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#### § 2604.201 [Amended]

■ 3. Section 2604.201(a)(1) is amended by removing the phrase "telephone at 202-208-8000 or FAX 202-208-8037," in the second sentence and adding in its place the phrase "telephone: 202-482-9300, TDD: 202-482-9293, or FAX: 202-482-9237,".

#### § 2604.301 [Amended]

■ 4. In § 2604.301(a), the first sentence is amended by:

■ A. Removing the phrase "telephone, 202-208-8000, or FAX, 202-208-8037," and adding in its place the phrase "telephone: 202-482-9300, TDD: 202-482-9293, or FAX: 202-482-9237,"; and

■ B. By adding between the ZIP Code "20005-3917" and the word "or" the phrase ", by E-mail: *usoge@oge.gov*,".

#### § 2604.602 [Amended]

■ 5. Section 2604.602(b) is amended by adding between the words "guidance" and "and" the phrase ", including regarding Executive Order 13392 (Improving Agency Disclosure of Information),".

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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 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule eliminating 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 continues in effect seasonal adjustments to the handling requirements applicable to well matured fruit and the removal of 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 reduces handler costs while enabling handlers to continue to meet the demands of their buyers.

**EFFECTIVE DATE:** September 27, 2007.

**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* or *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*.

**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."

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 final rule continues in effect the provisions of an interim final rule action that: (1) Eliminated 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) made seasonal adjustments to the handling requirements applicable to California Well Matured fruit; and (3) removed certain handler reporting requirements that are deemed no longer necessary.

These changes 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 (FSIS) 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, the industry determined that these programs would not presently 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 minimal because inspection is not 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 FSIS 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 began in April. The committees recommended a crop estimate of 19,000,000 containers of nectarines and 20,000,000 containers of peaches at their May 1, 2007, meetings.

#### **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.

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

This rule also continues in effect a revision to 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" are 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. Prior to the interim final rule, nectarines and peaches were subject to a modified U.S. No. 1 grade requirement. Handlers were also able to pack to "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 continues in effect revisions to 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 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 continues in effect revisions of 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 makes 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 inspectors. These maturity guides are reviewed each year by the FSIS 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 FSIS 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 FSIS 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 FSIS'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 continues in effect revisions to 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" are 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 continues in effect revisions to paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 to establish variety-specific minimum size requirements for 14 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 confirmed this information regarding minimum size and harvesting period. Thus, the recommendation to place the Burnectfive (Spring Flare® 21) variety in the variety-specific minimum size regulation at a minimum size 96 was appropriate. This recommendation results from size studies conducted by the committees 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 was revised to include the Burnecttwelve (Sweet Flare® 21), Early Pearl, and Rose Bright varieties; and paragraph (a)(6) of § 916.356 was 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 continues to revise 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 continues to remove the variety-specific minimum size 16 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 was the May Snow variety of peaches, which was recommended for regulation at a minimum size 88. Studies conducted by the committees on 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 between the committees and handlers known to pack the variety confirmed this information regarding minimum size and the harvesting period. 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 was revised to include the Snow Angel peach variety; paragraph (a)(3) of § 917.459 was revised to include the May Snow peach variety; paragraph (a)(4) of § 917.459 was revised to include the May Saturn (Early Saturn) peach variety; paragraph (a)(5) of § 917.459 was revised to include the Candy Red, Raspberry, and Sugar Jewel peach varieties; and paragraph (a)(6) of § 917.459 was revised to include the Burpeachfifteen (Summer Flame® 34), Burpeachsixteen, Burpeachtwenty (Summer Flame®), Galaxy, and Snow Magic peach varieties.

Section (a)(4) is reserved for any varieties which will be regulated at a size 84. The May Saturn (Early Saturn)

variety, as noted above, is regulated at size 84 under (a)(4).

This rule 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 are 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. Prior to the interim rule, under 19 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.

However, as a State marketing program has recently been implemented for the California peach and nectarine industries, which includes the collection and dissemination of statistical information, 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 continues in effect revisions removing reporting requirements in § 916.160 for nectarines and §§ 917.178 and 917.179 for peaches. This action reduces 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."

#### Final Regulatory Flexibility Analysis

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

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

#### 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 final rule continues in effect the provisions of an interim final rule action that: (1) Eliminated 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 continues in effect 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 not considered 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 ensures that fruit packed in containers marked "CA WELL MAT" or "California Well Matured" is inspected and meets applicable grade and quality requirements. For this reason, the committees unanimously recommended the revisions in this final rule 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 continues in effect 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 FSIS 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 continues in effect 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" are subject to minimum size requirements, this rule also continues in effect revisions to the size regulations which 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 revisions 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 continues in effect revisions reducing 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 that were removed by the interim final rule were 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.

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.

An interim final rule concerning this action was published in the **Federal Register** on April 16, 2007 (72 FR 18847). Copies of the rule were posted on the committees' Web site. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided a 60-day comment period which ended June 15, 2007. Two comments were received during the comment period in response to the rule.

The first commenter, representing the committees, agrees with a majority of the changes that were outlined in the interim final rule. The commenter stated that there was one discrepancy in regards to the reporting requirements. The commenter contends that the committees' intent was to have reporting requirements suspended, not removed, in case the committees recommend reinstating the Federal orders' reporting requirements in the future. The commenter contends that if the reporting requirements are removed, the current OMB approval on the committees' reporting forms will be eliminated.

The suspension of reporting requirements without a reactivation date is essentially equivalent to the removal of reporting requirements. The reinstatement process would not be shortened by retaining the regulations. USDA will work to ensure a timely reinstatement of the reporting requirements should the committees recommend using them in the future. Accordingly, no changes have been made to the rule based on this comment.

The second commenter contends that lowering industry quality standards will adversely affect the public in a number of ways.

However, previously mentioned, beginning with the 2007 season, under the new State program, all fruit must meet at least a modified U.S. No. 1 grade and be "mature" as defined in the Standards for nectarines and peaches. Under the Federal program, all marketing order handling requirements, including inspection and certification requirements, for "California well matured" fruit are maintained. The quality standards are not being lowered; rather they are being revised to give

handlers more cost-saving options. Accordingly, no changes have been made to the rule based on this comment.

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.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (72 FR 18847, April 16, 2007) 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 were removed or terminated, it is found that those provisions no longer tend to effectuate the declared policy of the Act.

#### 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.

#### PARTS 916 and 917—[AMENDED]

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 72 FR 18847 on April 16, 2007, is adopted as a final rule without change.

Dated: August 21, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 07-4161 Filed 8-27-07; 8:45 am]

BILLING CODE 3410-02-M

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 922

[Docket No. AMS-FV-07-0085; FV07-922-2 PR]

#### Apricots Grown in Designated Counties in Washington; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2007–2008 and subsequent fiscal periods from \$1.00 to \$1.50 per ton for Washington apricots. The Committee is responsible for local administration of the marketing order regulating the handling of apricots grown in designated counties in Washington. Assessments upon handlers of apricots are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

**EFFECTIVE DATE:** August 29, 2007.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326-2724; Fax: (503) 326-7440; or E-mail:

[Robert.Curry@usda.gov](mailto:Robert.Curry@usda.gov) or

[GaryD.Olson@usda.gov](mailto:GaryD.Olson@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, 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 No. 922 (7 CFR part 922), as amended, regulating the handling of apricots grown in designated counties in Washington, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, apricot handlers in designated counties in Washington are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable Washington

apricots beginning April 1, 2007, and will continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with 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. Such 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 increases the assessment rate established for the Committee for the 2007–2008 and subsequent fiscal periods from \$1.00 to \$1.50 per ton for Washington apricots handled under the order.

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

For the 2005–2006 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of \$1.00 per ton of apricots handled. This rate continues in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 24, 2007, and unanimously recommended 2007–2008 expenditures of \$6,743. In comparison, the budgeted expenditures