

six in favor and four opposed to the proposed rule.

Three commentators representing retailers and wholesale grocers opposed the rule claiming that it would expand the PACA program.

It is true that the rule does expand the PACA program to a product line that is not currently covered, but only because the current regulations restrict the application of the meaning of "perishable agricultural commodity" as provided in the Act. Oil-blanched product is well within the definition of a perishable agricultural commodity as defined by the statute and is consistent with the industry view of the scope of the Act and the nature of the product. Including oil-blanched frozen fruits and vegetables does not unduly or disproportionately burden retailers. With this final rule, all sales of potato products, whether to wholesale distributors, or retailers, would be covered by the term "perishable agricultural commodity." Further, retailers would be less likely than other dealers to be affected by the rule because frozen oil-blanched product would be a small portion of their total business. However, continuing to exclude (frozen french fried potatoes) the largest single frozen commodity in the United States poses substantial risk to farmers, shippers, and processors who are extending credit without the trust protection the Act affords to other dealers.

Another commentator representing a major restaurant chain opposed the proposed rule because he thought the change might bring restaurants under the jurisdiction of the PACA, and argued that therefore, the economic impact of the rule has been underestimated. Restaurants traditionally have not been considered subject to the PACA by USDA or Congress unless the buying arm of the restaurant is a separate legal entity, and is buying for and/or reselling the product to another entity. Since restaurants are not subject to the PACA, this change in the regulation will not impact restaurants.

For the reasons stated, we are not making any changes to this final rule based on the above comments.

The commentators in favor of the proposal claimed that frozen potatoes cannot be shipped practically and commercially without being oil-blanched and that extending PACA to cover these products would protect processors and shippers and enhance the protection to farmers. They also pointed out that incorporating oil-blanched products into the regulations was consistent with the current policy

of including water-blanched and steam-blanched product and would streamline the administration of PACA because it would no longer be necessary to distinguish oil-blanched from water or steam-blanched products. They also claimed that the proposed rule would improve marketing efficiency, thereby benefitting consumers and the potato industry.

After thoroughly analyzing the comments received and all other available information, the Department has concluded that issuing this rule is appropriate.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

After consideration of all relevant material presented, the comments received, and other available information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 46

Agricultural commodities, Brokers, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 46 of the Code of Federal Regulations is amended as follows:

PART 46—REGULATIONS (OTHER THAN RULES OF PRACTICE) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

1. The authority citation for part 46 continues to read as follows:

Authority: Sec. 15, 46 Stat. 537; 7 U.S.C. 499o.

2. In section 46.2, paragraph (u) is revised to read as follows:

§ 46.2 Definitions.

* * * * *

(u) *Fresh fruits and fresh vegetables* include all produce in fresh form generally considered as perishable fruits and vegetables, whether or not packed in ice or held in common or cold storage, but do not include those perishable fruits and vegetables which have been manufactured into articles of food of a different kind or character. The effects of the following operations shall not be considered as changing a commodity into a food of a different kind or character: Water, steam, or oil blanching, chopping, color adding, curing, cutting, dicing, drying for the removal of surface moisture; fumigating, gassing, heating for insect control, ripening and coloring; removal of seeds,

pits, stems, calyx, husk, pods, rind, skin, peel, et cetera; polishing, precooling, refrigerating, shredding, slicing, trimming, washing with or without chemicals; waxing, adding of sugar or other sweetening agents; adding ascorbic acid or other agents used to retard oxidation; mixing of several kinds of sliced, chopped, or diced fruits or vegetables for packaging in any type of containers; or comparable methods of preparation.

* * * * *

Dated: March 20, 1996.

Lon Hatamiya,

Administrator.

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BILLING CODE 3410-02-P

7 CFR Parts 916 and 917

[Docket No. FV95-916-4-IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, container, and pack requirements for fresh shipments of these fruits, beginning with 1996 season shipments. 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.

DATES: Effective April 1, 1996.

Comments which are received by April 26, 1996 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; or by facsimile at 202-720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street,

Suite 102B, Fresno, California 93721; telephone: (209) 487-5901; or Kenneth Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2861.

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

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

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of

essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) met December 7, 1995, and unanimously recommended that the handling requirements for California nectarines and peaches be revised, respectively. These committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. These 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.

Container and Pack Requirements (Nectarines)

Section 916.350 specifies container and pack requirements for fresh nectarine shipments. Paragraph (a)(4)(iv) of § 916.350 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of nectarines in a 16-pound sample for each tray-pack size designation. This rule revises paragraph (a)(4)(iv) of § 916.350 by modifying one size designation for the weight-count standards in Column B of TABLE 1 for early-season and mid-season nectarine varieties and one size designation for the weight-count standards in Column B of TABLE 2. Continuing research conducted by the NAC indicate that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified for the past two

seasons based on that consideration. Results from the 1995 season suggest that a minor modification of TABLE 1 and TABLE 2 is necessary to provide more accurate weight-count standards for early-season and mid-season nectarines, and late-season nectarines.

The NAC recommended these revised weight-count standards for nectarines after a comprehensive review of the appropriate relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season nectarine varieties, as well as late-season varieties. Specifically, the NAC's recommendation provides that the maximum number of nectarines of size 50 in a 16-pound sample of early-season and mid-season fruit is more appropriately 39 rather than 38. Also the maximum number of nectarines of size 50 in a 16-pound sample of late-season fruit is more appropriately 37 rather than 36.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide for equality between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack styles.

According to the NAC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled pack size. In some instances, these samples required an additional piece of fruit to meet the 16-pound weight requirement, thus causing the pack to be "marked" smaller than its equivalent tray-pack size. When packs are "marked" smaller this causes the container to be sold for a lower price.

Revised and refined weight-count standards should provide for more accurate marking of sizes when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of nectarines. These regulations also attempt to assure equivalent returns for growers based on style of pack used.

This rule also further clarifies the definition of "tree ripe" added to section 916.350 paragraph (b) for the 1995 season. According to the NAC, "tree ripe" is an optional marking with regard to maturity that is stamped on containers of nectarines. Currently, the definition of tree ripe is based on the California Well Matured maturity requirement and is intended to be used for fruit which has been allowed to

ripen naturally by remaining longer on the tree. California Well Matured means that fruit has been picked at a maturity level distinctly more advanced than "mature." The definition of "tree ripe" was added in 1995 so that its meaning was consistent with other descriptive markings and provided a consistent minimum maturity level throughout the industry to the benefit of consumers. However, during the 1995 season, some handlers marked their boxes of fruit as "tree ripened." It has been recommended by the NAC that the terms "tree ripe", and "tree ripened", and other terms which denote an advanced level of maturity due to the fruit remaining on the tree for a longer period, are interchangeable terms indicative of the enhanced maturity of the fruit inside the box. Requiring containers of nectarines to be at a minimum California Well Matured in order to be marked "tree ripe" or "tree ripened," or other interchangeable terms such as "ripened on the tree", or "ripened on tree" will clarify the current regulation by specifying when the "tree ripe" or some similar marking using the words "tree" and "ripe", can be used and help to ensure that buyer expectations are met.

The NAC also recommended that a new container, that allows for markings on the lid of the container, be approved for nectarine shipments for the 1996 season only. The NAC will review the impact of the use of this container with shippers prior to the 1997 season.

The marketing order, under § 916.350, requires that all containers be marked with specific information (e.g. handler, grade, size, and variety) and that all such markings on nectarine containers have to be applied to the outside end of the container. This has been defined as any of the four sides of the container, but not on the lid. Currently, there is interest by handlers in containers that are reusable thus creating financial savings for handlers. There is now a reusable and recyclable container, a single layer, plastic, 12x20 inch box, that is available for use with nectarines. However, the design of the container, which has cooling slots in all of its sides, is such that the markings cannot easily be placed on the outside end of the container.

The NAC believes that allowing for markings to be placed on the container lid will facilitate the use of this plastic, reusable and recyclable container in compliance with marketing order requirements. Authorizing the use of this new container will allow handlers to reduce their container costs through the continued reuse of the container.

Maturity Requirements (Nectarines)

Section 916.356 specifies maturity requirements for fresh nectarines in paragraphs (a)(1) and (a)(1)(i), including TABLE 1. For fruit being inspected and certified as meeting the maturity requirements for "well matured", maturity determinations are generally in terms of maturity guides (e.g., color chips) specified in TABLE 1.

This rule revises paragraph (a)(1) by exempting yellow nectarine varieties from the requirement that a blush or red color be present on the skin of the nectarines. By their nature, yellow nectarine varieties fail to attain any color other than yellow on the skin of the fruit. The U.S. Standards for Grades of Nectarines requires that a blush or red color be present on the skin of the fruit in order for the fruit to be considered as U.S. No. 1 grade.

This rule also revises TABLE 1 of paragraph (a)(1)(i) of § 916.356 for nectarines to add the maturity guides for four nectarine varieties. Specifically, an addition to the maturity guides was recommended for Grand Diamond, King Jim, and Spring Brite at a maturity guide of L, and Rose Diamond at a maturity guide of J.

The NAC recommended these maturity requirement changes for these nectarine varieties based on a continuing review by the Shipping Point Inspection Service of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for such variety.

Size Requirements (Nectarines)

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific size requirements for six nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1995 season. This rule also modifies the variety-specific size requirements for two varieties of nectarines by reassigning those varieties.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity and, therefore, the quality of the product, but also the size of the fruit. Increased size results in increases in the number of packed boxes of nectarines per acre. This provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to growers. Varieties

recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size.

Paragraph (a)(3) is revised to include the Johnny's Delight and May Jim varieties; paragraph (a)(4) is revised to include the Arctic Rose variety; and paragraph (a)(6) in § 916.356 is revised to include the Flame Glo, Prima Diamond III, Prima Diamond IV, Prima Diamond VIII, and the White Jewels nectarine varieties.

This rule also revises § 916.356 to remove eleven 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 1995 season. Paragraph (a)(2) of that section is revised to remove the Royal Delight nectarine variety. Paragraph (a)(4) is revised to remove the Sunfre variety, and paragraph (a)(4) is also revised to delete the May Jim variety. This variety was placed in this paragraph prior to the 1995 season. The variety matures to a smaller-than-average size when compared to other varieties in this paragraph. Based upon its sizing characteristics from the 1995 season, removal of the May Jim variety from this paragraph was recommended. Paragraph (a)(6) is revised to remove the Del Rio Rey, Independence, La Pinta, Late Le Grand, Royal Red, Son Red, Sun Grand, 181-119 (Sierra Star), and Nectarine 23 nectarine varieties. Paragraph (a)(6) is also revised to remove the Arctic Rose variety. This variety was placed in this paragraph prior to the 1995 season. The variety matures to a smaller-than-average size when compared to other varieties in this paragraph. Based upon its sizing characteristics from the 1995 season, removal of the Arctic Rose variety from this paragraph was recommended.

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.

Container and Pack Requirements (Peaches)

Section 917.442 currently specifies container and pack requirements for fresh peach shipments. Paragraph (a)(4)(iv) of § 917.442 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of peaches in a 16-pound sample for each tray pack size designation. This rule revises paragraph (a)(4)(iv) of § 917.442 by modifying one size designation for the weight-count standards in Column B of TABLE 1 for early-season and mid-season peach varieties. Research conducted by the PCC indicated that early-season and mid-season fruit weighs less than late-season fruit and the weight-count standards were, therefore, modified for the past two seasons based on that consideration. Results from the 1995 season suggest that a minor modification of TABLE 1 is necessary to provide more accurate weight-count standards for early-season and mid-season peaches.

The PCC recommended the revised container marking requirement changes for peaches after a comprehensive review of the appropriate relationships between the tray-pack containers and loose-filled or tight-filled containers for early-season and mid-season peach varieties prior to the 1996 season. Specifically, the PCC's recommendation provides that the maximum number of peaches of size 54 in a 16-pound sample of early-season and mid-season fruit is more appropriately 44 rather than 43.

Pack regulations provide for uniform packing practices. In particular, weight-count standards provide equality between fruit packed in loose-filled or tight-filled containers and fruit packed in tray-pack styles.

According to the PCC, packers occasionally moved fruit from tray-pack styles of pack to loose-filled or tight-filled pack styles. This activity has led to an awareness, especially in regard to early-season varieties, that fruit which was of proper size when tray-packed exceeded the maximum number of nectarines for the 16-pound sample for corresponding loose-filled or tight-filled pack size. In this instance, these samples needed an additional piece of fruit to meet the 16-pound weight requirement, thus causing the pack to be "marked" smaller than its equivalent tray-pack size. When packs are "marked" smaller this causes the container to be sold for a lower price. During the 1994 season, new weight-count assignments for early varieties

were in place. Research continued with the purpose of possible refinement of those weight-count assignments.

Revised and refined weight-count standards for early varieties should provide for more accurate marking of size when packed in loose-filled or tight-filled pack styles compared to equivalent sizes that are tray packed. These regulations provide for uniformly packed containers of peaches. These regulations also attempt to assure equivalent returns for growers based on style of pack used.

This rule also further clarifies the definition of "tree ripe" added to section 917.442 paragraph (b) for the 1995 season. According to the PCC, "tree ripe" is an optional marking with regard to maturity that is stamped on containers of peaches. Currently the definition of tree ripe is based on the California Well Matured maturity requirement and is intended to be used for fruit which has been allowed to ripen naturally by remaining longer on the tree. California Well Matured means that fruit has been picked at a maturity level distinctly more advanced than "mature." The definition of "tree ripe" was added in 1995 so that its meaning was consistent with other descriptive markings and provided a consistent minimum maturity level throughout the industry to the benefit of consumers. However, during the 1995 season, some handlers marked their boxes of fruit as "tree ripened." It has been recommended by the PCC that the terms "tree ripe" and "tree ripened" and other terms which denote an advanced level of maturity due to the fruit remaining on the tree for a longer period, are interchangeable terms indicative of the enhanced maturity of the fruit inside the box. Requiring containers of peaches to be at a minimum California Well Matured in order to be marked "tree ripe" or "tree ripened," or other interchangeable terms such as "ripened on the tree," or "ripened on tree" will clarify the current regulation by specifying when the "tree ripe" or some similar marking using the words "tree" and "ripe" can be used and help to ensure that buyer expectations are met.

The PCC also recommended that a new container, that allows for markings on the lid of the container, be approved for peach shipments for the 1996 season only. The PCC will review the impact of this container with shippers prior to the 1997 season.

The marketing order, under § 917.442, requires that all containers be marked with specific information (e.g. handler, grade, size, and variety) and that all such markings on peach containers have to be applied to the outside end of the

container. This has been defined as any of the four sides of the container, but not on the lid. Currently, there is interest by handlers in containers that are reusable thus creating financial savings for handlers. There is now a reusable and recyclable container, a single layer, plastic, 12x20 inch box, that is available for use with peaches. However, the design of the container, which has cooling slots in all of its sides, is such that the markings cannot easily be placed on the outside end of the container.

The PCC believes that allowing for markings to be placed on the container lid will facilitate the use of this plastic, reusable and recyclable container in compliance with marketing order requirements. Authorizing the use of this new container will allow handlers to reduce their container costs through the continued reuse of the container.

Maturity Requirements (Peaches)

Section 917.459 specifies maturity requirements for fresh peaches in paragraph (a)(1), including TABLE 1. For fruit being inspected and certified as meeting the maturity requirements for "well matured", maturity determinations are generally in terms of maturity guides (e.g., color chips) specified in TABLE 1. This rule revises TABLE 1 of paragraph (a)(1)(ii) of § 917.459 for peaches to change the maturity guide for the Elegant Lady peach variety from a maturity guide M to a maturity guide L. The Early Delight peach variety has been recommended to be added with a maturity guide H and the May Sun variety has been recommended to be added with a maturity guide I.

The PCC recommended these maturity requirement changes for these peach varieties based on a continuing review by the Shipping Point Inspection Service of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for such varieties.

Size Requirements (Peaches)

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule also revises § 917.459 to establish variety-specific size requirements for six peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1995 season.

Size regulations are put in place to improve fruit quality by allowing fruit to stay on the tree for a greater length of time. This increased growing time not

only improves maturity, and, therefore, the quality of the product, but also size of the fruit. Increased size results in increases in the number of packed boxes of peaches per acre. This provides greater consumer satisfaction, more repeat purchases, and, therefore, increases returns to growers. Varieties recommended for specific size regulation have been reviewed and recommendations are based on the characteristics of the variety to attain minimum size.

In § 917.459 paragraph (a)(5) is revised to include the May Sun peach variety; and paragraph (a)(6) is revised to include the July Sun, Kaweah, Snow Giant, Snow King, and Sugar Giant peach varieties.

This rule also revises § 917.459 to remove eleven peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of each of these varieties were produced during the 1995 season. In § 917.459 paragraph (a)(2) of § 917.459 is revised to remove the Flordaprince peach variety; paragraph (a)(5) is revised to remove the First Lady, Merrill Gem, Royal May, Sierra Crest, Summer Crest, and 50-178 peach varieties; and paragraph (a)(6) is revised to remove the Angelus, August Delight, Parade, and Scarlet Lady 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 removal of the Flordaprince variety from paragraph (a)(2) results in there being no varieties regulated within size 96 for the 1996 season. Since the variety-specific list is subject to change from one season to another, the Department wishes to reserve paragraph number (a)(2) for future regulation of peaches at size 96.

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 sizes fruit. 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's determination is 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.

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that the 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 because: (1) California nectarine and peach growers 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 yellow-skinned nectarines and size requirements for several nectarine and peach varieties; (3) California nectarine and peach handlers are aware of these revised requirements that are non-controversial, administrative by nature, and similar to other recommendations made by the committees in prior seasons, and they will need no additional time to comply with such requirements; and (4) the rule provides a 30-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:

PART 916—NECTARINES GROWN IN CALIFORNIA

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

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

2. Section 916.350 is amended by revising TABLE 1 and TABLE 2 of paragraph (a)(4)(iv), revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 916.350 California Nectarine Container and Pack Regulation.

- (a) * * *
- (4) * * *
- (iv) * * *

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

Column A—Tray pack size designation	Column B—Maximum number of nectarines in a 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	67
70	60
64	55
60	49
56	46
54	40
50	39
48	35
42	31
40	30
36	25
34	23
32	22
30	19

TABLE 2.—WEIGHT-COUNT STANDARDS FOR NECTARINES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B—Maximum number of nectarines in a 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii), and (a)(9)(ii) of § 916.356
108	92
96	87

TABLE 2.—WEIGHT-COUNT STANDARDS FOR NECTARINES PACKED IN LOOSE OR TIGHT-FILLED CONTAINERS—Continued

Column A—Tray pack size designation	Column B—Maximum number of nectarines in a 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii), and (a)(9)(ii) of § 916.356
88	78
84	75
80	67
72	61
70	56
64	51
60	46
56	43
54	39
50	37
48	33
42	28
40	26
36	25
34	23
32	22
30	19

* * * * *

(b) As used in this section, standard pack and fairly uniform in size shall have the same meanings as set forth in 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. No. 12B standard fruit box measures 2³/₈ to 7¹/₈ × 11¹/₂ × 16¹/₈ inches, No. 22D standard lug box measures 2⁷/₈ to 7¹/₈ × 13¹/₂ × 16¹/₈ inches, No. 22E standard lug box measures 8³/₄ × 13¹/₂ × 16¹/₈ inches, No. 22G standard lug box measures 7³/₈ to 7¹/₂ × 13¹/₄ × 15⁷/₈ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension). 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 minimum California Well Matured standards.

(c) Each container of nectarines in plastic, 12×20 inch reusable and recyclable containers shall meet and bear, on the container lid, all applicable marking requirements under the order.

3. Section 916.356 is amended by revising paragraphs (a)(1) introductory text, Table 1, (a)(2) introductory text, (a)(3) introductory text, (a)(4) introductory text, and (a)(6) introductory text to read as follows:

§ 916.356 California Nectarine Grade and Size Regulation.

(a) * * *
 (1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U. S. No. 1 grade: Provided, that nectarines 2 inches in diameter or smaller, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ³/₈ inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle ¹/₂ inch in diameter: Provided further, that an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: Provided further, that all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart. 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.

* * * * *

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
Ama Lyn	G
Apache	G
April Glo	H
Armking	B
August Glo	L
August Red	J
Aurelio Grand	F
Autumn Delight	M
Autumn Grand	L
Bob Grand	L
Clinton-Strawberry	H
Del Rio Rey	G
Desert Dawn	G
Early Diamond	J
Early May	F
Early May Grand	H
Early Star	G
Early Sungrand	H
Fairlane	M
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Gee Red	H
Gold King	H
Grand Diamond	L
Grandlerli	J
Grand Stan	F
Hi-Red	J
Independence	H

TABLE 1—Continued

Column A variety	Column B maturity guide
July Red	L
June Glo	H
June Grand	G
Kent Grand	L
King Jim	L
Kism Grand	J
Larry's Grand	M
Late Le Grand	L
Late Tina Red	I
Le Grand	H
Maybelle	F
May Diamond	I
Mayfair	C
May Fire	H
May Glo	H
May Grand	H
May Kist	H
Mayred	B
Mid Glo	L
Mike Grand	H
Moon Grand	M
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	M
Red Delight	I
Red Free	L
Red Glen	J
Red Grand	H
Red Jim	L
Red June	G
Red Lion	J
Red May	J
Regal Grand	L
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Sierra Star/181-119	G
Son Red	L
Sparkling June	M
Sparkling May	J
Sparkling Red	L
Spring Brite	L
Spring Diamond	M
Spring Grand	G
Spring Red	F
Springtop	B
Stan's Grand	C
Star Bright	G
Star Brite	J
Star Grand	H
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	M
Summer Fire	L
Summer Grand	L
Summer Lion	M
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G

TABLE 1—Continued

Column A variety	Column B maturity guide
Super Star	G
Tasty Free	J
Tasty Gold	H
Tom Grand	L
Zee Glo	J
61-61	J

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 May Glo variety nectarines through May 5 of each year; or April Glo, or Mayfire variety nectarines, unless:

* * * * *

(3) Any package or container of May Glo variety nectarines on or after May 6 of each year, or Earliglo, Early Diamond, Johnny's Delight, May Jim, or May Kist variety nectarines, unless:

* * * * *

(4) Any package or container of Arctic Rose, Early May, Mike Grand, June Brite, June Glo, May Grand, May Diamond, May Lion, Pacific Star, Red Delight, Rose Diamond, Sparkling May, Star Brite, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Queen, August Glo, August Red, Autumn Delight, Big Jim, Bob Grand, Early Red Jim, Early Sungrand, Fairlane, Fantasia, Firebrite, Flame Glo, Flamekist, Flaming Red, Flavor Grand, Flavortop, Flavortop I, Grand Diamond, How Red, July Red, King Jim, Kay Diamond, Kism Grand, Late Red Jim, Mid Glo, Moon Grand, Niagara Grand, Prima Diamond, Prima Diamond III, Prima Diamond IV, Prima Diamond VIII, P-R Red, Red Diamond, Red Fred, Red Free, Red Glen, Red Jim, Red Lion, Rio Red, Royal Giant, Royal Glo, 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, Tasty Gold, Tom Grand, White Jewels, Zee Glo, 80P-1135, or 424-195 variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

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

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

2. Section 917.442 is amended by revising TABLE 1 of paragraph (a)(4)(iv), revising paragraph (b), and adding a new paragraph (c) to read as follows:

§ 917.442 California Peach Container and Pack Regulation.

- (a) * * *
- (4) * * *
- (iv) * * *

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

Column A—Tray pack size designation	Column B—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
96	96
88	92
84	83
80	76
72	68
70	64
64	56
60	50
56	46
54	44
50	39
48	35
42	31
40	30
36	27
34	25
32	23
30	21

* * * * *

(b) As used in this section, standard pack shall have the same meaning as set forth in U.S. Standards for Grades 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. No. 12B standard fruit box measures 2³/₈ to 7¹/₈ x 11¹/₂ x 16¹/₈ inches, No. 22D standard lug box measures 2⁷/₈ to 7¹/₈ x 13¹/₂ x 16¹/₈ inches, No. 22E standard lug box measures 8³/₄ x 13¹/₂ x 16¹/₈ inches, No. 22G standard lug box measures 7³/₈ to 7¹/₂ x 13¹/₄ x 15⁷/₈ inches. All dimensions are given in depth (inside dimension) by width by length (outside dimension). Individual consumer packages means packages holding 15

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

(c) Each container of peaches in plastic, 12x20 inch reusable and recyclable containers shall meet and bear, on the container lid, all applicable marking requirements under the order.

3. Section 917.459 is amended by removing and reserving paragraph (a)(2), and revising Table 1 of paragraph (a)(1)(ii), (a)(5) introductory text, and (a)(6) introductory text to read as follows:

§ 917.459 California Peach Grade and Size Regulation.

- (a) * * *
- (1) * * *

(ii) If a grower or handler believes his/her fruit is meeting the appropriate maturity level but the fruit has not been so graded by the inspector, he/she may appeal the inspection by calling the officer-in-charge of the local Federal-State Inspection Service office to arrange for an on-site examination of the fruit.

TABLE 1

Column A variety	Column B maturity guide
Angelus	I
Ambercrest	G
Armgold	D
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Bella Rosa	G
Belmont (Fairmont)	I
Berenda Sun	I
Blum's Beauty	G
Bonjour	F
Cardinal	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Desertgold	B
Diamond Princess	J
Early Coronet	D
Early Delight	H
Early Fairtime	I
Early May Crest	H
Early O'Henry	I
Early Royal May	G
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C

TABLE 1—Continued

Column A variety	Column B maturity guide
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Fortyniner	F
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
Jody Gaye	F
John Henry	J
Judy Elberta	C
July Lady	G
June Crest	G
June Lady	G
June Pride	J
June Sun	H
Kearney	I
Kern Sun	H
Kings Lady	I
Kings Red	I
Lacey	I
Mardigras	G
Mary Ann	G
May Crest	G
May Lady	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
Morning Sun	D
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Preuss Suncrest	F
Prima Fire	H
Prima Lady	J
Prime Crest	H
Queen Crest	G
Ray Crest	G
Red Cal	I
Redglobe	C
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rio Oso Gem	I
Royal April	D
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
Springold	D
Sugar Lady	J
Summer Lady	M
Summerset	I
Suncrest	G
Sun Lady	I

TABLE 1—Continued

Column A variety	Column B maturity guide
Topcrest	H
Toreador	I
Tra Zee	J
Treasure	F
Willie Red	G
Windsor	I
Zee Lady	L
50-178	G

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

* * * * *

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Golden Crest, Honey Red, June Lady, June Sun, Kern Sun, Kingscrest, Kings Red, May Crest, May Sun, Merrill Gemfree, Queencrest, Ray Crest, Redtop, Regina, Rich May, Snow Brite, Snow Flame, Springcrest, Spring Lady, or Sugar May variety of peaches unless:

* * * * *

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

* * * * *

Dated: March 21, 1996.
Eric M. Forman,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 96-7438 Filed 3-26-96; 8:45 am]
BILLING CODE 3410-02-P

7 CFR Part 920
[Docket No. FV95-920-4FR]

Kiwifruit Grown in California; Relaxation of Container Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule relaxes the container marking requirements for kiwifruit packed under the Federal marketing order for kiwifruit grown in California. This relaxation reduces the number of kiwifruit containers required to be marked with the lot stamp number. This rule reduces handling costs and provides more flexibility in kiwifruit packing operations.

EFFECTIVE DATE: April 26, 1996.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209) 487-5901, Fax # (209) 487-5906; or Charles Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526-S, Washington, DC 20090-6456, telephone (202) 720-5127, Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR Part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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