S. No. 1 containers better without sacrificing any fruit.

For these reasons, the committees unanimously recommended that shipments of "CA Utility" quality nectarines and peaches be permitted for the 2001 season with a continuing in-house statistical review. The revisions of paragraphs (d) of §§ 916.350 and 917.442, and paragraphs (a)(1) of §§ 916.356 and 917.459 continue in effect to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2001 season, on the same basis as the 2000 season.

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" 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 2001 handling regulations are the same as those that appeared in the 2000 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 continues in effect the revision of TABLE 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for two varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Diamond Bright nectarine variety to be regulated at the J maturity guide, and for the Honey Kist

variety to be regulated at the I 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 continues in effect the revision of TABLE 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for four varieties of peaches. Specifically, SPI recommended adding maturity guides for the Autumn Flame and Vista peach varieties to be regulated at the J maturity guide, for the Earlitreat variety to be regulated at the H maturity guide, and for the Summer Zee variety to be regulated at the L maturity guide.

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 continues in effect the revision of § 916.356 to establish variety-specific minimum size requirements for 7 varieties of nectarines, which were produced in commercially significant quantities of more than 10,000 containers for the first

time during the 2000 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for 11 varieties of nectarines whose shipments fell below 5,000 containers during the 2000 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the September Free variety of nectarines, recommended for regulation at a minimum size 80. Studies of the size ranges attained by the September Free variety revealed that 100 percent of the containers met the minimum size of 80 during the 2000 season. Sizes ranged from size 40 to size 80, with 3.3 percent of the packages in the 40 sizes, 37 percent in the 50 sizes, 32.5 percent in the 60 sizes, 23.8 percent in the 70 sizes and 3.3 percent at size 80.

A review of other varieties with the same harvesting period indicated that the September Free 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 September Free variety in the variety-specific minimum size regulation at a minimum size 80 is appropriate.

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 revision of the introductory text of paragraph (a)(3) of § 916.356 continues in effect to include the Crimson Baby nectarine variety, and the revision of the introductory text of paragraph (a)(4) continues in effect to include the Scarlet Jewels nectarine variety. In addition, the revision of the introductory text of paragraph (a)(6) of § 916.356 continues in effect to include the Arctic Mist, August Pearl, July Pearl, September Free, and Spring Sweet nectarine varieties.

This rule also continues in effect the revision of the introductory text of paragraphs (a)(4) and (a)(6) of § 916.356 to remove 11 varieties from the variety-specific minimum size requirements

specified in the section because less than 5,000 containers of each of these varieties were produced during the 2000 season. Specifically, the revision of the introductory text of paragraph (a)(4) of § 916.356 continues in effect the removal of the Diamond Jewel and May Lion nectarine varieties; and the revision of the introductory text of paragraph (a)(6) of § 916.356 continues in effect the removal of the Alshir Red, Autumn Delight, Crystal Rose, Fairlane, Fantasia, Kay Bright, Niagra Grand, Rio Red, and White September 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 continues in effect the revision of § 917.459 to establish variety-specific minimum size requirements for 10 peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2000 season. This rule also continues in effect the removal of the variety-specific minimum size requirements for 9 varieties of peaches whose shipments fell below 5,000 containers during the 2000 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Coral Princess variety of peaches, which was recommended for regulation at a minimum size 72. Studies of the size ranges attained by the Coral Princess variety revealed that 100 percent of the containers met the minimum size of 72 during the 2000 season. The sizes ranged from the 30 sizes to the 70 sizes, with 1.6 percent of the containers meeting the 30 sizes, 37 percent meeting the 40 sizes, 55.9 percent meeting the 50 sizes, 4.9 percent meeting the 60 sizes, and 0.6 percent meeting size 72. The size distribution for the 2000 season was similar to the size distribution for the 1999 season.

A review of other varieties with the same harvesting period indicated that the Coral Princess 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 Coral Princess variety in the variety-specific

minimum size regulation at a minimum size 72 is appropriate.

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 revision of the introductory text of paragraph (a)(5) of § 917.459 continues in effect to include the Kingscrest peach variety; and the revision of the introductory text of paragraph (a)(6) of § 917.459 continues in effect to include the Autumn Red, Coral Princess, Garnet Jewel, Ivory Princess, Klondike, Pretty Lady, Snow Jewel, Summer Dragon, and Sweet Dream peach varieties.

This rule also continues in effect the revision of the introductory text of paragraphs (a)(2), (a)(3), (a)(5), and (a)(6) of § 917.459 to remove 9 peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties were produced during the 2000 season. Thus, the revision of the introductory text of paragraph (a)(2) of § 917.459 continues in effect the removal of the Lady Sue peach variety; the revision of the introductory text of paragraph (a)(3) continues in effect the removal of the Goldcrest peach variety; and the revision of the introductory text of paragraph (a)(5) continues in effect the removal of the Merrill Gemfree peach variety. The revision of the introductory text of paragraph (a)(6) of § 917.459 continues in effect the removal of the Autumn Lady, Early O'Henry, Late September Snow, N117, Red Sun, and Suncrest peach varieties.

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 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 fresh California nectarines and peaches.

This rule continues in effect the 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 interests of producers, handlers, and consumers.

Final 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 final regulatory flexibility analysis.

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

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration [13 CFR 121.201] 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 \$500,000. 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. In the 2000 season, 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 555,555 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 2000 season, the committees' staff estimates that small handlers represent approximately 94 percent of the handlers within the industry.

The committees' staff has also estimated that approximately 22 percent of the producers in the industry could be defined as other than small entities. In the 2000 season, the average producer price received was \$5.50 per container or container equivalent for nectarines, and \$5.25 per container or container equivalent for peaches. A producer would have to produce at least 90,910 containers of nectarines and 95,239 containers of peaches to have annual receipts of \$500,000. Given data maintained by the committees' staff and the average producer price received during the 2000 season, the committees' staff estimates that small producers represent approximately 78 percent of the producers within the industry.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, 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 5, 2000, and unanimously recommended that the handling requirements be revised for the 2001 season, which began April 1, 2001. These recommendations had been presented to the committees by various subcommittees, each charged with the review and discussion of the changes. This rule continues in effect the revisions to the handling requirements to: (1) Continue the lot stamping requirements which were in effect for the 2000 season; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2001 season; and (3) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions.

This rule continues in effect the lot stamping requirements for returnable plastic containers under the marketing orders' rules and regulations that were in effect for such containers during 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 the cards on all exposed or outside containers, and not less than 75 percent of the total

containers on a pallet. Such requirements are continued in effect for the 2001 season, and would help the inspection service safeguard the identity of inspected and certified containers of nectarines and peaches, and help the industry by keeping in place the information necessary to facilitate their "trace-back" program.

The Returnable Plastic Container Task Force and Grade and Size Subcommittee considered possible alternatives to this action. They discussed the availability of a new container style with a specific area on the principal display panel for placement of the cards, but were not assured by container manufacturers that all containers would have such a display area. Also, in the absence of an adhesive to secure the cards, the display area would not meet the requirements of the committees or the inspection service. Such alternatives were, thus, rejected.

For these reasons, the task force and subcommittee recommended to the committees, and the committees voted unanimously, to extend the requirement for the lot stamp number to be provided 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 will continue to ensure that all the containers on each pallet had been inspected and certified in the event a card on an individual container or containers is removed, misplaced, or lost.

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. Since that time, shipments of "CA Utility" have ranged from 1 to 4 percent of total nectarine and peach shipments. This rule continues in effect the authorization for continued shipments of "CA Utility" quality nectarines and peaches during the 2001 season.

The Grade and Size Subcommittee considered one alternative to this action. They considered not authorizing continued shipments of "CA Utility" quality nectarines and peaches. However, shipments of "CA Utility" quality fruit are holding steady or increasing in volume since 1996. Also, some handlers note, that the availability of "CA Utility" gives handlers the flexibility to remove marginal fruit from their U.S. No. 1 containers, thus, making the contents of their U.S. No. 1 containers better. Based upon these considerations, this alternative was rejected.

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.

Sections 916.356 and 917.459 establish minimum maturity levels. This rule continues in effect the 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 SPI. 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 characteristics of nectarines and peaches as experienced over the previous season's inspections. Adjustments in the guides 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 rules and regulations, and in § 917.459 of the peach order's rules and regulations, minimum sizes for various varieties of nectarines and peaches, respectively, are established. This rule continues in effect the adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2001 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. Such adjustments to minimum sizes of nectarines and peaches 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 actions would include not establishing lot stamping, grade, size, and maturity regulations for nectarines and peaches. Such an action, however, would be a significant departure from the committees' practices, 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 is not appropriate.

The committees made recommendations regarding all the revisions in handling and lot stamping requirements after considering all available information, including comments of persons at several subcommittee meetings and comments received by committee staff. Such subcommittees include the Grade and Size Subcommittee, the Inspection and Compliance Subcommittee, the Returnable Plastic Container Task Force, and the Management Services Committee.

At the meetings, the impact of and alternatives to these recommendations were deliberated. These subcommittees and the task force, like the committees themselves, frequently consist of individual producers (and handlers, where authorized) with many years' experience in the industry who are familiar with industry practices. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited.

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.

Additionally, as noted in the initial regulatory flexibility analysis, 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 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings are widely publicized through the nectarine and peach industries 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 5, 2000, meetings were public meetings, and all entities, large and small, were encouraged to express views on these issues. Further, various subcommittee meetings were held prior to the December 5 meeting in which these regulations were reviewed and discussed.

An interim final rule concerning this action was published in the **Federal Register** on April 2, 2001 (66 FR 17479). Copies of the rule were provided to all committee members, and nectarine and peach handlers by the committees' staff. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period, which ended June 1, 2001. One comment was received.

The commenter requested several clarifications to the interim final rule. One clarification dealt with the spelling of two nectarine varieties currently referred to as "Prima Diamond 13" and "Brite Pearl." According to the commenter, "Prima Diamond 13" should be corrected to read "Prima Diamond XIII," and "Brite Pearl" should be corrected to read "Bright Pearl."

The commenter also noted that the name of the nectarine variety referred to as "Super Star" should be corrected to read "Sunecteigh." Further, the commenter noted, the trademarked name "Super Star" should appear in parentheses after the varietal name "Sunecteigh" in the regulations. The current maturity assignment for the Super Star variety will be applied to "Sunecteigh (Super Star)."

The commenter also advised that the name of the peach variety currently referred to as "Amber Crest" should be corrected to read "Supechfour." The commenter also requested that the trademarked name, "Amber Crest," should appear in parentheses after the varietal name "Supechfour" in the regulations. The current maturity assignment for the Amber Crest variety will be applied to "Supechfour (Amber Crest)."

Accordingly, appropriate changes are made based upon the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: <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.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, with appropriate changes, as published in the **Federal Register** (66 FR 17479, April 2, 2001), will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers are already shipping California nectarines and peaches from the 2001 crop, and the varietal name corrections should be in place for the season; (2) handlers are already aware of this rule, which was unanimously recommended at a public meeting; and (3) a 60-day comment period was provided for in the 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.

Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published at 66 FR 17479 on April 2, 2001, is adopted as a final rule with the following changes:

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

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

§ 916.356 [Amended]

2. Section 916.356, TABLE 1 of paragraph (a)(1)(iv), is amended by removing the words "Super Star * * * * * G" and adding the words "Sunecteigh (Super Star)" with a "G" maturity guide, between the words "Sun Diamond" and "Sun Grand."

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

4. Section 916.356, paragraph (a)(6), is amended by revising the words "Brite Pearl" to read "Bright Pearl;" by removing the words "Super Star;" and by adding the words "Sunecteigh (Super Star)" between the words "Sun Diamond" and "Sunny Red."

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

§ 917.459 [Amended]

5. Section 917.459, TABLE 1 of paragraph (a)(1)(iv), is amended by removing the words "Amber Crest * * * * * G" and by adding the words "Supechfour (Amber Crest)" with

a "G" maturity guide, between the words "Suncrest" and "Sweet Scarlet."

6. Section 917.459, paragraph (a)(6) is amended by removing the words "Amber Crest" and adding the words "Supechfour (Amber Crest)" between the words "Summer Zee" and "Sweet Dream."

Dated: July 26, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01-19099 Filed 7-31-01; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV01-959-1 FIR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the South Texas Onion Committee (Committee) for the 2000-2001 and subsequent fiscal periods from \$0.04 to \$0.03 per 50-pound container or equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 31, 2001.

FOR FURTHER INFORMATION CONTACT:

Cynthia Cavazos, Marketing Assistant, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; 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) 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, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 2000, and continue until amended, suspended, or terminated. 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Committee for the 2000-2001 and subsequent fiscal periods from \$0.04 to \$0.03 per 50-pound container or equivalent of onions handled.

The South Texas onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999-2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a mail vote, unanimously recommended 2000-2001 expenses of \$142,000 for personnel, office, compliance, and partial promotion expenses. These expenses were approved on July 31, 2000. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on December 27, 2000, and unanimously recommended 2000-2001 expenditures of \$306,740 and an assessment rate of \$0.03 per 50-pound container of onions. In comparison, last year's budgeted expenditures were \$301,000. The assessment rate of \$0.03 is \$0.01 lower than the rate previously in effect. The Committee voted to lower its assessment rate to reduce handler costs by about \$75,000 (\$0.01 assessment rate reduction X 7,500,000 containers of assessable onions), and because the Committee believes the projected reserve on July 31, 2001 (\$279,814), would be higher than needed to administer the program.

The Committee recently entered into an agreement with the Texas Produce Association (Association) for management services. The Association also manages the Texas citrus and melon administrative committees (7 CFR parts 906 and 979) and several other State marketing organizations. The sharing of costs (staff, office space, and equipment) is expected to foster economy and efficiency. Each organization's share of the costs is based