

# Rules and Regulations

Federal Register

Vol. 72, No. 72

Monday, April 16, 2007

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. AMS-FV-07-0030; FV07-916/917-4 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 eliminates grade, size, maturity, pack, container and inspection requirements for all California nectarines and peaches except those packed in containers labeled "California Well Matured" or "CA WELL MAT". This rule also makes seasonal adjustments to the handling requirements applicable to well matured fruit. Finally, this rule removes certain handler reporting requirements that are deemed no longer necessary. 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 should reduce handler costs while enabling handlers to continue to meet the demands of their buyers.

**DATES:** Effective April 17, 2007.

Comments received by June 15, 2007 will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or Internet: [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or E-mail: [Jennifer.Garcia3@usda.gov](mailto:Jennifer.Garcia3@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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

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

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler

is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule: (1) Eliminates grade, size, maturity, pack, container and inspection requirements for all California nectarines and peaches except those packed in containers labeled "California Well Matured" or "CA WELL MAT"; (2) Makes seasonal adjustments to the handling requirements applicable to California Well Matured fruit; and (3) Removes certain handler reporting requirements that are deemed no longer necessary.

These changes are intended to allow industry handlers to reduce costs and provide them greater flexibility in meeting buyer preferences. Also, adjustments are made in light of the newly implemented California State marketing program.

Sections 916.52 and 917.41 of the orders provide authority for handling regulations for fresh California nectarines and peaches. The regulations may include grade, size, maturity, quality, pack, and container requirements. The orders also provide that whenever such requirements are in effect, the fruit subject to such regulation must be inspected by the Federal or Federal-State Inspection Service (Inspection Service) and certified as meeting the applicable requirements.

The nectarine order has been in effect since 1939, and the peach program has been in effect since 1958. The orders have been used over the years to establish a quality control program that includes minimum grades, sizes, and maturity standards. That program has helped improve the quality of product moving from the farm to market, and has helped growers and handlers more effectively market their crops. Additionally, the orders have been used to ensure that only satisfactory quality nectarines and peaches reach the consumer. This has helped increase and maintain market demand over the years.

Sections 916.53 and 917.42 authorize the modification, suspension, or

termination of regulations issued under 916.52 and 917.41, respectively. Changes in regulations have been implemented to reflect changes in industry operating practices and to solve marketing problems as they arise. The committees, which are responsible for local administration of the orders, meet whenever needed, but at least annually, to discuss the orders and the various regulations in effect and to determine if, or what, changes may be necessary to reflect industry needs. As a result, regulatory changes have been made numerous times over the years to address industry changes and to improve program operations.

The industry has struggled to reduce costs in recent years. In its efforts to reduce costs, the industry considered adopting audit-based inspection programs in lieu of traditional inspection programs. Ultimately these programs would not provide sufficient savings to the industry. More recently, the industry considered replacing the existing Federal marketing orders with programs under the State of California that would not require Federal or Federal-State inspection of nectarines and peaches. In 2006, at the request of the industry, the California Department of Food and Agriculture promulgated a State program authorizing voluntary inspections for the nectarine and peach industry.

Beginning with the 2007 season, under the State program, all fruit must meet at least a modified U.S. No 1 grade and be "mature" as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) and United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223) (hereinafter referred to as the "Standards"). Inspection costs under the program are expected to be minimal, because inspection would not be mandatory. The industry has also shifted its data collection and promotional activities over to the State program.

The industry subsequently discussed removing all handling regulations under the Federal orders. This would have also resulted in the elimination of all inspection requirements and expenses under the Federal orders. However, the industry believes that buyers value the committees' "CA WELL MAT" mark as an indicator of high quality and may be willing to pay a premium price for fruit marked as such. The "CA WELL MAT" certification mark is owned by the California Tree Fruit Agreement, the management organization of the Peach Commodity Committee (PCC), which also manages the Nectarine Administrative Committee (NAC).

Accordingly, the committees decided to maintain all Federal marketing order handling requirements, including inspection and certification requirements, for "California well matured" fruit. The committees, thus, recommended revising the handling regulations to cover only nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured".

The term "well matured" is defined in the orders' rules and regulations, and has been used for many years by the industry to describe a level of maturity higher than the definition of "mature" in the Standards. The Inspection Service has been providing certification that these products meet the definition. Containers of nectarines and peaches bearing the certification mark must meet all of the requirements entailed in the definition of "well matured." Thus, nectarines and peaches must continue to meet the grade and size requirements set forth in the orders' rules and regulations.

The committees met on February 9, 2007, and unanimously recommended that the handling requirements be revised for the 2007 season, which is expected to begin in April. No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, based on sufficient chill hours and a strong bloom, preliminary estimates indicate that the 2007 crop will be slightly larger than the 2006 crop, which totaled approximately 17,078,801 containers of nectarines and 19,231,534 containers of peaches.

#### Container and Pack Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of pack and container requirements for nectarines and peaches, respectively. Such requirements appear in §§ 916.115, 916.350, 917.150 and 917.442 of the orders' rules and regulations.

Currently, §§ 916.115 and 917.150 require that all containers of nectarines and peaches, respectively, be stamped with an Inspection Service lot number showing that such fruit has been inspected. Since only nectarines and peaches marked "CA WELL MAT" or "California Well Matured" will be subject to inspection requirements beginning in the 2007 season, §§ 916.115 and 917.150 are revised to specify that lot stamping is only required on containers so marked.

This rule also revises paragraph (a)(3) of §§ 916.350 and 917.442 to remove

references to "U.S. Mature" and "US Mat" container markings. These references are no longer needed since only fruit packed in containers marked "CA WELL MAT" or "California Well Matured" will be subject to handling regulations under the orders this season.

Sections 916.350 and 917.442 also establish weight-count standards for packed containers of nectarines and peaches, respectively. These regulations define a maximum number of nectarines or peaches in a sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers. The regulations also specify how the containers must be marked. In paragraph (a)(8) of § 916.350 and (a)(9) of § 917.442, weight marking requirements are established for nectarines and peaches packed in volume-filled Euro style containers.

According to the committees, some retailers have requested handlers to supply volume-filled Euro containers with a net weight that is equal to the weight of tray-packed Euro containers. By eliminating the net weight requirement for volume-filled Euro containers, handlers are allowed to increase or decrease the amount of fruit in the container to match the net weight of fruit in a tray-packed Euro container, thus giving them more flexibility when marketing their fruit.

#### 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. Currently, nectarines and peaches are subject to a modified U.S. No. 1 grade requirement. Handlers are also able to pack to a "CA Utility" quality standards, subject to container labeling requirements. The committees recommended continued use of these grade and quality requirements.

However, they recommended that these requirements only be applied to nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured". This rule revises paragraph (a) of §§ 916.356 and 917.459 to specify such requirements only for containers of nectarines and peaches marked "CA WELL MAT" or "California Well Matured" during the 2007 and subsequent seasons.

These changes will allow industry handlers to reduce inspection costs by removing inspection and certification requirements on containers not marked "CA WELL MAT" and provide them greater flexibility in meeting buyer preferences.

This rule also revises paragraph (a)(1) of § 916.356 to add an additional

tolerance for Peento-type nectarines. Peento-type nectarines, also known as donut® nectarines due to their flattened shape, are prone to growth cracks, which emanate from the blossom end of the fruit. The committees believe that this is a minor defect that does not affect the edibility of the fruit. Thus, this action will make more Peento-type nectarines available to consumers without materially impacting the overall quality of the fruit.

#### Maturity Requirements

Sections 916.52 and 917.41 of the orders also authorize the establishment of maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is “mature” as defined in the Standards. The regulations also define a higher level of maturity (“well-matured”) that can be used at the option of handlers.

For most varieties, “well-matured” determinations for nectarines and peaches are made using maturity guides (e.g., color chips,) along with other maturity tests as may be applied by the Inspection Service. These maturity guides are reviewed each year by the Inspection Service 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 appear in Table 1 in paragraphs (a)(1)(iv) of §§ 916.356 and 917.459, for nectarines and peaches, respectively. Seasonal adjustments being made to the maturity guide are described below.

*Nectarines:* Requirements for “well-matured” nectarines are specified in § 916.356 of the order’s rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for four varieties of nectarines. Specifically, the Inspection Service recommended adding maturity guides for the Larry’s Red, September Bright, and WF 1 varieties to be regulated at the J maturity guide, and for the Prima Diamond VII variety to be regulated at the L maturity guide.

*Peaches:* Requirements for “well-matured” peaches are specified in § 917.459 of the order’s rules and regulations. This rule revises Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for 11 peach varieties. Specifically, the Inspection Service recommended adding maturity guides for the Super Chief and Sweet Crest varieties to be regulated at the H maturity guide; the Junelicious variety to be regulated at the I maturity guide; the Burpeachfourteen (Spring Flame® 20), Henry III, Sharise, Sierra Rich,

Sweet Blaze and Sweet Kay varieties to be regulated at the J maturity guide; and the Bright Princess and Summer Fling varieties to be regulated at the L maturity guide.

The committees recommended these maturity guide requirements based on the Inspection Service’s continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the “well-matured” level of maturity for nectarine and peach varieties in production.

#### Size Requirements

Both orders provide authority (in §§ 916.52 and 917.41) 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, thereby increasing returns to producers and handlers. In addition, increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, which is also a benefit to producers and handlers.

Several years ago the committees recommended revisions to allow handlers of late season nectarine and peach varieties to pack smaller sized fruit as long as the fruit was “well matured”. This rule revises the size regulations in paragraphs (a)(6)(i), (a)(6)(ii), (a)(9)(i), and (a)(9)(ii) of § 916.356 and paragraphs (a)(6)(i) and (a)(6)(ii) to remove size options since only containers marked “CA WELL MAT” or “California Well Matured” will be subject to the size regulations under the orders.

Varieties recommended for specific size regulations have been reviewed and such recommendations are based on the specific characteristics of each variety. The committees 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 to the size requirements are appropriate.

*Nectarines:* Section 916.356 of the order’s rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to establish variety-specific minimum size requirements for fourteen varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2006 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Burnectfive (Spring Flare® 21) variety of nectarines, recommended for regulation at a minimum size 96. Studies of the size ranges attained by the Burnectfive (Spring Flare® 21) variety revealed that 100 percent of the containers met the minimum size of 96 during the 2005 and 2006 seasons. Sizes ranged from size 50 to size 96, with 5.8 percent of the fruit in the 50 sizes, 15.7 percent of the packages in the 60 sizes, 28.6 percent in the 70 sizes, 34.1 percent in the 80 sizes, and 16.8 percent in the 90 sizes.

A review of other varieties with the same harvesting period indicated that the Burnectfive (Spring Flare® 21) 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 Burnectfive (Spring Flare® 21) variety in the variety-specific minimum size regulation at a minimum size 96 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical data such as this provides the committee 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, paragraph(a)(3) of § 916.356 is revised to include the Burnectfive (Spring Flare® 21) variety; paragraph (a)(4) of § 916.356 is revised to include the Burnecttwelve (Sweet Flare® 21), Early Pearl, and Rose Bright varieties; and paragraph (a)(6) of § 916.356 is revised to include the August Bright, Burnectseventeen (Summer Flare® 32), Candy Pearl, Grand Candy, Honey Diva, Larry’s Red, Prima Diamond VII, Spring Pearl, Sugarine, and Zephyr nectarine varieties.

*Peaches:* Section 917.459 of the order’s rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6) of § 917.459 to

establish variety-specific minimum size requirements for 11 peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2006 season. This rule also removes the variety-specific minimum size requirements for seven varieties of peaches whose shipments fell below 5,000 containers during the 2006 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the May Snow variety of peaches, which was recommended for regulation at a minimum size 88. Studies of the size ranges attained by the May Snow variety revealed that 97.8 percent of the containers met the minimum size of 88 during the 2005 and 2006 seasons. The sizes ranged from size 40 to size 88, with 11.6 percent of the containers meeting the size 40, 19.2 percent meeting the size 50, 45.7 percent meeting the size 60, 15.1 percent meeting the size 70, 3.4 percent meeting the size 80, 2.3 percent meeting the size 84, and 0.5 percent meeting the size 88 in the 2006 season.

A review of other varieties with the same harvesting period indicated that the May Snow variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to pack the variety confirm this information regarding minimum size and the harvesting period, as well. Thus, the recommendation to place the May Snow variety in the variety-specific minimum size regulation at a minimum size 88 is appropriate.

Historical data such as this provides the committee 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 committee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, paragraph (a)(2) of § 917.459 is revised to include the Snow Angel peach variety; paragraph (a)(3) of § 917.459 is revised to include the May Snow peach variety; paragraph (a)(4) of § 917.459 is revised to include the May Saturn (Early Saturn) peach variety; paragraph (a)(5) of § 917.459 is revised to include the Candy Red, Raspberry, and Sugar Jewel peach varieties; and paragraph (a)(6) of § 917.459 is revised to include the

Burpeachfifteen (Summer Flame® 34), Burpeachsixteen, Burpeachtwenty (Summer Flame®), Galaxy, and Snow Magic peach varieties.

Section (a)(4) is currently reserved for any varieties which will be regulated at a size 84. The May Saturn (Early Saturn) variety, as noted above, will be regulated at size 84 under (a)(4).

This rule also revises paragraph (a)(5) of § 917.459 to remove the May Sun and Snow Prince peach varieties and paragraph (a)(6) of § 917.459 to remove the 24-SB, Crimson Queen, Jupiter, Red Giant, and Spring Gem peach varieties from the variety-specific minimum size requirements because less than 5,000 containers of each of these varieties was produced during the 2006 season.

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

The committees 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.

#### Reporting Requirements

Sections 916.60 and 917.50 of the orders authorize the establishment of reporting requirements for nectarines and peaches, respectively. Currently, under sections 916.160, 917.178, and 917.179, handlers are required to file certain reports pertaining to daily packouts, annual shipments, and shipment destinations. The collection and dissemination of statistical information has been a valuable component of the programs, as it provides growers and handlers with information which enhances their decision-making ability.

As previously discussed, a State marketing program has recently been implemented for the California peach and nectarine industries, which include the collection and dissemination of statistical information. Accordingly, there is no longer a need to require these handler reports under the orders. Therefore, at their February 9, 2007, meetings, the committees recommended removing current handler reporting requirements, beginning with the 2007 season. The committees have implemented a memorandum of understanding to share information with the new State marketing order, so

information collected by the State program can be utilized by the committees.

This rule removes reporting requirements in § 916.160 for nectarines and §§ 917.178 and 917.179 for peaches. This action should reduce handler costs under the orders.

This rule reflects the need to revise the handling and reporting requirements for California nectarines and peaches. This rule is intended primarily to reduce costs and should therefore have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches. This rule is also intended to maintain the perceived value of the "California well matured" certification mark by maintaining current grade, size, quality, pack, container and inspection requirements on fruit packed and labeled as "California Well Matured" or "CA WELL MAT."

#### Initial Regulatory Flexibility Analysis

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

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

#### Industry Information

There are approximately 175 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 676 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than \$6,500,000. Small agricultural producers are defined by the SBA as those having annual receipts of less than \$750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who would not be considered small entities. For the 2006 season, the committees' staff estimated that the average handler price received

was \$9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 722,223 containers to have annual receipts of \$6,500,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2006 season, the committees' staff estimates that small handlers represent approximately 85 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 68 producers in the industry would not be considered small entities. For the 2006 season, the committees estimated the average producer price received was \$4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 containers of nectarines and peaches to have annual receipts of \$750,000. Given data maintained by the committees' staff and the average producer price received during the 2006 season, the committees' staff estimates that small producers represent more than 90 percent of the producers within the industry.

With an average producer price of \$4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 36,388,996 containers, the value of the 2006 packout is estimated to be \$163,750,482. Dividing this total estimated grower revenue figure by the estimated number of producers (676) yields an estimate of average revenue per producer of about \$242,234 from the sales of peaches and nectarines.

#### *Regulatory Revisions*

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The committees met on February 9, 2007, and unanimously recommended that these handling requirements be revised for the 2007 season. This rule: (1) Eliminates grade, size, maturity, pack, container and inspection requirements for all California nectarines and peaches except those packed in containers labeled "California Well Matured" or "CA WELL MAT"; (2) Makes seasonal adjustments to the handling requirements applicable to California Well Matured fruit; and (3) Removes certain handler reporting requirements that are deemed no longer necessary.

#### **Container and Pack Requirements—Discussions and Alternatives**

Sections 916.350 and 917.442 establish container and pack requirements. The committees discussed removing all handling regulations under the Federal orders, including inspection requirements. However, the industry believes that buyers value the committees' "CA WELL MAT" mark as an indicator of high quality and may be willing to pay a premium price for fruit marked as such. Accordingly, they decided to maintain current grade, quality, maturity, size container, pack and inspection requirements for "well matured" fruit. The committees, thus, recommended revising the handling regulations to cover only nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured".

#### **Lot Stamping Requirements—Discussions and Alternatives**

Sections 916.115 and 917.150 establish lot stamping requirements. This rule revises lot stamping requirements to require such markings only on containers labeled "CA WELL MAT" or "California Well Matured". An alternative would be to leave the existing lot stamping requirements unchanged, but the requirements would not be consistent with the other recommended changes and would result in unnecessary expenses for industry handlers. Based on this, the committees recommended revising lot stamping requirements to require such markings only on containers labeled "CA WELL MAT" or "California Well Matured."

#### **Weight Marking Requirements—Discussions and Alternatives**

Sections 916.350 and 917.442 also establish weight marking requirements for nectarines and peaches packed in Euro type volume-filled containers. These require each five down Euro container of loose-filled nectarines or peaches to be marked with the words "29 pounds net weight".

In the past, handlers' sales to their retail customers have been based on set net weights for most pack styles. With the changing marketing environment, some retailers want volume-filled pack styles that have the same net weight as tray pack styles, especially for the Euro type containers.

Handlers either respond to the requests of the retailers or risk losing business from those retailers. The committees agreed that weight markings are no longer necessary; and, in turn, at their February 9, 2007, meetings

recommended eliminating the Euro type container weight marking requirement.

Without the weight marking requirements, nectarines and peaches packed in Euro style volume-filled containers can be packed to the buyers' preferences. The committees believe that the elimination of marking requirements will satisfy the stated needs of retailers and will open additional market opportunities for the industry.

#### **Grade and Quality Requirements—Discussions and Alternatives**

Sections 916.356 and 917.459 establish minimum grade and quality requirements. The NAC and PCC previously discussed removing all handling regulations under the orders in favor of regulations under the newly-promulgated State marketing order. However, the industry still wanted to retain quality standards for fruit marketed as "CA WELL MAT", a term which has value to buyers and the industry. One alternative the committees discussed was to allow handlers to use the mark under a licensing agreement with CTFA. Taking into account enforcement concerns, this approach was viewed as not feasible.

At their February 9, 2007, meetings, the committees recommended revising the grade and quality requirements to apply only to nectarines and peaches packed in containers marked "CA WELL MAT" or "California Well Matured" beginning with the 2007 season. This action will ensure that fruit packed in containers marked "CA WELL MAT" or "California Well Matured" continues to be inspected and meet applicable grade and quality requirements. For this reason, the committees unanimously recommended the revisions and believe that they will help accomplish the goals of the industry.

#### **Minimum Maturity and Size Requirements—Discussions and Alternatives**

Sections 916.356 and 917.459 establish minimum fruit maturity levels. This rule makes adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on measurements suggested by maturity guides (e.g., color chips), as reviewed and recommended by the Inspection Service annually to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect refinements in measurements of the maturity characteristics of nectarines and peaches as observed during previous seasons' inspections. Adjustments in the

guides utilized ensure acceptable fruit maturity and increased consumer satisfaction while benefiting nectarine and peach producers and handlers.

Sections 916.356 and 917.459 of the orders' rules and regulations also specify minimum sizes for various varieties of nectarines and peaches. This rule makes adjustments to the minimum sizes authorized for certain varieties of each commodity for the 2007 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre, and coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

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

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

Sections 916.356 and 917.459 of the orders' rules and regulations also specify size requirements for handlers of late season nectarine and peach varieties wishing to pack smaller sized fruit as long as the fruit was "well matured." Since only containers marked "CA WELL MAT" or "California Well Matured" will be subject to minimum size requirements, this rule also revises the size regulations to remove these obsolete size options.

#### **Reporting Requirements—Discussions and Alternatives**

Sections 916.160 and 917.178 establish reporting requirements for nectarine and peach handlers, respectively. Similar reporting requirements have been established under the newly-implemented California State marketing program. Accordingly, collection of this information under the Federal orders is no longer necessary. The committees have implemented a memorandum of understanding to share information with the new State marketing order, so information collected by the State program can be utilized by the

committees. An alternative would be to maintain the reporting requirements, but this would result in an unnecessary reporting burden. For this reason, the removal of reporting requirements was unanimously recommended by both committees.

The committees make recommendations regarding the revisions in handling and reporting requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all meetings are distributed to committee members and others who have requested them, and are also available on the committees' Web site, thereby increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, each of the recommended changes is expected to generate financial benefits for producers and handlers through reduced costs and increased fruit sales. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule reduces reporting and recordkeeping requirements on both small and large nectarine and peach handlers regulated under the orders. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being removed by this rule are currently approved by the Office of Management and Budget (OMB), under OMB No. 0581-0189, Generic OMB Fruit Crops. Removal of the reporting requirements under Parts 916 and 917 is expected to reduce the reporting burden on small or large peach and nectarine handlers by 370 hours, and should further reduce industry expenses.

The AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen

access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings are widely publicized throughout the nectarine and peach industry and all interested parties are encouraged to attend and participate in committee deliberations on all issues. These meetings are held annually in the fall, winter, and spring. During the February 9, 2007, meetings, all entities, large and small, were encouraged to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

This rule invites comments on changes to the handling and reporting requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act. With regard to revision to the rules and regulations under the order and concerning those provisions that are removed or terminated, it is found that those provisions no longer tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule should be implemented as soon as possible, since shipments of California nectarines and peaches are expected to begin in early April; (2) this rule relaxes handling and reporting requirements for nectarines and peaches; (3) the committees met and unanimously recommended these changes at public meetings, and

interested persons had opportunities to provide input at all those meetings; and (4) the rule provides a 60-day comment period, and any written comments timely received will be considered prior to any finalization of this interim final rule.

**List of Subjects**

*7 CFR Part 916*

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

*7 CFR Part 917*

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

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

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

Authority: 7 U.S.C. 601–674.

**PART 916—NECTARINES GROWN IN CALIFORNIA**

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

**§ 916.115 Lot stamping.**

Except when loaded directly into railway cars, exempted under § 916.110, or for nectarines mailed directly to consumers in consumer packages, all exposed or outside containers of nectarines marked “CA WELL MAT” or “California Well Matured”, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 916.55: *Provided*, That pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

■ 3. Section 916.160 is removed.

■ 4. Section 916.350 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (a)(3);

■ c. Removing paragraph (a)(8); and

■ d. Redesignating current paragraphs (a)(9) through (a)(11) as (a)(8) through (a)(10) to read as follows:

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

(a) During the period beginning April 1 and ending October 31, no handler

shall ship any package or container of any variety of nectarines marked “CA WELL MAT” or “California Well Matured” except in accordance with the following terms and conditions:

\* \* \* \* \*

(3) Each package or container of nectarines bearing the words “California Well Matured” or “CA WELL MAT” shall be well matured as defined in § 916.356.

\* \* \* \* \*

■ 5. Section 916.356 is amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Revising paragraph (a)(1) introductory text;

■ c. Revising Table 1 of paragraph (a)(1)(iv) (excluding the note following the table);

■ d. Revising the introductory text of paragraphs (a)(3), (a)(4), and (a)(6)

■ e. Revising paragraphs (a)(6)(i) and (a)(6)(ii); and

■ f. Revising paragraphs (a)(9)(i) and (a)(9)(ii) to read as follows:

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

(a) During the period beginning April 1 and ending October 31, no handler shall ship any package or container of any variety of nectarines marked “CA WELL MAT” or “California Well Matured” except in accordance with the following terms and conditions:

(1) Any lot or package or container of any variety of nectarines shall meet the requirements of U.S. No. 1 grade:

*Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle  $\frac{3}{8}$  inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle  $\frac{1}{2}$  inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That nectarines of the Peento type shall be permitted blossom end cracking that is well healed and does not exceed the aggregate area of a circle  $\frac{3}{8}$  inch in diameter, and/or does not exceed a depth that exposes the pit: *Provided further*, That any handler may handle nectarines if such nectarines meet “CA Utility” quality requirements. The term “CA Utility” means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S.

No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are well mature and are:

\* \* \* \* \*

(iv) \* \* \*

TABLE 1

Column A variety	Column B maturity guide
Alshir Red .....	J
Alta Red .....	J
April Glo .....	H
August Fire .....	L
August Glo .....	L
August Lion .....	J
August Red .....	J
Aurelio Grand .....	F
Autumn Delight .....	L
Big Jim .....	J
Burnectone (Spring Ray®) .....	L
Burnectseven (Summer Flare® 28) .....	J
Burnectten (Spring Flare® 19) .....	H
Burnecttwelve (Sweet Flare® 21) .....	I
Candy Gold .....	L
Crimson Baby .....	G
Diamond Bright .....	J
Diamond Jewel .....	L
Diamond Ray .....	L
Earliglo .....	I
Early Diamond .....	J
Early Red Jim .....	J
Early Sungrand .....	H
Emelia .....	J
Fairlane .....	L
Fantasia .....	J
Firebrite .....	H
Fire Sweet .....	J
Flame Glo .....	L
Flamekist .....	L
Flaming Red .....	K
Flavortop .....	J
Gee Sweet .....	L
Grand Candy .....	J
Grand Diamond .....	L
Grand Sweet .....	J
Gran Sun .....	L
Honey Blaze .....	J
Honey Dew .....	B*
Honey Fire .....	L
Honey Kist .....	I
Honey Royale .....	J
July Red .....	L
June Brite .....	I
June Candy .....	K
Juneglo .....	H
Kay Diamond .....	L
Kay Glo .....	J
Kay Sweet .....	J
King Jim .....	L
Kism Grand .....	J
Larry's Red .....	J
Late Le Grand .....	L
Late Red Jim .....	J
Mango .....	B*
May Diamond .....	I
May Fire .....	H
Mayglo .....	H
May Grand .....	H



TABLE 1—Continued

Column A variety	Column B maturity guide
May Kist .....	H
Mid Glo .....	L
Moon Grand .....	L
Niagra Grand .....	H
P-R Red .....	L
Prince Jim .....	L
Prince Jim I .....	L
Prima Diamond VII .....	L
Prima Diamond XIII .....	L
Prima Diamond XIX .....	L
Red Delight .....	I
Red Diamond .....	L
Red Fred .....	J
Red Free .....	L
Red Glen .....	J
Red Glo .....	I
Red Jewel .....	L
Red Jim .....	L
Red May .....	J
Red Roy .....	J
Regal Red .....	K
Rio Red .....	L
Rose Diamond .....	J
Royal Giant .....	I
Royal Glo .....	I
Ruby Diamond .....	L
Ruby Fire .....	G
Ruby Grand .....	J
Ruby Sun .....	J
Ruby Sweet .....	J
Scarlet Red .....	K
September Bright .....	J
September Free .....	J
September Grand .....	L
September Red .....	L
Shay Sweet .....	J
Sheri Red .....	J
Sparkling June .....	L
Sparkling May .....	J
Sparkling Red .....	L
Spring Bright .....	L
Spring Diamond .....	L
Spring Red .....	H
Spring Sweet .....	J
Star Brite .....	J
Sugar Queen .....	L
Summer Beaut .....	H
Summer Blush .....	J
Summer Bright .....	J
Summer Diamond .....	L
Summer Fire .....	L
Summer Grand .....	L
Summer Jewel .....	L
Summer Lion .....	L
Summer Red .....	L
Sunburst .....	J
Sun Diamond .....	I
Sunecteight (Super Star) .....	G
Sun Grand .....	G
Sunny Red .....	J
Tom Grand .....	L
WF 1 .....	J
Zee Fire .....	J
Zee Glo .....	J
Zee Grand .....	I

\* Predominant ground color must be break- ing yellowish green.

\* \* \* \* \*

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Burnectfive (Spring Flare® 21), Burnectten (Spring Flare® 19), Crimson Baby, Earliglo, Red Jewel or Zee Fire variety nectarines unless:

\* \* \* \* \*

(4) Any package or container of Arctic Star, Burnectone (Spring Ray®), Burnecttwelve (Sweet Flair® 21), Diamond Bright, Diamond Pearl, Early Pearl, Gee Sweet, June Pearl, Kay Fire, Kay Glo, Kay Sweet, Prima Diamond IV, Prima Diamond VI, Prima Diamond XIII, Prince Jim, Prince Jim 1, Red Roy, Rose Bright, Rose Diamond, Royal Glo, or Zee Grand variety nectarines unless:

\* \* \* \* \*

(6) Any package or container of Alta Red, Arctic Belle, Arctic Blaze, Arctic Gold, Arctic Ice, Arctic Jay, Arctic Mist, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Bright, August Fire, August Glo, August Lion, August Pearl, August Red, August Snow, August Sweet, Autumn Blaze, Big Jim, Bright Pearl, Burnectfour (Summer Flare® 35), Burnectseven (Summer Flare® 28), Burnectseventeen (Summer Flare® 32), Candy Gold, Candy Pearl, Diamond Ray, Early Red Jim, Fire Pearl, Fire Sweet, Flaming Red, Giant Pearl, Grand Candy, Grand Pearl, Grand Sweet, Honey Blaze, Honey Dew, Honey Diva, Honey Fire, Honey Kist, Honey Royale, July Pearl, July Red, Kay Pearl, La Pinta, Larry's Red, Late Red Jim, Mike's Red, P-R Red, Prima Diamond VII, Prima Diamond IX, Prima Diamond X, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Prima Diamond XXVIII, Prince Jim 3, Red Diamond, Red Glen, Red Jim, Red Pearl, Regal Pearl, Regal Red, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, September Bright (26P-490), September Free, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Pearl™, Spring Sweet, Sugarine, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Jewel, Summer Lion, Summer Red, Sunburst, Sun Valley Sweet, Terra White, Zee Glo or Zephyr variety nectarines unless:

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

(ii) Such nectarines, when packed other than as specified in paragraph (a)(6)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or

container, contains not more than 76 nectarines, except for Peento-type nectarines.

\* \* \* \* \*

(9) \* \* \*

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

(ii) Such nectarines, when packed other than as specified in paragraph (a)(9)(i) of this section, are of a size that a 16-pound sample, representative of the nectarines in the package or container, contains not more than 76 nectarines, except for Peento-type nectarines.

\* \* \* \* \*

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

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

**§ 917.150 Lot stamping.**

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

**§ 917.178 [Removed]**

■ 7. Section 917.178 is removed.

**§ 917.179 [Amended]**

■ 8. In § 917.179, the suspension of March 3, 1994 (59 FR 10056), is lifted.

**§ 917.179 [Removed]**

■ 9. Section 917.179 is removed.

■ 10. Section 917.442 is amended by:

- a. Revising paragraph (a) introductory text;
- b. Revising paragraph (a)(3);
- c. Removing paragraph (a)(9); and
- d. Redesignating current paragraphs (a)(10) through (a)(12) as (a)(9) through (a)(11) to read as follows:



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

(a) During the period beginning April 1 and ending November 23, no handler shall ship any package or container of any variety of peaches marked "CA WELL MAT" or "California Well Matured" except in accordance with the following terms and conditions:

\* \* \* \* \*

(3) Each package or container of peaches bearing the words "California Well Matured" or "CA WELL MAT" shall be well matured as defined in § 917.459.

\* \* \* \* \*

- 11. Section 917.459 is amended by:
- a. Revising paragraph (a) introductory text;
- b. Revising paragraph (a)(1) introductory text;
- c. Revising Table 1 of paragraph (a)(1)(iv) (excluding the note following the table);
- d. Revising the introductory text of paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (a)(6); and
- e. Revising paragraphs (a)(6)(i) and (a)(6)(iii) to read as follows:

**§ 917.459 California peach grade and size regulation.**

(a) During the period beginning April 1 and ending November 23, no handler shall ship any package or container of any variety of peaches marked "CA WELL MAT" or "California Well Matured" except in accordance with the following terms and conditions:

(1) Any lot or package or container of any variety of peaches shall meet the following requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided further*, That peaches of the Peento type shall be permitted blossom end cracking that is well healed and does not exceed the aggregate area of a circle 3/8 inch in diameter, and/or does not exceed a depth that exposes the pit; *Provided further*, That any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the peaches in any container meet or exceed the requirement of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are well mature and are:

\* \* \* \* \*

(iv) \* \* \*

TABLE 1

Column A variety	Column B maturity guide
Angelus	I
August Dream	J
August Lady	L
Autumn Flame	J
Autumn Gem	I
Autumn Lady	H
Autumn Red	J
Autumn Rose	H
Bev's Red	I
Blum's Beauty	G
Bright Princess	L
Brittney Lane	J
Burpeachfive (July Flame®)	L
Burpeachfourteen (Spring Flame® 20).	J
Burpeachone (Spring Flame® 21).	J
Burpeachsix (June Flame®)	L
Burpeachthree (September Flame®).	I
Burpeachtwo (Henry II®)	J
Cal Red	I
Candy Red	J
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
Country Sweet	J
David Sun	I
Diamond Princess	J
Earlirich	H
Earlritreat	H
Early Delight	H
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Joy	H
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Princess	L
Henry III	J
Honey Red	G
Island Princess	H
Joanna Sweet	J
John Henry	J
July Elberta	C
June Lady	G
Junelicious	I
June Pride	J
Kawah	L
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
King Sweet	I

TABLE 1—Continued

Column A variety	Column B maturity guide
Lacey	I
Lady Lou	I
Lady Sue	L
Late Ito Red	L
Madonna Sun	J
Magenta Queen	J
May Crest	G
May Sun	I
May Sweet	I
Merrill Gem	G
Merrill Gemfree	G
Morning Lord	J
O'Henry	I
Pacifica	G
Pretty Lady	J
Prima Gattie 8	L
Prima Gattie 10	J
Prima Peach IV	J
Prima Peach 23	J
Queencrest	G
Ray Crest	G
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
September Sun	I
Sharise	J
Shelly	J
Sierra Gem	J
Sierra Lady	I
Sierra Rich	J
Sparkle	I
Sprague Last Chance	L
Springcrest	G
Spring Delight	G
Spring Gem	J
Spring Lady	H
Springtreat (60EF32)	I
Sugar Time (214LC68)	I
Summer Fling	L
Summer Kist	J
Summer Lady	L
Summerset	I
Summer Zee	L
Suncrest	G
Supechfour (Amber Crest)	G
Super Chief	H
Super Rich	H
Sweet Amber	J
Sweet Blaze	J
Sweet Crest	H
Sweet Dream	J
Sweet Gem	J
Sweet Kay	J
Sweet Mick	J
Sweet Scarlet	J
Sweet September	I
Topcrest	H
Tra Zee	J
Vista	J
Willie Red	G

TABLE 1—Continued

Column A variety	Column B maturity guide
Zee Diamond .....	J
Zee Lady .....	L

\* \* \* \* \*

(2) Any package or container of April Snow, Earlitreat, Snow Angel, Sugar Snow, or Supeachsix (91002) variety peaches unless:

\* \* \* \* \*

(3) Any package or container of Island Prince, May Snow, Snow Kist, Snow Peak or Super Rich variety peaches unless:

\* \* \* \* \*

(4) Any package or container of May Saturn (Early Saturn) variety peaches unless:

\* \* \* \* \*

(5) Any package or container of Babcock, Bev's Red, Bright Princess, Brittney Lane, Burpeachone (Spring Flame® 21), Burpeachfourteen (Spring Flame® 20), Burpeachnineteen (Spring Flame® 22), Candy Red, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Honey Sweet, Ivory Queen, June Lady, Magenta Queen, May Crest, May Sweet, Prima Peach IV, Queencrest, Raspberry, Rich May, Scarlet Queen, Sierra Snow, Snow Brite, Springcrest, Spring Lady, Spring Snow, Springtreat (60EF32), Sugar Jewel, Sugar Time (214LC68), Sunlit Snow (172LE81), Supecheight (012-094), Sweet Scarlet, Sweet Crest or Zee Diamond variety peaches unless:

\* \* \* \* \*

(6) Any package or container of August Lady, Autumn Flame, Autumn Red, Autumn Rich, Autumn Rose, Autumn Snow, Burpeachfifteen (Summer Flame® 34), Burpeachfive (July Flame®), Burpeachfour (August Flame®), Burpeachseven (Summer Flame® 29), Burpeachsix (June Flame®), Burpeachsixteen, Burpeachthree (September Flame®), Burpeachtwenty (Summer Flame®), Burpeachtwo (Henry II®), Coral Princess, Country Sweet, Diamond Princess, Earlirich, Early Elegant Lady, Elegant Lady, Fancy Lady, Fay Elberta, Full Moon, Galaxy, Glacier White, Henry III, Henry IV, Ice Princess, Ivory Princess, Jasper Treasure, Jillie White, Joanna Sweet, John Henry, Kaweah, Klondike, Last Tango, Late Ito Red, Magenta Gold, O'Henry, Pink Giant, Pink Moon, Prima Gattie 8, Prima Peach 13, Prima Peach XV, Prima Peach 20, Prima Peach 23, Prima Peach XXVII, Princess Gayle, Rich Lady, Royal Lady, Ruby Queen, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow,

September Sun, Sierra Gem, Sierra Rich, Snow Beauty, Snow Blaze, Snow Fall, Snow Gem, Snow Giant, Snow Jewel, Snow King, Snow Magic, Snow Princess, Sprague Last Chance, Spring Candy, Sugar Crisp, Sugar Giant, Sugar Lady, Summer Dragon, Summer Lady, Summer Sweet, Summer Zee, Sweet Blaze, Sweet Dream, Sweet Kay, Sweet September, Tra Zee, Valley Sweet, Vista, White Lady, or Zee Lady variety peaches unless:

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

\* \* \* \* \*

(iii) Such peaches in any container when packed other than as specified in paragraphs (a)(6)(i) and (ii) of this section are of a size that a 16-pound sample, representative of the peaches in the package or container, contains not more than 73 peaches, except for Peento type peaches.

\* \* \* \* \*

Dated: April 11, 2007.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 07-1867 Filed 4-11-07; 3:42 pm]

BILLING CODE 3410-02-P

**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Part 214**

[CIS No. 2295-03; USCIS-2004-0001]

RIN 1615-AB17

**Petitioning Requirements for the O and P Nonimmigrant Classifications**

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Department of Homeland Security regulations to permit petitioners to file O and P nonimmigrant petitions up to one year prior to the petitioner's need for the alien's services. This amendment will enable petitioners who are aware of their need for the services of an O or P nonimmigrant well in advance of a scheduled event, competition, or performance to file their petitions under normal processing procedures. This way, petitioners will be better assured that they will receive a decision on their petitions in a timeframe that will allow them to secure the services of the O or

P nonimmigrant when such services are needed.

**DATES:** This rule is effective May 16, 2007.

**FOR FURTHER INFORMATION CONTACT:** Hiroko Witherow, Adjudications Officer, Business and Trade Services Branch/Program and Regulation Development, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272-9135.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under the O nonimmigrant classification, a U.S. employer, U.S. agent, or a foreign employer through a U.S. agent, may petition for an alien who has extraordinary ability in the arts, the sciences, education, business or athletics that has been demonstrated by sustained national or international acclaim to come to the United States temporarily to continue work in the area of extraordinary ability. Immigration and Nationality Act (INA) sec. 101(a)(15)(O)(i), 8 U.S.C. 1101(a)(15)(O)(i); 8 CFR 214.2(o)(1) & (2). In addition, such employer or agent also may use the O nonimmigrant classification to petition for an alien who has a demonstrated record of extraordinary achievement in motion picture or television productions to come to the United States temporarily to continue work in the area of extraordinary achievement. *Id.* Under the P nonimmigrant classification, a U.S. employer, U.S. sponsoring organization, U.S. agent, or a foreign employer through a U.S. agent, may petition for an alien who is coming temporarily to the United States to perform at a specific athletic competition as an athlete at an internationally recognized level or performance, or to perform with an entertainment group that has been recognized internationally as being outstanding. INA sec. 101(a)(15)(P), 8 U.S.C. 1101(a)(15)(P); 8 CFR 214.2(p)(1) & (2). Such employer, agent, or sponsor also can use the P nonimmigrant classification to petition for an alien to come temporarily to the United States to perform as an artist or entertainer under a reciprocal exchange program between organizations in the United States and organizations in a foreign country. *Id.* Finally, such employer, agent, or sponsor can use the P nonimmigrant classification to petition for an alien artist or entertainer to come temporarily to the United States to perform, teach, or coach under a commercial or noncommercial program that is