

# Proposed Rules

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 944

[Docket No. FV-97-916-1 PR]

#### Fruits; Import Regulations; Proposed Nectarine Import Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish minimum quality, size, and maturity requirements for fresh nectarines offered for importation into the United States during the months of April through October. The proposed import requirements would be implemented in accordance with Section 8e of the Agricultural Marketing Agreement Act of 1937, which requires that whenever certain specified commodities, including nectarines, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, quality, size, and maturity requirements as those in effect for the domestically produced commodity.

**DATES:** Comments must be received by May 26, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; FAX # (202) 720-5698; or E-mail: moabdocket\_clerk@usda.gov. 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 in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2523-S, Washington,

DC 20090-6456; telephone: (202) 720-2491; Fax # (202) 720-5698. 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 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, Fax # (202) 720-5698, or E-mail: Jay\_N\_Guerber@usda.gov. You may also view our web site: <http://www.ams.usda.gov/fv/moab8e.html>.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," which provides that whenever certain specified commodities, including nectarines, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, quality, size, and maturity requirements as those in effect for the domestically produced commodities.

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

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

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This proposed rule would establish minimum quality, size, and maturity requirements for fresh nectarines offered for importation into the United States from April 1 through October 31 each year. The proposed import requirements would be implemented in accordance with section 8e of the Act.

Virtually all U.S. commercial shipments of fresh nectarines are regulated under Marketing Order No. 916 (order) which covers nectarines grown in California. The order has been in effect for more than 37 years. Grade, quality, size, and maturity requirements are in effect under the order for fresh

market shipments during the period April 1 through October 31. These requirements are designed to increase nectarine sales by providing stable marketing conditions and ensuring that good quality fruit is shipped, thus promoting consumer satisfaction. The California nectarine season begins April 1 and ends October 31. The current handling regulation for these nectarines appears at 7 CFR 916.356. The most recent revisions to that regulation were published at 63 FR 16032, 63 FR 44363, 63 FR 50461, and 63 FR 60209. Proposed revisions to that regulation were published in the **Federal Register** on March 8, 1999, at 64 FR 11346.

There is no other Federal marketing order in effect for nectarines produced in the United States. Thus, the requirements for imported nectarines would be based on those in effect for California nectarines.

Most nectarines imported into the United States originate in Chile. The Chilean fresh nectarine season extends from November through mid-April, with most active shipments to the United States occurring between January and March. Fresh nectarine imports from Chile, while relatively small when compared with total domestic production, fill to a great extent the gap in supplies during the winter months. Most Chilean imports enter the United States when there are no domestic nectarine shipments and no regulations are in effect.

This proposed action would add a new § 944.800 under 7 CFR Part 944—Fruits; Import Regulations to establish minimum quality, size, and maturity requirements for fresh nectarines imported into the United States.

This proposed rule would provide that from April 1 through October 31 of each year, fresh nectarines imported into the United States would be subject to minimum quality, size, and maturity requirements. This is the same period that such requirements are in effect for fresh California nectarines under the order. Imports arriving before the domestic commodity's shipping season begins or after the domestic commodity's shipping season ends would not be subject to the proposed import requirements. In recent seasons, nectarines have been imported beginning in November and ending in mid-April. Most imported nectarines

would, therefore, not be covered by these proposed requirements.

This rule proposes that nectarines imported into the United States meet a minimum quality requirement of "CA Utility," which is established under the order. Under the order, containers of such quality fruit must be clearly labeled "CA Utility." No such labeling requirement is being proposed for nectarines imported into the United States, however, because section 8e of the Act does not authorize container regulations for imports.

This action also proposes that nectarines imported into the United States meet minimum size requirements. The minimum size requirement for each nectarine variety would specify a maximum number of nectarines permitted in a 16-pound sample. Under the order, minimum size requirements are specified by variety, and are based on the maximum number of nectarines permitted in a 16-pound sample of each variety. The minimum size requirement for an imported nectarine variety would be the same fruit count per 16-pound sample as that specified for that variety under the domestic handling regulation for nectarines.

The maximum number of nectarines in a 16-pound sample would range from a count of 67 to 100, depending on the variety. The nectarines in the 16-pound sample would have to be representative of the nectarines in the package or container and, to meet minimum requirements, the sample could not contain more than the specified number of nectarines for that variety. For the purposes of simplification, this proposed rule lists alphabetically, in a table under proposed § 944.800, the nectarine varieties with their corresponding 16-pound sample counts.

Nectarine varieties not specifically listed in the size table would also be subject to minimum size requirements, which would vary by time of year. From April 1 through May 31, the maximum number of such nectarines in a 16-pound sample would be 90; from June 1 through June 30, the maximum number would be 83; and from July 1 through October 31, the maximum would be 67 nectarines. This is comparable to the requirements under the California nectarine order.

Under the order, nectarines must be "mature" as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) (Standards). The Standards define "mature" to mean that the nectarine has reached the stage of growth that will insure a proper completion of the ripening process. A

higher level of maturity, called "well-matured," is also defined in the order. For certain varieties, the minimum size requirements are based upon the degree of maturity of the fruit, with smaller nectarines being authorized for shipment if they meet the higher maturity standard. For example, a 16-pound sample of the Fantasia variety may not have more than 67 nectarines if the fruit is mature. However, if the fruit is "well-matured," the sample may have up to 75 nectarines.

Under the order, maturity guides known as color chips are used to determine whether certain specified varieties of nectarines meet the well-matured standard. It would be impractical to use these particular color chips to determine whether imported nectarines meet the well-matured requirement, because the color chips were assigned based on the nectarine growing conditions occurring in California. Chile is the principle source of nectarines imported into the United States. Climatic differences between Chile and California make it inappropriate to use the color chips developed for California nectarines as a measure of maturity of imported nectarines.

This proposed rule provides for the same minimum size requirements as those in place for California nectarines. This includes different minimum size requirements for certain varieties depending on the level of maturity. While color chips are not included as maturity guides, there are other criteria used to determine the level of maturity of California nectarines that are appropriate for use in ascertaining the maturity of imported nectarines as well.

For example, the characteristics of "mature" nectarines are that they are light green in color and their shoulders are well-rounded and filled out. Such fruit is normally unyielding to ordinary hand pressure, and exhibit a slight resistance to a knife cut. These nectarines have flesh that is somewhat granular in appearance and is light green to breaking yellow.

Fruit determined to be "well-matured" are light greenish yellow to yellow in color, with well-rounded shoulders that are completely filled out. "Well-matured" nectarines give slightly to ordinary hand pressure and exhibit little or no resistance to a knife cut. The flesh shows little or no granulation and is yellow or straw-colored.

This rule also proposes a procedure to be used in determining whether nectarines meet the minimum size requirements specified for each size category when applying the 16-pound sample requirement. Requirements for

use of an 8-pound sample are provided under the marketing order. Under this procedure, a sample consisting of one-half of the specified number of fruit for a 16-pound sample for a particular size category would be used, provided such sample weighs at least 8 pounds. The count in the 8-pound sample would be multiplied by 2 to determine if it meets the 16-pound requirement. When one-half the specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit would be used to determine the sample weight. If a sample failed with respect to minimum size requirements on the basis of an 8-pound sample, a full 16-pound sample would be used to determine if the fruit meets the minimum size requirements.

Importers would be responsible for arranging for the required inspection and certification of such nectarines prior to importation. Importation is defined to mean release from custody of the United States Customs Service. Such inspection services are available on a fee-for-service basis. This action could, therefore, result in increased costs associated with importing fresh nectarines. The additional costs should be offset, however, by the benefits accrued by ensuring that only acceptable quality fruit is present in the United States marketplace. Such quality assurance promotes buyer satisfaction and increased sales.

This proposed rule would provide a limited quantity exemption from the import requirements specified herein. Individual shipments of 200 pounds or less would be excluded from the proposed quality, size, maturity, and inspection requirements. Additionally, fresh nectarines imported for consumption by charitable institutions, distribution by relief agencies, or commercial processing into products would be exempt from the proposed import requirements. Similar exemptions are provided under the order.

To ensure that fresh nectarines imported exempt from the quality, size, and maturity requirements are used in exempt outlets, this rule proposes that such nectarines be subject to the safeguard procedures for imported fruit established in § 944.350.

Under these procedures, an importer wishing to import nectarines covered herein for exempt uses would complete, in quadruplicate, an "Importer's Exempt Commodity Form (FV-6)." The first copy would be presented to the U.S. Customs Service at the port of entry. The second copy would be mailed or sent via fax to the Marketing Order Administration Branch (MOAB) within

2 days of the entry of the shipment. The third copy would accompany the exempt lot to the receiver, who would certify that the lot has been received and it will be used in an exempt outlet. After the certification is signed by the receiver, the form would be returned to MOAB by the receiver within 2 days of receipt of the lot. The fourth copy would be retained by the importer.

The FV-6 form is currently used by importers of many other fruits and vegetables. The proposed rule could increase the reporting burden for a small number of importers and receivers of nectarines who would complete the FV-6 form, taking about 0.166 hour to complete each report. The additional burden is already accounted for in the information collection submitted for the FV-6 form. This form has been previously approved by the Office of Management and Budget (OMB) under OMB control number 0581-0167. Because of the different domestic (April–October) and import (November–April) seasons, the impact of the 8e requirements should be insignificant. Since imports of nectarines end during April, the impact of this action on importers would be minimal.

FV-6 forms can be obtained from MOAB by calling (202) 720-2491 or sending a fax to (202) 720-5698. The form would be completed at the time the commodity enters the United States. Information called for on the "Importer's Exempt Commodity Form" includes:

- (1) The commodity and the variety (if known) being imported,
  - (2) The date and place of inspection if used to enter failing product or culls as exempt, (include a copy of the inspection certificate),
  - (3) Identifying marks or numbers on the containers,
  - (4) Identifying numbers on the railroad car, truck or other transportation vehicle transporting product to the receiver,
  - (5) The name and address of the importer,
  - (6) The place and date of entry,
  - (7) The quantity imported (in pounds or kilograms),
  - (8) The name and address of the intended receiver (e.g., processor, charity, or other exempt receiver),
  - (9) The intended use of the exempt commodity,
  - (10) The U.S. Customs Service entry number and harmonized tariff code number, and
  - (11) Such other information as may be necessary to ensure compliance with this regulation.
- Lots that are exempt from the quality, size, and maturity requirements of the

nectarine import regulation would not be subject to the inspection and certification requirements in such regulation. An imported lot intended for nonexempt uses, or any portion of such a lot, which fails established quality, size, and maturity requirements, could be exported, disposed of in an exempt outlet, or destroyed.

This proposed rule would also amend paragraph (a) of § 944.400 (7 CFR part 944). That paragraph designates the organizations to perform inspection and certification of imported fresh fruits specified in section 8e of the Act. That paragraph also specifies procedures to be followed for obtaining the required inspections. This proposed rule would designate the Federal or Federal-State Inspection Service and the Canadian Food Inspection Agency as the organizations authorized to inspect and certify foreign produced nectarines as meeting import requirements issued pursuant to section 8e.

Paragraphs (b), (c), and (d) of § 944.400, which specify additional procedures for obtaining inspection and certification of the imported fruits listed in that section, would remain unchanged. These procedures are followed by importers who obtain inspection and certification of those fresh fruits specified in section 8e that are offered for importation into the United States.

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

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

Small agricultural service firms, which include importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000.

There are an estimated 35 importers of nectarines. During the 1996/97 season, about 2,885,000 packages (18 pounds each) of nectarines were imported from Chile. Prices ranged from

\$8.00 to \$28.00 per package, depending on such factors as the time of year and size of the fruit. Assuming an average quantity of 82,428 packages at a price of \$18.00 per package (mid-point in the range), the average nectarine receipts per importer would be \$1,483,704. However, there is a variation in size among the importers, and many handle other commodities in addition to nectarines. While it is not possible to determine how many nectarine importers fall within SBA's definition of a small entity, it is safe to assume that some of the 35 importers could be classified as such.

Section 8e of the Act provides that when certain domestically produced commodities, including nectarines, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, quality, size, and maturity requirements.

Under section 8e, this rule would establish quality, size, and maturity requirements for imported nectarines during the period April 1 through October 31. Imported nectarines would be required to be inspected and certified as meeting these requirements. However, only a tiny fraction of the nectarines imported into the United States enter during the proposed period of regulation. For example, during the 1996–97 Chilean season, approximately 26,000 tons of nectarines were imported. Of these, only 27 tons were imported between April and October. Thus, less than 1 percent of nectarines imported that season would have been subject to the requirements, including inspection, proposed herein. This amount, which is slightly less than 1½ truckloads of nectarines (at 40,000 pounds per truckload), is less than 1 twentieth of 1 percent of the California nectarines which were regulated during 1997.

Similarly, during the 1995–96 Chilean season, approximately 20,000 tons were imported into the United States, but less than 1 percent would have been subject to these regulations. During the 1994–95 Chilean season, slightly less than 35,000 tons of nectarines were imported into the United States, but, again, less than 1 percent would have been regulated.

Since inspection is available on a fee-for-service basis, this action could result in increased costs associated with importing fresh nectarines during the regulated period. Because the amount coming in during this time is so small, however, the total cost of meeting the inspection requirement should be negligible.

Inspection fees vary, depending on such factors as the location of the inspection, the size of the lot to be

inspected, and whether there are multiple commodities in the lot to be inspected. It is estimated that the cost of inspecting nectarines at the Port of Philadelphia in accordance with the provisions of 7 CFR Part 51 (where the majority of nectarine imports enter the country) ranges from 1½ to 3½ cents per container. In recent seasons, f.o.b. prices for Chilean nectarines during the month of April (the time covered by this proposed rule) ranged from \$8.00 to \$16.00 per package. Inspection fees would therefore account for less than one half of 1 percent of the value of the nectarines being imported.

These slight additional costs should be offset by the benefits accrued by ensuring that only acceptable quality fruit is available in the United States marketplace during the regulated period, and allowing the Chilean fruit to equally compete with the California fruit.

This action is intended to ensure that imported nectarines are subject to the same quality requirements as domestically produced nectarines, but because it would apply only to the few nectarines that are presented for importation during the domestic shipping season, it should have only a minimal effect on the market.

The alternative to this action is to continue to allow nectarines to be imported during the domestic shipping season without having to meet similar quality, size, and maturity requirements. This alternative is not in accordance with the requirements of the Act.

Interested persons are invited to comment on this initial regulatory flexibility analysis, and submit information on the regulatory and informational impacts this proposed action would likely have on small businesses.

The information collection requirements contained in this proposed rule have been previously approved by the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), and have been assigned OMB number 0581-0167.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule.

A 60-day period is provided to allow interested persons to comment on this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

#### List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Nectarines, Olives, Oranges.

For the reasons set forth above, 7 CFR Part 944 is proposed to be amended as follows:

#### PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR Part 944 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 944.350 is amended by adding the word “nectarines” after the word “limes” in the section heading and in paragraphs (a)(1) and (a)(2).

3. In § 944.400, the section heading and paragraph (a) introductory text are revised to read as follows:

**§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, kiwifruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.**

(a) The Federal or Federal-State Inspection Service, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, kiwifruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes that are imported into the United States. The Canadian Food Inspection Agency is also designated as a governmental inspection service for the purpose of certifying grade, size, quality and maturity of nectarines and prune variety plums (fresh prunes) only. Inspection by the Federal or Federal-State Inspection Service or the Canadian Food Inspection Agency, with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective services, applicable to the particular shipment of the specified fruit, is required on all imports. Inspection and certification by the Federal or Federal-State Inspection Service will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR Part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados, grapefruit, kiwifruit, limes, nectarines, oranges, prune variety plums (fresh prunes), and table grapes should make arrangements for inspection through the applicable one of the following offices, at least the

specified number of the days prior to the time when the fruit will be imported:

\* \* \* \* \*

4. A new § 944.800 is added to read as follows:

#### § 944.800 Nectarine import regulation.

(a) Pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], the importation into the United States of any nectarines, during the period April 1 through October 31 of each year, is prohibited unless:

(1) Such nectarines meet at least “CA Utility” quality requirements. The term *CA Utility* means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

(i) Free from insect injury which has penetrated or damaged the flesh; split pits which cause an unhealed crack or one or more well healed cracks which, either singly or in the aggregate, are more than ⅜ inch in length; mold, brown rot, and decay which has affected the edible portion; and

(ii) Free from serious damage due to skin breaks, cuts, growth cracks, bruises, or other causes. Damage to any nectarine is serious when it causes a waste of 10 percent or more, by volume, of the individual nectarine.

(iii) Tolerances. Not more than 10 percent, by count, of the nectarines in any one container may be below the requirements which are prescribed by this paragraph, including not more than 5 percent, by count, for any one defect, except split pits. An additional tolerance of 10 percent, by count, of the nectarines in any one container or bulk lot may contain nectarines affected with split pits. This means a total tolerance of 20 percent is allowed for all defects, including split pits, but not to exceed 15 percent for split pits alone.

(2) Such nectarines of any variety of nectarines listed in Column A of Table I of this paragraph are of a size that a 16-pound sample representative of the size of the nectarines contains not more than the number of nectarines listed for the variety in Column B or C of said table: *Provided*, That the following procedure shall be used in determining whether nectarines meet the minimum size requirements specified for each size category in this section applying the 16-

pound sample. A sample consisting of one-half of the specified number of fruit for a particular size category shall be used, provided such sample weighs at least eight pounds. When one-half the

specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit shall be used to determine the sample weight. If a sample fails with

respect to minimum size requirements on the basis of an 8-pound sample, a 16-pound sample shall be used to determine if the fruit meets the minimum size requirements.

TABLE I

Column A Variety	Column B Maximum No. of nectarines per 16-lb. sample if mature	Column C Maximum No. of nectarines per 16-lb. sample if well- matured
Alshir Red	68	75
Alta Red	68	75
April Glo	100	100
Arctic Glo	83	83
Arctic Pride	68	75
Arctic Queen	68	75
Arctic Rose	83	83
Arctic Snow	68	75
Arctic Star	83	83
Arctic Sweet	68	75
August Glo	68	75
August Lion	68	75
August Red	68	75
August Snow	68	75
Autumn Delight	68	75
Big Jim	68	75
Brite Pearl	68	75
Crystal Rose	68	75
Diamond Brite	83	83
Diamond Ray	68	75
Earliglo	90	90
Early Diamond	90	90
Early May	83	83
Early Red Jim	68	75
Fairlane	68	75
Fantasia	68	75
Firebrite	68	75
Fire Pearl	68	75
Flame Glo	68	75
Flaming Red	68	75
Flavortop	68	75
Flavortop I	68	75
Grand Diamond	68	75
Grand Pearl	68	75
Grand Sun	90	90
Honey Kist	68	75
How Red	68	75
Johnny's Delight	90	90
July Red	68	75
Juneglo	83	83
June Pearl	83	83
Kay Diamond	68	75
Kay Glo	83	83
King Jim	68	75
Late Red Jim	68	75
May Diamond	83	83
May Grand	83	83
May Jim	90	90
May Kist	90	90
May Lion	83	83
Mayfire	100	100
Mayglo (before May 6)	100	100
Mayglo (after May 5)	90	90
Mid Glo	68	75
Niagara Grand	68	75
P-R Red	68	75
Prima Diamond IV	83	83
Prima Diamond IX	68	75
Prima Diamond XIII	83	83
Prima Diamond XVI	68	75
Prima Diamond XIX	68	75

TABLE I—Continued

Column A Variety	Column B Maximum No. of nectarines per 16-lb. sample if ma- ture	Column C Maximum No. of nectarines per 16-lb. sample if well- matured
Prima Diamond XXIV .....	68	75
Prince Jim .....	83	83
Red Delight .....	83	83
Red Diamond .....	68	75
Red Glen .....	68	75
Red Glo .....	83	83
Red Jim .....	68	75
Red May .....	78	78
Rio Red .....	68	75
Rose Diamond .....	83	83
Royal Giant .....	68	75
Royal Glo .....	83	83
Ruby Diamond .....	68	75
Ruby Pearl .....	68	75
Scarlet Red .....	68	75
September Red .....	68	75
Sparkling June .....	68	75
Sparkling May .....	83	83
Sparkling Red .....	68	75
Spring Bright .....	68	75
Spring Diamond .....	68	75
Spring Red .....	68	75
Star Brite .....	83	83
Summer Beaut .....	68	75
Summer Blush .....	68	75
Summer Bright .....	68	75
Summer Diamond .....	68	75
Summer Fire .....	68	75
Summer Grand .....	68	75
Summer Lion .....	68	75
Summer Red .....	68	75
Sun Diamond .....	68	75
Sunburst .....	68	75
Sunny Red .....	68	75
Super Star .....	68	75
Terra White .....	68	75
White Jewel .....	68	75
Zee Glo .....	68	75
Zee Grand .....	83	83
491-48 .....	68	75

(3) Such nectarines of any variety not specifically listed in Table I of paragraph (a)(2) of this section are of a size that a 16-pound sample, using the procedure in paragraph (a)(2) of this section, contains: During the period April 1 through May 31, not more than 90 nectarines; during the period June 1 through June 30, not more than 83 nectarines; and during the period July 1 through October 31, not more than 67 nectarines or, if the nectarines are "well-matured", not more than 75 nectarines.

(b) The importation of any individual shipment which, in the aggregate, does not exceed 200 pounds net weight, is exempt from the requirements specified in this section.

(c) The quality, size, and maturity requirements of this section shall not be applicable to nectarines imported for

consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, but such nectarines shall be subject to the safeguard provisions in § 944.350.

(d) The term *nectarines* means all varieties of *Prunus Amygdalus Nectarina*, commonly called nectarines.

(e) The term *importation* means release from custody of the United States Customs Service.

(f) The terms *U.S. No. 1* and *mature* mean the same as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 to 51.3160). *Well-Matured* means a condition distinctly more advanced than *mature*.

(g) Inspection and certification service is required for imports and will be available in accordance with the regulation designating inspection services and procedures for obtaining

inspection and certification (7 CFR Part 944.400).

(h) Any lot or portion thereof which fails to meet the import requirements prior to or after reconditioning, and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or commercial processing into products, may be exported, disposed of in an exempt outlet, or destroyed.

(i) As specified in this section, it is determined that fresh nectarines imported into the United States shall meet the same or comparable minimum quality, size, and maturity requirements as those established for fresh nectarines grown in California under Marketing Order No. 916 (7 CFR Part 916).

Dated: March 22, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99-7474 Filed 3-25-99; 8:45 am]

BILLING CODE 3410-02-P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 230, 240 and 270

[Release Nos. 33-7656, 34-41189, IC-23745; File No. S7-10-99; International Series Release No. 1188]

RIN 3235-AH32

### Offer and Sale of Securities to Canadian Tax-Deferred Retirement Savings Accounts

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

**SUMMARY:** The Commission is proposing a new rule that would permit foreign securities to be offered to U.S. participants in certain Canadian tax-deferred retirement accounts and sold to those accounts without being registered under the Securities Act of 1933. The Commission also is proposing a new rule that would permit foreign investment companies to offer securities to those U.S. participants and sell securities to their Canadian retirement accounts without registering under the Investment Company Act of 1940. These rules would enable investors who hold securities in certain Canadian tax-deferred retirement accounts, and who reside or are temporarily present in the United States, to manage their investments within those accounts.

**DATES:** Comments must be received on or before May 28, 1999.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549-0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7-10-99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

**FOR FURTHER INFORMATION CONTACT:**

Cynthia Gurnee Pugh, Special Counsel,

at (202) 942-0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549-0506, or Paul M. Dudek, Chief, at (202) 942-2990, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549-0302.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission") today is proposing for public comment rule 237 (17 CFR 230.237) under the Securities Act of 1933 (15 U.S.C. 77a) (the "Securities Act"), rule 7d-2 (17 CFR 270.7d-2) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act"), and amendments to rule 12g3-2 under the Securities Exchange Act of 1934 (15 U.S.C. 78a) (the "Exchange Act").

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### TEXT OF PROPOSED RULES

#### Executive Summary

In Canada, individuals can invest a portion of their earnings in tax-deferred retirement savings accounts ("Canadian retirement accounts"), which operate in a manner similar to Individual Retirement Accounts ("IRAs") in the United States. Individuals themselves can decide how to invest the assets held in the accounts, but contributions and withdrawals are subject to strict limits. Individuals who have established Canadian retirement accounts and later moved to the United States ("Canadian/U.S. Participants" or "participants") have encountered obstacles to the continued management of their retirement investments in those accounts. Most securities held in these accounts, and the investment companies ("funds") that issue many of those securities, are not registered in the United States, and issuers therefore cannot publicly offer and sell those

securities to Canadian/U.S. Participants. As a result, these participants have not been able to make changes in their retirement accounts to carry out the financial planning needed to meet their individual retirement goals.

The Commission is proposing two rules that would enable Canadian/U.S. Participants to continue to manage the assets in their Canadian retirement accounts. The proposed rules would provide relief from the U.S. registration requirements, under certain conditions, for offers of securities to these participants and sales to their accounts. Under the proposals, (i) securities of foreign issuers, including securities of foreign funds, could be offered to Canadian/U.S. Participants and sold to their Canadian retirement accounts without being registered under the Securities Act or the Exchange Act and (ii) foreign funds could offer securities to Canadian/U.S. Participants and sell securities to their Canadian retirement accounts without registering as investment companies under the Investment Company Act. The offer and sale of these securities, however, would remain fully subject to the antifraud provisions of the U.S. securities laws.

### I. Introduction

More than half of all Canadian households invest retirement savings through some form of Canadian retirement account.<sup>1</sup> Canadian retirement accounts, like IRAs in the United States,<sup>2</sup> encourage retirement saving by permitting individuals to invest savings on a tax-deferred basis.<sup>3</sup>

<sup>1</sup> See, e.g., Royal Trust Seventh Annual RRSP Survey (1997), available at <<http://www.royalbank.com/rt-wealth/01survey/01fk.html>> (visited Dec. 22, 1998). Assets held in Canadian retirement accounts represent a sizable portion of Canadian pension assets. See The Conference Board of Canada, *Maximizing Choice: Economic Impacts of Increasing the Foreign Property Limit* at Table 1 (Jan. 1998), available at <[http://www.ific.ca/eng/frames.asp?11=Regulation\\_and\\_Committees](http://www.ific.ca/eng/frames.asp?11=Regulation_and_Committees)> (through the "Current Issues & Initiatives" and the "Impact of the Foreign Property Rule" hyperlinks) (visited Dec. 22, 1998). In addition, a 1998 survey reports that approximately half of Canadian retirement account holders plan to invest the greatest proportion of their annual contributions in mutual funds. See Royal Trust Eighth Annual RRSP Survey (1998), available at <<http://www.royalbank.com/rt-wealth/01survey/01h3.html>> (visited Dec. 28, 1998).

<sup>2</sup> See 26 U.S.C. 408, 408A (providing for Individual Retirement Accounts under U.S. tax law). Canadian retirement accounts are established and governed by the Income Tax Act of Canada and the regulations thereunder. See generally Income Tax Act, R.S.C. 1985, ch. 1 (5th Supp.) (Can.) (as amended) ("Canadian Income Tax Act"); Income Tax Regulations, C.R.C., ch. 945 (1997) (Can.) ("Canadian Income Tax Regulations").

<sup>3</sup> Contributions to a Canadian retirement account and earnings on those contributions are not subject to Canadian income tax until withdrawn. A