

instrument models and/or calibrations for corn measurements would greatly increase the cost of the GIPSA standardization program, would increase the cost of the overall inspection service, and would reduce the reliability of official inspection results. In addition, GIPSA does not regulate or control the use of analytical instruments outside of the official inspection system. Consequently, unofficial inspection service providers may use other instruments and/or calibrations.

This final rule also incorporates by reference the Corn Refiners Association Method A-20, Starch method, into the regulations. GIPSA will use this method as the chemical reference method for determining the starch content in corn.

GIPSA is required to collect fees for providing official testing service to cover, as nearly as practicable, GIPSA's costs for performing the service, including related administrative and supervisory costs. Testing procedures and time necessary to determine oil, protein, and starch in corn using the approved NIRT analyzers are the same as those required for NIRT wheat protein or NIRT soybean oil and protein determinations. Therefore, GIPSA has decided to collect fees identical to the fees established for NIRT wheat protein or NIRT soybean oil and protein testing services. These fees will be \$1.50 per test when the service is performed at an applicant's facility in an onsite Federal Grain Inspection Service (FGIS) laboratory; \$8.10 per test when an original inspection service is performed at a location other than an applicant's facility in an FGIS laboratory; and \$15.85 per test when an appeal inspection service is performed at a location other than an applicant's facility in an FGIS laboratory.

GIPSA has carefully considered the comments received regarding this action and has determined that it is in the best interest of American agriculture to offer this service. This decision is based on the fact that (1) the calibration data set represents a significant part of the 1998 corn market, (2) GIPSA plans to expand the calibration data set to incorporate new germplasm sources as they are released to the commercial market, (3) future calibration enhancements will remain under the direct control of GIPSA, and (4) the performance of the NIRT instruments will continue to satisfy market needs.

Final Action

Value-enhanced corn is produced on 3.3 to 3.7 million acres. It is projected that the U.S. acreage of value-enhanced corn is to remain essentially unchanged,

with the exception of high-oil corn. Approximately 1.5 million acres of high-oil corn is projected for the 1998 crop year and is expected to more than double in 1999. High-oil corn will continue to be a significant part of the value-enhanced corn produced and traded in the marketplace (the market potential for high-oil corn is very high, representing the most significant growth potential for the value-enhanced corn market). Also, the possible introduction of nutritionally dense hybrid corn makes it necessary to provide the grain industry with a reliable official testing procedure it can use to negotiate price, value, and premium. Additionally, GIPSA is offering this service upon request as an official criteria, which will have no effect on the grade designation.

For several years, corn processors and producers have expressed an interest in having corn officially analyzed for oil, protein, and starch content. When GIPSA explored the possibility of providing official testing of corn for oil, protein, and starch content, several NIRS calibration sources (including ISU and MBS Inc.) were contacted to enlist their cooperation. After reviewing the available sources of NIRS calibration data, GIPSA decided to use the Optimum Quality Grains, Inc., database for the following reasons: (1) Optimum Quality Grains, Inc., is a significant source of high-oil corn in the current market; (2) their analytical procedures were reviewed and were compatible with GIPSA's procedures for calibration development; (3) their calibration data contained several hundred samples; and (4) they provided their calibration data to GIPSA at no cost and without restrictions on its use.

The initial GIPSA calibration is intended to represent the majority of high oil corn that will be traded in 1998. GIPSA's plan for future calibration development will expand the population of the database to other sources of value-enhanced corn. GIPSA intends to provide opportunities for interested parties to supply samples of material from other germplasm sources for inclusion in its calibration updates. Consequently, as additional hybrids reach the feed and food marketing channels, GIPSA will solicit new samples for inclusion in the calibration data set.

GIPSA has carefully considered the comments received regarding this action and has determined that it is in the best interest of the corn industry to offer this service. This decision is based on the fact that (1) the calibration data set represents a significant part of the 1998 corn market, (2) GIPSA plans to expand the calibration data set to incorporate

new germplasm sources as they are released to the commercial market, (3) future calibration enhancements will remain under the direct control of GIPSA, and (4) the performance of the NIRT instruments will continue to satisfy market needs. GIPSA believes that offering this service will enhance both the export and domestic marketability of speciality corn.

Therefore, GIPSA will offer corn oil, protein, and starch testing services as official criteria under the authority of the USGSA. Upon a request for service, official inspection personnel will determine corn oil, protein, and starch content. Percent corn oil, protein, and starch will be reported to the nearest tenth percent on a dry matter basis (zero moisture basis) unless another moisture basis is requested.

Based on this and other available information, GIPSA has determined that the interim rule amending Part 801 as published at 63 FR 35502 will be adopted as the final rule.

List of Subjects in 7 CFR Part 801

Grains, Incorporation by reference.

PART 801—OFFICIAL PERFORMANCE REQUIREMENTS FOR GRAIN INSPECTION EQUIPMENT

Accordingly, the interim rule amending 7 CFR Part 801 which was published at 63 FR 35502 on June 30, 1998, is adopted as a final rule without change.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV99-916-2 FR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container marking requirements for fresh shipments of these fruits, beginning with 1999 season shipments. This rule also authorizes continued shipments of "CA Utility"

quality nectarines and peaches during the 1999 season with an increased percentage of U.S. No. 1 nectarines and peaches in each container. This rule will enable handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

EFFECTIVE DATE: This final rule becomes effective April 20, 1999.

FOR FURTHER INFORMATION CONTACT:

Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-5698; or E-mail: Jay_N_Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/oaob.html>.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

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

This final rule revises the handling requirements currently prescribed for shipments of fresh nectarines and peaches under the orders.

Under the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) (committees), which are responsible for local administration of the orders, met on December 2, 1998, and unanimously recommended that these handling requirements be revised for the 1999 season, which begins April 1, with one exception. The Nectarine Administrative Committee voted 4 in favor and 3 opposed to continuing shipments of "CA Utility" quality nectarines with an increased percentage of U.S. No. 1 nectarines in boxes of "CA Utility" quality nectarines; and the Peach Commodity Committee voted 7 in favor and 4 opposed to continuing shipments of "CA Utility" quality peaches with an increased percentage of U.S. No. 1 peaches in boxes of "CA Utility" quality peaches. The nectarine order requires six concurring votes on recommendations for regulations and the peach order requires nine concurring votes on recommendations for regulations. As a result, these two votes did not meet the minimums prescribed to constitute official recommendations to the Secretary. Nectarine and peach handlers have been authorized to ship "CA Utility" quality fruit since the 1996 season, and such shipments have comprised about two percent of total shipments. Such fruit is mature but of a lower quality than U.S. No. 1 fruit and is acceptable in some

markets. If shipments of "CA Utility" quality fruit are not permitted, only higher-quality fruit could be shipped.

Because prior season experience shows that the authority to ship "CA Utility" quality fruit provided additional marketing opportunities for handlers, the Department proposed continuing to allow such shipments during 1999, and invited written comments from all interested persons. One comment supporting the continued shipment of "CA Utility" quality fruit was received.

The changes implemented by this final rule: (1) Require that maturity and "CA Utility" quality marking of containers be a minimum of $\frac{3}{8}$ inch in height; (2) require that experimental containers and 22G containers be marked with both the size and the count of fruit contained in the package; (3) require that master containers of consumer packages be marked with the minimum size fruit contained in the consumer packages; (4) add weight counts for early-season, mid-season, and late-season varieties; (5) continue shipments of "CA Utility" quality nectarines and peaches, and increase the percentage of U.S. No. 1 nectarines and peaches permitted in containers of "CA Utility" quality fruit from the current 30 percent to 40 percent, provided that the additional 10 percent of U.S. No. 1 fruit in the container has non-scoreable blemishes; and (6) revise varietal maturity and size requirements to reflect recent changes in growing conditions.

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

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, the committees continue to believe that the 1999 crop will be somewhat larger in size but similar in characteristics to the 1998 crop which totaled 16,916,900 boxes of nectarines and 18,202,300 boxes of peaches.

Container Marking Requirements

Sections 916.52 and 917.41 of the orders for nectarines and peaches, respectively, authorize container marking requirements. Requirements for container markings are specified in §§ 916.350 and 917.442 of the orders' rules and regulations. Container marking requirements include marking of the commodity and variety (e.g., July Red Nectarines), the size of the fruit in the box (e.g., 80 size), the net weight, the maturity (either U.S. Mature (US MAT), or California Well-Matured (CA WELL MAT)), or the quality (i.e., "CA Utility"), on each container of nectarines and peaches.

This final rule revises paragraphs (a)(3) of §§ 916.350 and 917.442 in the orders' rules and regulations to require that maturity markings on containers be in letters at least $\frac{3}{8}$ inch in height. This rule also revises the current quality marking requirement in paragraphs (d) of §§ 916.350 and 917.442 for "CA Utility" from a minimum of $\frac{3}{4}$ inch in height to a minimum of $\frac{3}{8}$ inch in height. These changes standardize marking requirements on containers by specifying a minimum lettering height of $\frac{3}{8}$ inch for both maturity and quality markings. This is intended to assure that all containers shipped by nectarine and peach handlers are similarly marked.

The committees unanimously recommended that the lettering indicating fruit maturity and quality on containers be standardized at a minimum height of $\frac{3}{8}$ inch. The $\frac{3}{8}$ inch minimum is appropriate, given the number of other markings, required or voluntary, on each container. Such lettering is also readily legible to the Federal or Federal-State Inspection Service (Inspection Service) and compliance officers representing the committees. The $\frac{3}{8}$ inch minimum letter height standard will also eliminate any confusion among handlers about which size is required for markings by reducing the currently-required $\frac{3}{4}$ inch minimum marking for "CA Utility" to a minimum $\frac{3}{8}$ inch in height and by specifying similar requirements for maturity markings.

Sections 916.350 and 917.442 of the orders' rules and regulations also require containers to be marked with the size and/or number of pieces of fruit in the container (count).

In commonly-used containers such as the No. 22D and the No. 32 boxes, the configurations of fruit results in the fruit size and count being the same. The No. 22G standard lug box, however, has a different shape which results in a different tray-pack configuration than those of the No. 22D and the No. 32

boxes. The shape of the No. 22G container also imposes tighter limits on the number of fruit that can be tray packed in it than the No. 22D and No. 32 boxes, and the fruit size and count are not the same. Thus, handlers using it should be required to indicate the number of fruit in the container as well as the fruit size, since the fruit size and count are not always the same in this container. This is also true for some experimental packages, as well, since there are no standardized pack configurations for experimental packages, and, thus, no standardized basis for comparison against the No. 22D and No. 32 boxes is possible. Experimental containers, in addition to the No. 22G standard lug box, are required to be marked with both the size and the count of fruit contained in the package.

To lessen the chances of confusion in the marketplace with such containers, the committees unanimously recommended requiring that the No. 22G standard lug box and experimental containers be marked with both the size and count of the fruit contained in the package.

To implement this change, paragraphs (a)(4)(i) and (a)(4)(ii) of § 916.350 are revised to add the requirement that experimental containers be marked with both the size and count of nectarines contained within the containers. Paragraph (a)(4)(ii) of § 917.442 is also revised to add the requirement that the No. 22G standard lug box be marked with both the size and count of peaches contained within the container.

Sections 916.350 and 917.442 also specify markings that are required on master containers of consumer packages, consumer packages within master containers, and consumer packages not within master containers. Master containers must be marked with the net weight of each consumer package, the number of individual consumer packages, the size description of the fruit in each consumer package, and the name and address of the shipper. Consumer packages within the master containers must be marked with the name and address of the shipper and the net weight of the container. When the consumer package is not in a master container, the consumer package must also be marked with the number of fruit in the package, the name of the variety, if known, and the maturity of the fruit in the package.

Authority for consumer packages permits handlers to pack and ship nectarines and peaches in other types of containers demanded by their customers. The fruit packages are tailored to the requirements of the

buyer, and the buyer may require the handler to pack consumer packages of several different sizes of fruit within the master container. For example, a master container may contain five consumer packages. One consumer package may contain size 64 nectarines, while two other consumer packages may contain size 70 nectarines. The remaining two consumer packages may contain size 60 nectarines. In this example, each consumer package contains the same size nectarines within that package, but the master container contains consumer packages with different nectarine sizes.

The committees unanimously recommended that such size variations from consumer package to consumer package within a master container should be indicated on the master container. The committees determined that the marking on the master container should accurately and clearly reflect the minimum size contained within the package containing the smallest size fruit and that the master container contains consumer packages with larger sized fruit. For example, a master container will be marked "Minimum size 60 and larger" or "Minimum size 96 and larger," as appropriate, when the consumer packages in the master container contain different fruit sizes. This is intended to provide more accurate information to the buyers of the fruit.

According to a comment received regarding this aspect of the proposed rule issued on these regulatory changes, the intent of the committees was to ensure that when multiple sizes of consumer packages of nectarines or peaches are contained within the master container, the master container must be marked "Minimum size 60 and larger," or "Minimum size 96 and larger," etc., as appropriate. However, the commenter noted, the proposed rule did not specify that when the master container does not contain multiple sizes of nectarines or peaches in the consumer packages, only the size of the nectarines or peaches in the consumer packages should be marked on the master container, such as "Size 60," or "Size 96," etc., as appropriate. Accordingly, the clarification to the proposed rule is made.

Thus, paragraph (a)(8)(i) of § 916.350 and paragraph (a)(9)(i) of § 917.442 of the orders' rules and regulations are revised to require that the markings on master containers containing consumer packages of different sizes of nectarines and peaches specify the smallest size and the words "and larger" in the packages. When consumer packages contain nectarines or peaches of the same sizes, the master container shall

continue to be marked with the appropriate individual size marking.

Pack Regulations

Container markings based on weight-count standards are also specified in Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the orders' rules and regulations. The purpose of the weight-count standards is to establish the maximum number of nectarines or peaches in a 16-pound sample for each individual size designation. To facilitate the repacking of nectarines and peaches from tray-packs into volume-filled containers, the committees routinely conduct tests to determine the optimum weight-count standards for early-season, mid-season, and late-season nectarines and peaches, respectively, based on the sizes of nectarines and peaches in tray-packs. Tray-packs fit into standard nectarine and peach boxes and have molded cavities for the fruit to sit in. Trays with different cavity sizes are used, depending upon the size of the fruit being packed. Handlers have traditionally used tray-packs to securely package nectarines and peaches. However, some handlers have moved away from tray-packed configurations toward volume-filled configurations in recent years.

Handlers of nectarines and peaches have informed the committees that some larger sizes of nectarines and peaches are increasingly being converted from tray-packs to volume-filled packs. Since volume-filled containers are less costly to pack and market demands change, handlers have opted to pack a greater proportion of the larger-sized, high-quality fruit in volume-filled containers.

Size studies were performed by the NAC and PCC in 1994 and 1995, and were used as a basis for changing some of the weight counts. Because nectarines and peaches of size 44 were not packed in volume-filled containers, no weight counts were published for size 44 nectarines and peaches at that time. As the practice of converting tray-packed containers of size 44 nectarines and peaches to volume-filled containers has increased, the need to publish a weight-count standard also increased.

The committees have used the previously-conducted size studies to determine the weight-count standards for size 44 nectarine and peach sizes for inclusion in the weight-count standards. The NAC has determined that the weight-count standard for size 44 should be a maximum of 33 pieces for early-season nectarines and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The PCC has determined that the weight

count standard for size 44 should be a maximum of 33 pieces of fruit in a 16-pound sample for all peach varieties.

Therefore, the NAC and PCC unanimously recommended modifications to the weight-count standards for nectarines and peaches by the addition of weight-count standards for size 44 nectarines and peaches. To implement such a change, Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations are revised by adding size 44 and the applicable weight-count standard of a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. These changes will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers, decrease the handling costs associated with that conversion, and meet marketing demands.

Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 of the order's rules and regulations required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Under § 917.459 of the order's rules and regulations prior to the 1996 season, peaches were also required to meet the requirements of a U.S. No. 1 grade, except there was a more liberal allowance for open sutures that were not "serious damage."

Under §§ 916.356 and 917.459, shipments of "CA Utility" quality nectarines and peaches have been permitted since the 1996 season, contingent upon the fruit in such containers meeting certain relaxed quality requirements. "CA Utility" quality is a lower-quality fruit than U.S. No. 1. Previously, the requirement for containers of "CA Utility" nectarines and peaches provided that not more than 30 percent of the fruit in any container meet or exceed the requirements of U.S. No. 1. This final rule permits handlers to continue shipping "CA Utility" fruit during the 1999 season, and increases the 30 percent limitation to not more than 40 percent except that the additional 10 percent of the U.S. No. 1 fruit must have non-scoreable blemishes.

Containers marked "CA Utility" must be inspected by the Inspection Service

and certified as meeting the "CA Utility" quality requirements. Part of the inspection process is to evaluate the fruit in accordance with the requirements of the U.S. Standards for Grades of Nectarines, the U.S. Standards for Grade of Peaches, (Standards) and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be "scored" against the fruit as defects which are damaging to the grade of the fruit, while some other blemishes are not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed "scoreable" defects; and, in the second instance, the blemishes are termed "non-scoreable" defects. Some members of the committees supported a requirement that such non-scoreable blemishes must be present on the additional 10 percent of the fruit grading U.S. No. 1 in boxes marked "CA Utility" during the 1999 season.

A similar requirement was in place during the latter part of the 1998 season. At that time, unseasonal summer rains had caused increased "non-scoreable" defects which detracted from the overall appearance of U.S. No. 1 nectarines and peaches for some handlers. An interim final rule was published on September 22, 1998 (63 FR 50461), and a final rule was published on November 9, 1998 (63 FR 60209).

While containers marked "CA Utility" fruit are subject to relaxed quality requirements, all other grade and marking requirements of the orders must be met.

At the committee meetings on December 2, 1998, at least one handler complained that fruit with non-scoreable blemishes was unsightly in the type of U.S. No. 1 box he offered to the marketplace and to his customers. His preference was to place such fruit in boxes marked "CA Utility." The current limitation of not more than 30 percent U.S. No. 1 fruit in containers marked "CA Utility" caused the Inspection Service to determine that his "CA Utility" containers were "out of grade," because they contained more U.S. No. 1 fruit than permitted. For that reason, the handler was forced to remove the fruit from the "CA Utility" boxes, and either repack his U.S. No. 1 to include this fruit or discard the fruit. Therefore, the limitation of not more than 30 percent U.S. No. 1 in "CA Utility" quality containers became a hindrance and was eliminated by the September 22, 1998, rulemaking action.

A niche market exists for "CA Utility" quality fruit and an opportunity should be made available to market somewhat better quality. It was estimated by a

handler of "CA Utility" quality fruit that the relaxation from not more than 30 percent U.S. No. 1 in the containers to not more than 40 percent provided that the additional 10 percent U.S. No. 1 in the containers has non-scoreable blemishes will increase shipments of "CA Utility" quality nectarines and peaches by approximately one-half of one percent. A majority of the members of both committees supported the change, because the change had been in effect at the end of the 1998 season. However, one committee member commented that there was little merit to adding one-half of one percent to the marketplace. Another indicated that perhaps a review of the entire grade structure would address the problem and did not advocate relaxing the percentage of U.S. No. 1 in "CA Utility" containers. A majority of the committee members present voted to relax the percentage from 30 percent U.S. No. 1 in containers marked "CA Utility" to 40 percent U.S. No. 1 provided that the additional 10 percent of the U.S. No. 1 had non-scoreable blemishes. The vote by the NAC was 4 in favor and 3 opposed, and the vote by the PCC was 7 in favor and 4 opposed. The nectarine order requires six concurring votes on regulatory recommendations, and the peach order requires nine concurring votes on regulatory recommendations. As a result, these two votes did not meet the minimums prescribed to constitute official recommendations to the Secretary.

Because prior seasons' experience shows that the authority to ship "CA Utility" quality fruit provided additional marketing opportunities for handlers, the Department proposed continuing to allow such shipments during 1999 and invited written comments from all interested persons in the proposed rule. One comment supporting the proposal was received.

Historically, shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes in 1996. In 1997, shipments of "CA Utility" nectarines represented 1.1 percent of all nectarine shipments, or approximately 230,000 boxes. In 1998, shipments of "CA Utility" nectarines represented 4.5 percent of all nectarine shipments, or approximately 760,000 boxes. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments, or 366,000 boxes in 1996. In 1997, shipments of "CA Utility" peaches represented 1.0 percent of all peach shipments, or approximately 217,000 boxes. In 1998, shipments of "CA Utility" peaches represented 3.3

percent of all peach shipments, or approximately 602,000 boxes.

For these reasons, the Department has determined that continuing to allow shipments of "CA Utility" quality nectarines and peaches for the 1999 season with an increase in the percentage of U.S. No. 1 fruit permitted in each container effectuates the declared policy of the Act. Therefore, paragraphs (d) of §§ 916.350 and 917.442, and paragraphs (a)(1) of §§ 916.356 and 917.459 are revised to permit shipments of nectarines and peaches meeting revised "CA Utility" quality requirements during the 1999 season.

Maturity Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. Additionally, both orders' rules and regulations provide for a higher, "well-matured" classification. For most varieties, "well-matured" fruit determinations are made using maturity guides (e.g., color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most-recent information available on the individual characteristics of each variety. These maturity guides established under the handling regulations of the nectarine and peach marketing orders have been codified in the Code of Federal Regulations as Table 1 to paragraphs (a)(1)(iv) of §§ 916.356 and 917.459, for nectarines and peaches, respectively. Currently, §§ 916.356 and 917.459 include both "Table 1" and "Table 1 to Paragraphs (a)(1)(iv)". "Table 1" is a duplicate of "Table 1 to Paragraphs (a)(1)(iv)" and was proposed to be removed from both sections. In this final rule, "Table 1" is, therefore, removed. The latter table is referred to as "Table 1" in the remainder of this document.

The maturity requirements in the 1999 handling regulation are the same as those which appeared in the 1998 handling regulation with a few exceptions. Those exceptions are explained below in this final rule.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. Table 1 to paragraph (a)(1)(iv) of § 916.356 is revised to add a maturity guide for one nectarine variety. Specifically, SPI recommended adding a maturity guide for the

Diamond Jewel nectarine variety at a maturity guide of L.

The NAC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for nectarine varieties in production.

Peaches: Section 917.459 of the order's rules and regulations specifies maturity requirements for fresh peaches being inspected and certified as being "well-matured." Table 1 to paragraph (a)(1)(iv) of § 917.459 is revised to add maturity guides for three peach varieties. Specifically, SPI recommended adding the maturity guides for the Sweet Scarlet peach variety to be regulated at the J maturity guide, and the Lady Sue and Prima Gattie 8 peach varieties to be regulated at the L maturity guide.

The PCC unanimously recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for peach varieties in production.

Size Requirements

Both orders provide authority to establish size requirements in §§ 916.52 and 917.41. Size regulations provide greater consumer satisfaction and encourage more repeat purchases by helping to ensure consumers are provided high-quality fruit. Size regulations, therefore, increase returns to producers and handlers by encouraging producers to leave fruit on the tree longer. The increased growing time not only improves the size of the fruit, but also increases its maturity. Increased size also results in an increased number of packed boxes of nectarines or peaches per acre. Varieties recommended for specific size regulation have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in 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). Section 916.356 is revised to establish variety-specific size requirements for five nectarine varieties that were produced in commercially-significant quantities of more than

10,000 packages for the first time during the 1998 season.

For example, one of the varieties recommended for addition to the variety-specific size requirements is the Sunny Red variety. Studies of the size ranges attained by the Sunny Red variety revealed that all of the nectarines of that variety met sizes in the ranges of sizes 30, 40, 50, 60, 70, and 80. While the size distribution peaked on the size 40, 100 percent of the fruit sized at a minimum of size 80.

A review of other varieties with the same harvesting period indicated that Sunny Red was also comparable to those varieties in its size ranges. Further, handlers known to ship the variety have provided additional supporting information for making this determination. Thus, the recommendation to place the Sunny Red nectarine variety in the variety-specific size regulation at a size 80 is appropriate. Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers of the varieties affected are invited to comment when such size recommendations are deliberated.

Thus, to implement such size requirements, the introductory text of paragraph (a)(6) in § 916.356 is revised to include the Grand Pearl, Ruby Pearl, Sunny Red, Terra White, and 491-48 nectarine varieties.

This final rule also revises the introductory text of paragraph (a)(4) of § 916.356 to remove two nectarine varieties; and the introductory text of paragraph (a)(6) of § 916.356 is also revised to remove ten nectarine varieties from the variety-specific size requirements specified in this section because less than 5,000 packages of each of these varieties were produced during the 1998 season. The introductory text of paragraph (a)(4) is revised to remove the June Brite and Pacific Star nectarine varieties; and the introductory text of paragraph (a)(6) is revised to remove the Flamekist, Flavor Grand, Late How Red, Moon Grand, Prima Diamond XVIII, Red Free, Red Fred, Ruby Grand, September Grand, and Summer Star nectarine varieties. Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine

varieties, and consumer acceptance levels for various sizes of fruit. This final rule establishes minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(5), and paragraphs (b) and (c). Section 917.459 is revised to establish variety-specific size requirements for six peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1998 season.

For example, one of the peach varieties recommended for addition to the variety-specific size requirements is the Morning Lord variety. Studies of the size ranges attained by the Morning Lord variety revealed that while it peaked on size 40, 100 percent of the fruit sized at a minimum of size 72.

A review of other varieties harvested during the same period indicated that Morning Lord was also comparable to those varieties in its size ranges. Further, discussions with handlers known to ship the variety provided additional information for making such determinations. Thus, the recommendation to place the Morning Lord peach variety in the variety-specific size regulation at a size 72 is appropriate. Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated.

Accordingly, the introductory text of paragraph (a)(3) of § 917.459 of the order's rules and regulations is revised to include the Super Rich peach variety; the introductory text of paragraph (a)(4) is revised to include the Snow Dance peach variety; and the introductory text of paragraph (a)(6) is also revised to include the Morning Lord, Prima Peach 23, Yukon King, and 1-01-505 peach varieties.

Additionally, paragraphs (a)(5) and (a)(6) of § 917.459 are revised to remove 12 peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of these varieties were produced during the 1998 season. Specifically, the introductory text of paragraph (a)(5) is revised to remove the Honey Red and Sweet Gem peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised to remove the August Sun, Autumn

Crest, Autumn Gem, Belmont, Berenda Sun, Blum's Beauty, Fire Red, July Sun, Mary Anne, and Red Sun peach varieties.

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

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various fruit sizes. This final rule establishes minimum size requirements for fresh peaches consistent with expected crop and market conditions.

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

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

There are approximately 325 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than \$5,000,000. Small agricultural producers are defined as those having annual receipts of less than \$500,000.

The NAC and PCC staff have estimated that there are less than 20 handlers in the industry who could be defined as other than small entities. If the average handler price received were \$9.00 per box or box equivalent of nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of \$5,000,000. Small handlers represent approximately 94 percent of the handlers within the industry. In addition, the NAC and PCC staff estimates that there are approximately 400 producers who could be defined as other than small entities. If the average producer price received were \$6.00 per box or box equivalent for

nectarines and \$5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of \$500,000. Therefore, small producer entities represent approximately 78 percent of the producers within the industry. For those reasons, a majority of the handlers and producers may be classified as small entities.

Under §§916.52 and 917.41 of the orders, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This final rule revises the current requirements to: (1) Require that maturity and "CA Utility" quality marking of containers be a minimum of $\frac{3}{8}$ inch in height; (2) require that experimental containers and 22G containers be marked with both the size and the count of fruit contained in the package; (3) require that master containers of consumer packages be marked with the minimum size fruit contained in the consumer packages; (4) add weight counts for early-season, mid-season, and late-season varieties; (5) continue shipments of "CA Utility" quality nectarines and peaches, and increase the percentage of U.S. No. 1 nectarines and peaches permitted in containers of "CA Utility quality" fruit from the current 30 percent to 40 percent, provided that the additional 10 percent of U.S. No. 1 fruit in the container has non-scoreable blemishes; and (6) revise varietal maturity and size requirements to reflect recent changes in growing and marketing conditions.

In §§916.350 and 917.442 of the rules regulating nectarines and peaches, several container marking requirements are specified. This final rule specifies that the maturity markings U.S. Mature (US MAT) and California Well-Matured (CA WELL MAT), and the markings for "CA Utility" quality must be in lettering a minimum of $\frac{3}{8}$ inch in height. This standardizes the container markings for nectarines and peaches and is consistent with those used on plum containers. Plum shipments are regulated under a State marketing order. Because nectarine and peach handlers frequently handle plums, as well, this would ensure consistency in marking requirements for all three commodities, which is expected to benefit handlers.

Sections 916.350 and 917.442 also specify markings that are required on master containers of consumer packages, consumer packages within master containers, and consumer

packages not within master containers. Master containers must be marked with the net weight of each consumer package, the number of individual consumer packages, the size description of the fruit in each consumer package, and the name and address of the shipper. Consumer packages within the master containers must be marked with the name and address of the shipper and the net weight of the container. When the consumer package is not in a master container, the consumer package must also be marked with the number of fruit in the package, the name of the variety, if known, and the maturity of the fruit in the package.

In commonly-used containers, such as the No. 22D and the No. 32 boxes, the configurations of fruit result in the fruit size and count being the same. The No. 22G standard lug box, however, has a different shape which results in a different tray-pack configuration than those of the No. 22D and the No. 32 boxes. The shape of the No. 22G container also imposes tighter limits on the number of fruit that can be tray packed in it than the No. 22D and No. 32 boxes; this causes fruit size and count to be different. Thus, handlers using that container should be required to indicate the number of fruit in the container as well as the fruit size, because the fruit size and count are not always the same in this container. Differences in count and size also occur with some experimental packages, as well, because there are no standardized pack configurations for experimental packages, and, thus, no standardized basis for comparison against the No. 22D and No. 32 boxes. Experimental containers, like the No. 22G standard lug box, will be required to be marked with both the size and the count of fruit contained in the package. This requirement is expected to benefit consumers by ensuring that accurate size and count information is marked on packages of nectarines and peaches. This requirement is not expected to have a negative impact on handlers, since the No. 22G standard lug box represents less than one percent of packages of nectarines and peaches shipped annually, and no experimental containers have been used for several years. This requirement may also eliminate any confusion over fruit count and size experienced by buyers of nectarines and peaches.

Consumer packages permit handlers to pack and ship nectarines and peaches in other types of containers demanded by their customers. In this case, packaging of fruit in small boxes or bags is tailored to the requirements of the buyer, whether by weight, size, or other

factor. Because the buyer's requirements may be specific for the buyer's market, the handler may pack consumer packages of several different sizes of fruit within the master container. For example, a master container may contain five consumer packages. One consumer package may contain size 64 nectarines, while two other consumer packages may contain size 70 nectarines. The remaining two boxes may contain size 60 nectarines. The sizes of the fruit within the individual consumer packages are the same, but the master container may contain packages of different fruit sizes.

Several alternatives to this action were discussed at the Grade and Size Subcommittee meeting held on November 5, 1998. Some subcommittee members suggested that the master containers be marked with the largest size fruit in the consumer packages, such as "Minimum size 80 and smaller." Others felt that option might be misleading to retailers and consumers, and the alternative was rejected. Some subcommittee members suggested that the mixing of sizes in a master container should be discouraged. Others responded that such flexibility in packaging was responsive to the needs of some handlers, and those needs should be accommodated when possible, within the requirements of the orders.

This change requiring master containers containing consumer packages of different fruit sizes to be marked identifying the existence of size variations, permits handlers to continue to meet the demands of their buyers, but ensure that the fruit size within individual consumer packages contained within master containers is accurately and clearly marked on the master containers.

In §§916.350 and 917.442 of the orders' rules and regulations concerning nectarines and peaches, respectively, the use of pack regulations is specified. The NAC and PCC routinely conduct tests to determine the optimum weight-count standards for such early-season, mid-season, and late-season nectarines and peaches, respectively. Handlers of nectarines and peaches have informed the NAC and PCC that some larger sizes of nectarines and peaches are increasingly being converted from tray-packs to volume-filled packs. Since volume-filled containers are less costly to pack and market demands change, handlers have opted to pack a greater proportion of large, high-quality fruit in volume-filled containers. In 1998, lower market prices caused handlers to convert size 44 nectarines and peaches from tray-packed containers to volume-

filled containers. However, there are currently no weight counts published for size 44 nectarines and peaches.

In 1994 and 1995, when the NAC and PCC last conducted tests to determine the number of fruit of various sizes that weighed 16 pounds, which is the standard inspection sample weight, size 44 nectarines and peaches were not usually packed in volume-filled containers. More commonly, size 44 nectarines and peaches were packed in tray-packs. As a result, weight count requirements were not needed by the industries for this size. As the practice of converting tray-packed containers of size 44 nectarines and peaches to volume-filled containers has increased, the NAC and PCC have referred to previously-conducted size studies and determined that weight-count standards for size 44 nectarines and peaches need to be included in the weight-count standards with those for the other sizes of fruit. The NAC and PCC have also determined that the correct weight-count standard for size 44 is a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The addition of weight-count standards for size 44 nectarines and peaches converted from tray-packed containers to volume-filled containers is expected to benefit producers and handlers by giving handlers increased flexibility in meeting marketing demands.

Therefore, the NAC and PCC unanimously recommended modifications to the weight-count standards for nectarines and peaches by the addition of weight-count standards for size 44 nectarines and peaches. Such a change modifies Tables 1 and 2 of paragraphs (a)(4)(iv) in §§ 916.350 and 917.442 of the regulations by adding size 44 and the applicable weight-count standard of a maximum of 33 pieces of early-season nectarines and all peaches, and a maximum of 30 pieces of mid-season and late-season nectarines in a 16-pound sample. The change will permit handlers to more easily convert tray-packed nectarines and peaches to volume-filled containers. This change is expected to decrease the handling costs associated with such conversions, and permit handlers to better meet marketing demands.

In §§ 916.356 and 917.459 of the orders' rules and regulations concerning nectarines and peaches, respectively, shipments of "CA Utility" quality nectarines and peaches have been permitted since the 1996 season, contingent upon the fruit in such containers meeting certain relaxed quality requirements. "CA Utility"

quality is a lower-quality fruit than U.S. No. 1. Previously, the requirement for containers of "CA Utility" nectarines and peaches provided that not more than 30 percent of the fruit in any container meet or exceed the requirements of U.S. No. 1. This relaxation increases that limitation from 30 percent to not more than 40 percent provided that the additional 10 percent of the U.S. No. 1 has non-scoreable blemishes. This relaxation is anticipated to benefit growers, handlers, and consumers.

Containers marked "CA Utility" must be inspected by the Inspection Service and certified as meeting the "CA Utility" quality requirements. Part of the inspection process is to evaluate the fruit in accordance with the requirements of Standards and the orders. In conducting inspections, inspectors are required to evaluate various blemishes. Some blemishes are serious or severe enough to be "scored" against the fruit as defects which are damaging to the grade of the fruit, while some other blemishes are either not serious or severe enough to affect the grade of the fruit. In the first instance, the blemishes are termed "scoreable" defects; and, in the second instance, the blemishes are termed "non-scoreable" defects. Some committee members supported increased percentages of U.S. No. 1 fruit in boxes of "CA Utility" quality nectarines and peaches provided that such non-scoreable blemishes are present on the additional 10 percent of the fruit grading U.S. No. 1 in boxes marked "CA Utility."

A niche market exists for "CA Utility" quality fruit and an opportunity should be made available to market somewhat better quality. It was estimated that the relaxation from not more than 30 percent U.S. No. 1 to not more than 40 percent provided that the additional 10 percent U.S. No. 1 fruit in the containers has non-scoreable blemishes would increase shipments of "CA Utility" quality nectarines and peaches by one-half of one percent.

According to comments made at the committee meetings on December 2, 1998, a majority of the members of the committees supported allowing the use of "CA Utility" fruit during the 1999 season, and the change in quality requirements, because those requirements solved handler problems at the end of the 1998 season. One committee member, however, commented that there was little merit to adding one-half of one percent to the marketplace. Another indicated that perhaps a review of the entire grade structure would address the problem and did not advocate relaxing the

percentage of U.S. No. 1 in "CA Utility" containers.

The committees considered several alternatives at the meetings. One alternative was to leave the percentage of U.S. No. 1 nectarines and peaches permitted in "CA Utility" unchanged. It was determined that alternative would not address the problem facing the industry. The NAC and PCC also considered reviewing the entire grade structure, but that alternative was considered a long-term project which could not be accomplished in enough time to address the problem for the 1999 season. Another alternative discussed was to limit the change to handlers operating under the Partners-In-Quality (PIQ) Program and allow those handlers to pack not more than 40 percent of U.S. No. 1 provided that the additional 10 percent of U.S. No. 1 has non-scoreable blemishes. Under the PIQ Program, handlers self-inspect their nectarines and peaches against the minimum grade, size, quality, maturity, pack, and container marking requirements of the orders and the Standards, according to the procedures and requirements specified in their Inspection-Service-approved operation manuals.

Under the requirements of the program, PIQ handlers are required to meet the minimum grade, maturity, size, quality, container, and pack requirements on every container. A handler under conventional in-line inspection is required to meet the minimum grade, maturity, size, quality, container, and pack requirements on an entire lot of fruit, which is not as restrictive as meeting the requirements on every container. For example, under in-line inspection, a handler may present a lot of 1,000 containers of nectarines or peaches for inspection. The tolerance for misshapen nectarines is currently limited to 25 percent per lot. The variance in misshapen nectarines in containers within the lot could change from one container to another, provided that the average within the entire lot does not exceed 25 percent. For PIQ handlers, there is no opportunity to "average within" grade on lots of fruit; each container is graded on its own as though it were a lot. PIQ handlers, thus, face more rigorous requirements than handlers under conventional in-line inspection. This alternative would address PIQ handler concerns by providing them greater flexibility with regard to both U.S. No. 1 and "CA Utility" quality containers. However, this alternative was determined to favor a small percentage of the industry and was rejected.

Some members of the committees supported continued shipments of "CA

Utility" quality nectarines and peaches during the 1999 season with a relaxation of the percentage from 30 percent U.S. No. 1 in containers marked "CA Utility" to 40 percent U.S. No. 1, provided that the additional 10 percent of the U.S. No. 1 has non-scoreable blemishes. They believed that the additional marketing opportunities provided by allowing handlers to ship such fruit were important to the industries.

Sections 916.356 and 917.442 of the orders' rules and regulations for nectarines and peaches, respectively, currently establish minimum maturity levels. This rule makes adjustments to the "well matured" requirements for several varieties of nectarines and peaches. "Well matured" determinations are made using maturity guides (e.g., color chips). Such maturity guides provide producers, handlers, and SPI with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, thus ensuring consumer satisfaction while benefitting nectarine and peach producers and handlers.

Currently, in § 916.356 of the order's rules and regulations for nectarines and § 917.459 of the order's rules and regulations for peaches, minimum sizes for various varieties of nectarines and peaches are established. This final rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 1999 season. Size regulations provide greater consumer satisfaction and encourage more repeat purchases. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data, and producer and handler information regarding sizes which the different varieties attain.

This action will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

As noted in the initial regulatory flexibility analysis, the Department has

not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary. Further, the public comments received concerning this proposal did not specifically address the initial regulatory flexibility analysis. One comment was received from a person who identified herself as a small grower. This comment is discussed later in this document.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. These meetings are held annually in late Fall. Like all committee meetings, the December 2, 1998, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees are composed of producers.

A proposed rule concerning this action was published in the **Federal Register** on March 8, 1999 (64 FR 11346). Copies of the rule were mailed to all committee members and handlers by the NAC and PCC staff on March 9, 1999. Finally, the rule was made available through the Internet by the Office of the Federal Register. A 20-day comment period ending March 29, 1999, was provided to allow interested persons to respond to the proposal. Three comments were received during the comment period in response to the proposal.

One commenter supported the continued shipment of "CA Utility" quality fruit, and the proposed changes to the "CA Utility" quality requirements indicating that the changes will enable shippers to better meet buyer needs; i.e., provide blemished fruit to buyers requesting such fruit, and unblemished fruit to buyers requesting unblemished fruit.

Another commenter requested a clarifying change in the size markings for master containers when multiple sizes of consumer packages are contained within the master containers. The commenter contended that the proposed rule failed to make a distinction between container marking requirements for master containers of consumer packages with only one size of fruit and container marking requirements for master containers of consumer packages with different sizes

of fruit. The commenter noted that it was the intent of the committees that container marking requirements for master containers of consumer packages with only one size fruit remain unchanged. The committees' intent was to specify that when master containers contain consumer packages with different sizes of fruit, the container should be marked with the smallest size and the words "and larger." Changes to clarify the intent of the committees have been made as requested by the commenter in §§ 916.350 (a)(8)(i) and 917.442 (a)(9)(i).

The third commenter, who identified herself as a small grower, indicated that fruit grown in Northern California was harvested and marketed at least 10 days later than fruit from the other parts of the State, and that the orders do not take this into account.

The regulations do reflect seasonal variations and growing conditions, as appropriate. For example, under the orders, both variety-specific and non-listed variety size requirements are established. The requirements are carefully developed based on the sizing and maturity characteristics of the various nectarine and peach varieties, and the consumer acceptance levels of the various sizes of fruit. The major commercial varieties grown in California are subject to the variety-specific requirements and account for about 99 percent of all fruit shipments. The other minor varieties are subject to the non-listed variety requirements and account for about one percent of all shipments. The variety-specific size requirements apply to all shipments of the named varieties, but for non-listed varieties, the size requirements are applied based upon when the fruit is shipped. A smaller minimum size is applied for non-listed varieties shipped earlier in the season, and a larger one for later shipments, because varieties that are harvested later in the season typically are larger when mature, and consumers generally prefer larger fruit. In addition, growing time not only improves the size of the fruit, but also increases its maturity. Maturity requirements also reflect growing conditions. Accordingly, no changes to the regulations are made based on the comment.

Changes to the regulations also have been made to reflect the effective date and change the reference to "Prima Peach VIII" to "Prima Peach 13."

After consideration of all relevant matters presented, including the comments received, the information and recommendations submitted by the committees, and other available information, it is hereby found that this

rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date on this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because: (1) Handlers have made adjustments in their handling practices to comply with the changes recommended for the 1999 shipping season; (2) the 1999 shipping season for California nectarines and peaches is expected to begin in mid-April, and these changes should apply to as many of those shipments as possible.

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 916.350 is amended by:
 - (A) Revising paragraph (a)(3);
 - (B) Revising paragraphs (a)(4)(i) and (a)(4)(ii);
 - (C) Revising TABLES 1 and 2 in paragraph (a)(4)(iv);
 - (D) Revising paragraph (a)(8)(i); and
 - (E) Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

- (a) * * *
 - (3) Each package or container of nectarines, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words "U.S. Mature" or "US MAT" if such nectarines are mature as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160); or may instead bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words "California Well Matured" or "CA WELL MAT" if such nectarines are well matured as defined in § 916.356.
 - (4) * * *

(i) The size of nectarines packed in molded forms (tray-packs) in the No. 22D and the No. 32 standard boxes, or consumer packages; No. 22G standard lug boxes, experimental containers; or the No. 12B fruit (peach) boxes or flats; and the size of wrapped nectarines packed in rows in No. 12B fruit (peach) boxes shall be indicated in accordance with the number of nectarines in each container, such as "80 count," "88 count," etc.

(ii) The size of nectarines in molded forms (tray-packs) in experimental containers, and in No. 22G standard lug boxes, shall be indicated according to the number of such nectarines when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box, in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with count requirements in paragraph (a)(4)(i) of this section.

* * * * *

(iv) * * *

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

Column A—Tray pack size designation	Column B—Maximum number of nectarines in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii) of § 916.356
108	100
96	90
88	83
84	78
80	75
72	68
70	61
64	56
60	50
56	47
54	40
50	39
48	35
44	33
42	31
40	30
36	25
34	23
32	22
30	19

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

Column A—Tray pack size designation	Column B—Maximum number of nectarines in 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii) and (a)(9)(ii) of § 916.356
108	92
96	87
88	78
84	75
80	67
72	61
70	56
64	51
60	46
56	43
54	39
50	37
48	33
44	30
42	28
40	26
36	25
34	23
32	22
30	19

- * * * * *
- (8) * * *
 - (i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents: *Provided*, That when consumer packages of different sizes of nectarines are contained in a master container, the size description of the contents shall indicate the minimum size contained therein, using the terms "Minimum size 60 and larger," or "Minimum size 70 and larger," etc., as applicable.
 - * * * * *
 - (d) During the period April 20, 1999 through October 31, 1999, each container or package when packed with nectarines meeting the "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with other required markings, in letters at least 3/8 inch in height.
- 3. Section 916.356 is amended by:
 - (A) Revising the introductory text of paragraph (a)(1);
 - (B) Removing TABLE 1 in paragraph (a)(1)(i);

(C) Revising TABLE 1 TO PARAGRAPH (a)(1)(iv); and
 (D) Revising the introductory text of paragraphs (a)(4) and (a)(6) to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 3/8 inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 1/2 inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 20, 1999 through October 31, 1999, 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 U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

TABLE 1 TO PARAGRAPH (A)(1)(IV)

Column A variety	Column B maturity guide
Alshir Red	J
Apache	G
April Glo	H
Arm King	B
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Bob Grand	L
Diamond Jewel	L
Diamond Ray	L
Earliglo	I

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A variety	Column B maturity guide
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavor Grand	G
Flavortop	J
Flavortop I	K
Grand Diamond	L
Independence	H
July Red	L
June Brite	I
Juneglo	H
Kay Diamond	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
Maybelle	F
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Mike Grand	H
Moon Grand	L
Niagara Grand	H
Pacific Star	G
P-R Red	L
Red Diamond	L
Red Delight	I
Red Fred	J
Red Free	L
Red Glen	J
Red Glo	I
Red Grand	H
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Son Red	L
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J

TABLE 1 TO PARAGRAPH (A)(1)(IV)—Continued

Column A variety	Column B maturity guide
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Summer Star	G
Sunburst	J
Sun Diamond	I
Sunfre	F
Sun Grand	G
Super Star	G
Tasty Gold	H
Tom Grand	L
Zee Glo	J
Zee Grand	I

NOTE: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed in Table 1 of this paragraph.

* * * * *

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Diamond Bright, Early May, Juneglo, June Pearl, Kay Glo, May Diamond, May Grand, May Lion, Prima Diamond IV, Prima Diamond VI, Prima Diamond 13, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Sparkling May, Star Brite, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Red, August Snow, Autumn Delight, Big Jim, Brite Pearl, Crystal Rose, Diamond Ray, Early Red Jim, Fairlane, Fantasia, Firebrite, Fire Pearl, Flame Glo, Flaming Red, Flavortop, Flavortop I, Grand Diamond, Grand Pearl, Honey Kist, How Red, July Red, Kay Diamond, King Jim, Late Red Jim, Mid Glo, Niagara Grand, P-R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XIX, Prima Diamond XXIV, Red Diamond, Red Glen, Red Jim, Rio Red, Royal Giant, Ruby Diamond, Ruby Pearl, Scarlet Red, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunny Red, Super Star, Terra White, Zee Glo, or 491-48 variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

4. Section 917.442 is amended by:
 (A) Revising paragraph (a)(3);

- (B) Revising paragraph (a)(4)(ii);
- (C) Revising TABLES 1 and 2 in paragraph (a)(4)(iv);
- (D) Revising paragraph (a)(9)(i); and
- (E) Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(3) Each package or container of peaches, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words "U.S. Mature" or "US MAT" if such peaches are mature as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); or may instead bear on one outside end in plain sight and in plain letters at least 3/8 inch in height the words "California Well Matured" or "CA WELL MAT" if such peaches are well matured as defined in § 917.459 of this part.

(4) * * *

(ii) The size of peaches in molded forms in experimental containers and in the No. 22G standard lug box shall be indicated according to the number of such peaches when packed in molded forms in the No. 22D standard lug box or the No. 32 standard box in accordance with the requirements of standard pack, such as "80 size," "88 size," etc., along with the count requirements in paragraph (a)(4)(i) of this section.

* * * * *

(iv) * * *

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

Column A—Tray pack size designation	Column B—Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (b)(3) of § 917.459
96	96
88	92
84	83
80	76
72	69
70	65
64	57
60	51
56	47
54	44
50	39
48	35

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

Column A—Tray pack size designation	Column B—Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (b)(3) of § 917.459
44	33
42	31
40	30
36	27
34	25
32	23
30	21

TABLE 2.—WEIGHT-COUNT STANDARDS FOR ALL VARIETIES OF PEACHES PACKED IN LOOSE-FILLED OR TIGHT-FILLED CONTAINERS

Column A—Tray pack size designation	Column B— ¹
96	96
88	83
84	79
80	73
72	64
70	59
64	53
60	46
56	45
54	43
50	39
48	35
44	33
42	31
40	30
36	27
34	25
32	23
30	21

¹ Maximum number of peaches in 16-pound sample applicable to varieties specified in paragraphs (a)(6)(ii) and (c)(3) of § 917.459

* * * * *

(9) * * *

(i) The number of individual consumer packages, the net weight of each consumer package, and the size description of the contents: *Provided*, That when consumer packages of different sizes of peaches are contained in a master container, the size description of the contents shall indicate the minimum size contained therein, using the terms "Minimum size 60 and larger," or "Minimum size 70 and larger," etc., as applicable.

* * * * *

(d) During the period April 20, 1999 through November 23, 1999, each container or package when packed with peaches meeting "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with other required markings, in letters at least 3/8 inch in height.

5. Section 917.459 is amended by:
- (A) Revising the introductory text of paragraph (a)(1);
 - (B) Removing TABLE 1 in paragraph (a)(1)(i);
 - (C) Revising TABLE 1 TO PARAGRAPH (a)(1)(iv); and
 - (D) Revising the introductory text of paragraphs (a)(3), (a)(5), and (a)(6) and adding paragraph (a)(4) introductory text to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the 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 during the period April 20, 1999 through November 23, 1999, 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 requirements 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 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 mature and are:

* * * * *

(iv) * * *

TABLE 1 TO PARAGRAPH (A)(1)(IV)

Column A—variety	Column B—maturity guide
Ambercrest	G
Angelus	I
August Lady	L
August Sun	I
Autumn Crest	I
Autumn Gem	I
Autumn Lady	H
Autumn Rose	I
Belmont (Fairmont)	I

TABLE 1 TO PARAGRAPH (A)(1)(IV)—
Continued

Column A—variety	Column B—maturity guide
Berenda Sun	I
Blum's Beauty	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
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
Fayette	I
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Golden Crest	H
Golden Lady	F
Honey Red	G
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
June Sun	H
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Lady Sue	L
Mary Anne	G
May Crest	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
O'Henry	I
Pacifica	G
Parade	I
Pat's Pride	D
Prima Gattie 8	L
Prima Lady	J
Queencrest	G
Ray Crest	G
Red Cal	I
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

TABLE 1 TO PARAGRAPH (A)(1)(IV)—
Continued

Column A—variety	Column B—maturity guide
Ryan Sun	I
Scarlet Lady	F
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Springold	D
Sugar Lady	J
Summer Lady	L
Summerset	I
Suncrest	G
Sweet Scarlet	J
Topcrest	H
Tra Zee	J
Willie Red	G
Zee Lady	L

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed in table 1 of this paragraph.

* * * * *

(3) Any package or container of Goldcrest, Super Rich, or Topcrest variety peaches unless:

* * * * *

(4) Any package or container of Snow Dance variety peaches unless:

* * * * *

(5) Any package or container of Babcock, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, Golden Crest, June Lady, Kern Sun, May Crest, May Sun, Merrill Gemfree, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Springcrest, Spring Lady, Spring Snow, Sugar May, Sweet Scarlet, or White Dream variety of peaches unless:

* * * * *

(6) Any package or container of Amber Crest, August Lady, Autumn Flame, Autumn Lady, Autumn Rose, Cal Red, Carnival, Cassie, Champagne, Diamond Princess, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, John Henry, June Pride, Kaweah, Kings Lady, Lacey, Late Ito Red, Madonna Sun, Morning Lord, O'Henry, Prima Gattie, Prima Peach 13, Prima Peach 20, Prima Peach 23, Red Dancer, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Lady, Snow Diamond, Snow Giant, Snow King, Sparkle, Sprague Last Chance, Sugar Giant, Sugar Lady, Summer Lady, Summer Sweet, Summer Zee, Suncrest, Tra Zee, Vista, White Lady, Yukon King,

Zee Lady, or 1-01-505 variety of peaches unless:

* * * * *

Dated: April 14, 1999.

Robert C. Keeney,
Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99-9678 Filed 4-14-99; 1:28 pm]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

Milk in the Iowa Marketing Area

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 1000 to 1199, revised as of Jan. 1, 1998, page 611, § 1079.7(b) is corrected by revising "30 percent" to read "20 percent".

[FR Doc. 99-55514 Filed 4-16-99; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 99-04]

RIN 1557-AB14

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0996]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064-AC14

Risk-Based Capital Standards: Market Risk

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Joint final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are adopting as a final rule an interim rule amending their respective risk-based capital standards for market risk applicable to