lybica, Eremnus atratus, Eremnus cerealis, Eremnus setulosus, Eutetranychus orientalis, Helicoverpa armigera, Icerya seychellarum, Macchiademus diplopterus, Oxycarenus hyalinipennis, Pachnoda sinuata, Phlyctinus callosus, Scirtothrips aurantii, Scirtothrips dorsalis, Spodoptera littoralis, and *Tanyrhynchus carinatus* in accordance with part 305 of this chapter.

(c) Each shipment of grapes must be accompanied by a phytosanitary certificate of inspection issued by the national plant protection organization of Namibia bearing the following additional declaration: ''The grapes in this shipment have been inspected and found free of *Maconellicoccus hirsutus, Nipaecoccus vastator, Rastrococcus iceryoides, Cochlicella ventricosa,* and *Theba pisana*.''

(d) The grapes may be imported in commercial shipments only.

(Approved by the Office of Management and Budget under control number 0579–0300)

Done in Washington, DC, this 18th day of September 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–7891 Filed 9–20–06; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV06–916/917–1 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 is adopting, as a final rule, with a change, an interim final rule revising the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and pack requirements for fresh shipments of these fruits, beginning with 2006 season shipments. This rule also continues in effect the authorization for continued shipments of ''CA Utility'' quality nectarines and peaches, the establishment of weight-count standards for Peento type nectarines in volume-filled containers, and the elimination of the varietal container marking requirements. 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 enables handlers to continue to ship fresh nectarines and peaches in a manner that meets consumer needs, increases returns to producers and handlers, and reflects current industry practices.

DATES: *Effective Date:* October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Laurel May, Marketing Specialist, or Kurt Kimmel, Regional Manager, 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 e-mail: *Laurel.May@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 (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 rule continues in effect: (1) Revisions to the nectarine and peach grade, size, maturity, and pack requirements to better reflect current industry operating and marketing practices; (2) authorization for continued shipments of ''CA Utility'' quality nectarines and peaches during the 2006 and subsequent seasons to meet buyer needs; (3) establishment of weight-count standards for Peento type nectarines packed in volume-filled containers to assure pack uniformity; and (4) elimination of the varietal container marking requirements for nectarines and peaches to provide handlers more marketing flexibility.

Sections 916.52 and 917.41 of the orders provide authority for regulating the handling of fresh California nectarines and peaches. The regulations include grade, size, maturity, quality, pack, and container marking requirements. Such regulations are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, meet prior to and during each season to review the regulations. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. USDA 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.

The committees held such meetings on February 3, 2006, and unanimously recommended that the handling requirements be revised for the 2006 season, which was expected to begin at the end of March. No official crop estimates were available at the time of the committees' February meetings because the nectarine and peach trees were dormant. The committees subsequently met on April 27, 2006, and recommended 2006 crop estimates of 17,824,000 containers of nectarines and 20,242,000 containers of peaches. The 2006 nectarine crop is expected to be slightly smaller than the 2005 crop, which totaled approximately 18,618,000 containers. The 2006 peach crop is

expected to be slightly larger than the 2005 crop of approximately 20,177,000 containers.

Maturity Requirements

Sections 916.52 and 917.41 of the orders 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. 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 applied by the inspection service). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) 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 established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as Table 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2006 handling regulations are the same as those that appeared in the 2005 handling regulations with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for ''well-matured'' nectarines are specified in § 916.356 of the order's rules and regulations. This rule continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 916.356 to add maturity guides for seven varieties of nectarines. Specifically, SPI recommended adding maturity guides for the Ruby Fire variety to be regulated at the G maturity guide; for the Burnectten (Spring Flare® 19) variety to be regulated at the H maturity guide, for the Burnecttwelve (Sweet Flare® 21) variety to be regulated at the I maturity guide, for the Burnectseven (Summer Flare® 28) and Zee Fire varieties to be regulated at the J maturity guide, and for the Prima Diamond XIX and Summer Jewel varieties 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 continues in effect the revision of Table 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for seven peach varieties. Specifically, SPI recommended adding maturity guides for the Flavor Joy variety to be regulated at the H maturity guide; the King Sweet, Lady Lou, and Sugar Time (214LC68) varieties to be regulated at the I maturity guide; the August Dream variety to be regulated at the J maturity guide; and the Burpeachfive (July Flame®) and Burpeachsix (June Flame®) varieties to be regulated at the L maturity guide.

NAC and PCC recommended these maturity guide 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 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, and, therefore, increases returns to producers and handlers. Increased fruit size results in increased numbers of packed containers of nectarines and peaches per acre, which also benefits producers and handlers.

Recommendations for size regulations are based on the specific characteristics of each variety. The NAC and PCC 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 the revisions to § 916.356 that establish variety-specific minimum size requirements for nine varieties of nectarines that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2005 season. This rule also continues in effect to remove the variety-specific minimum size requirements for seven varieties of nectarines whose shipments fell below 5,000 containers during the 2005 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Burnectten (Spring Flare® 19) variety of nectarines, recommended for regulation at a minimum size 96. Studies of the size ranges attained by the Burnectten (Spring Flare® 19) variety revealed that 100 percent of the containers met the minimum size of 96 during the 2004 and 2005 seasons. Sizes ranged from size 40 to size 96, with 0.2 percent of the fruit in the 40 sizes, 4.9 percent of the packages in the 50 sizes, 27.0 percent in the 60 sizes, 35.8 percent in the 70 sizes, 24.4 percent in the 80 sizes, and 7.7 percent in size 96 for the 2005 season.

A review of other varieties with the same harvesting period indicated that the Burnectten (Spring Flare® 19) variety was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirm this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Burnectten (Spring Flare® 19) variety in the variety-specific minimum size regulation at a minimum size 96 is appropriate. This recommendation results from size studies conducted over a two-year period.

Historical data such as this provides the NAC 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, the introductory text of paragraph(a)(3) of § 916.356 continues in effect to be revised to include the Burnectten (Spring Flare® 19) variety; the introductory text of paragraph (a)(4) of § 916.356 continues in effect to be revised to include the Gee Sweet variety; and the introductory text of paragraph (a)(6) of § 916.356 continues in effect to be revised to include the Arctic Belle, August Sweet, Autumn Blaze, Giant Pearl, Prima Diamond X, Prince Jim 3, and Summer Jewel nectarine varieties.

This rule also continues in effect the revisions to the introductory text of paragraphs (a)(3), (a)(4), and (a)(6) of § 916.356 that remove seven varieties from the variety-specific minimum size requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2005 season. Specifically, the introductory text of paragraph (a)(3) of § 916.356 continues in effect to be revised to remove the Early Diamond nectarine variety; the

introductory text of paragraph (a)(4) of § 916.356 continues in effect to be revised to remove the Arctic Rose, June Glo, May Diamond and Red Delight nectarine varieties; and the introductory text of paragraph (a)(6) of § 916.356 continues in effect to be revised to remove the Bright Sweet and Emelia nectarine varieties.

Nectarine varieties removed from the nectarine variety-specific minimum size requirements become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

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 in effect revisions to § 917.459 that establish variety-specific minimum size requirements for eleven peach varieties that were produced in commercially significant quantities of more than 10,000 containers for the first time during the 2005 season. This rule also continues in effect to remove the variety-specific minimum size requirements for seven varieties of peaches whose shipments fell below 5,000 containers during the 2005 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Island Prince variety of peaches, which was recommended for regulation at a minimum size 88. Studies of the size ranges attained by the Island Prince variety revealed that 100 percent of the containers met the minimum size of 88 during the 2004 and 2005 seasons. The sizes ranged from size 30 to size 88, with 3.8 percent of the containers meeting the size 30, 4.0 percent meeting the size 40, 42.1 percent meeting the size 50, 28.1 percent meeting the size 60, 11.8 percent meeting the size 70, 9.9 percent meeting the size 80, and 0.3 percent meeting the size 88 in the 2005 season.

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

Historical 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 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 PCC and subcommittee meetings when the staff receives such comments, either in writing or verbally.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(3) of § 917.459 continues in effect to be revised to include the Island Prince and Snow Peak peach varieties; the introductory text of § (a)(5) of § 917.459 continues in effect to be revised to include the Bright Princess, Burpeachnineteen (Spring Flame® 22), Honey Sweet, Sierra Snow, and Sweet Crest peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 continues in effect to be revised to include the Glacier White, Jasper Treasure, Spring Candy, and Valley Sweet peach varieties.

This rule also continues in effect the revision to the introductory text of paragraph (a)(6) of § 917.459 to remove the Autumn Ruby, Cherry Red, Early O'Henry, Gypsy Red, Pretty Lady, Supechfour (Amber Crest), and 244LE379 peach varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 containers of each of these varieties was produced during the 2005 season.

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

NAC and PCC 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.

Grade and Quality Requirements

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

Since 1996, shipments of nectarines and peaches meeting ''CA Utility'' quality requirements have been permitted each season. ''CA Utility'' fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements. Nevertheless, the fruit is acceptable in many markets. Use of the ''CA Utility'' quality option has allowed handlers the opportunity to remove marginal fruit from the U.S. No. 1 containers and pack it in ''CA Utility'' containers instead, which results in better quality U.S. No. 1 packs without sacrificing fruit.

The committees have recommended continuation of the authorization to ship ''CA Utility'' quality fruit each year since 1996, and did so again at their meetings on February 3, 2006, for the 2006 and subsequent seasons. This rule continues in effect to revise paragraph (d) of § 916.350 and 917.442, and paragraph (a)(1) of § 916.356 and 917.459 to permit shipments of nectarines and peaches meeting ''CA Utility'' quality requirements during the 2006 and subsequent seasons.

Weight-Count Standards

Under the provisions of § 916.52 of the order, NAC is authorized to establish weight-count standards for packed containers of nectarines. These standards define a maximum number of nectarines in a 16-pound sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers. In § 916.350 of the order's rules and regulations, weight-count standards are established for all varieties of nectarines (except the Peento type), in Tables 1 and 2 of paragraph (a)(5)(iv).

According to NAC, Peento varieties of donut nectarines have traditionally been packed in trays because they have been marketed as a premium variety, whose value justified the added packing costs. Recently, as the volume has increased, the value of the variety has diminished in the marketplace, and some handlers now desire to pack Peento variety nectarines in volume-filled containers to meet market demands. However, prior to this time, weight-count standards for Peento type nectarines had not been established in the order's rules and regulations. Previously, weight-count standards for nectarines were for round nectarines. Peento type nectarines are shaped like donuts and fit into volume-filled containers differently, so the existing weight count standards were inappropriate.

In an effort to standardize the conversion from tray-packing to volume-filling for Peento type nectarines, the committee staff conducted weight-count surveys during the 2005 season to determine optimum weight-counts for the varieties at various fruit sizes. As a result, the staff prepared a new weight-count table applicable to only the Peento varieties. The Tree Fruit Quality Subcommittee reviewed the weight-counts at their November 10, 2005, meeting. At its February 3, 2006, meeting, NAC approved the recommendation that the new weight-counts be implemented for the 2006 and subsequent seasons.

This rule continues in effect the revisions made to paragraph (a)(5)(iv) of § 916.350 by adding a new Table 3, establishing the weight-counts for Peento type nectarines, following Tables 1 and 2. In a conforming change, the titles of Tables 1 and 2 continue to be revised by adding the words ''except Peento type nectarines'' between the words ''nectarines'' and ''packed.'' Conforming changes will continue in effect to be made by adding the words ''except for Peento type nectarines'' at the end of paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(ii) of § 916.356.

The committee staff will continue to conduct weight-count surveys to ensure that the Peento varieties that are packed in volume-filled containers meet the weight-count standards established for tray-packed nectarines, and to ensure that the weight-counts continue to be appropriate.

Varietal Container Markings

Sections 916.350 and 917.442 of the orders' rules and regulations require that all containers and packages of nectarines and peaches (except for consumer packages in master containers or those mailed directly to consumers) shall be marked with the name of the variety of the fruit if it is known, or with ''Unknown Variety'' if the variety is not known.

Many industry members believe that variety recognition may limit the industry's ability to provide the best quality fruit at any given time during the harvest season. Factors such as weather can contribute to wide variability in harvest dates for individual varieties from year to year, making it difficult to meet customer demands on a timely basis. Eliminating the varietal container marking requirement would ease the transition that occurs when older trees are replaced with newly introduced varieties. New varieties could be substituted for obsolete varieties without risking the loss of market opportunities. Therefore, industry members suggested that elimination of the varietal container marking requirement would enable them to supply whichever varieties are appropriately mature throughout the season without regard for variety identity.

The Tree Fruit Quality Subcommittee discussed this issue at many of their meetings in 2004 and 2005. They believe that eliminating the requirement that variety names be marked on containers will allow handlers greater flexibility to supply the best possible nectarines and peaches to customers throughout the marketing season without regard to variety. Consumer satisfaction should be raised, which will in turn increase returns to growers and handlers.

Upon recommendation by the Tree Fruit Quality Subcommittee, NAC and PCC voted unanimously at their meetings on February 3, 2006, to recommend elimination of the requirement that fruit variety be marked on containers of nectarines and peaches. Accordingly, paragraphs (a)(2) of §§ 916.350 and 917.442 continue in effect to be amended by deleting the words, ''and, except for consumer packages in master containers and consumer packages mailed directly to consumers, the name of the variety, if known, or, when the variety name is not known, the words 'unknown variety.' A marketing name, trade mark, or brand name may be associated with a variety name, but cannot be substituted for the variety name.''

Additionally, paragraph (a)(11) of § 916.350 and paragraph (a)(12) of § 917.442 continue in effect to be amended by deleting the words ''the name of the variety, if known, or if the variety is not known, the words *Unknown Variety*.''

This rule reflects the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that continuing this rule in effect will have a beneficial impact on producers, handlers, and consumers of fresh California nectarines and peaches.

This rule continues in effect the establishment of handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season meet acceptable handling requirements established under each of these orders. This rule also helps the California nectarine and peach industries to provide fruit desired by consumers. This rule continues in effect the establishment and maintenance of orderly marketing conditions for these fruits in the interests of producers, handlers, and consumers.

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. Thus, both statutes have small entity orientation and compatibility.

Industry Information

There are approximately 180 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 800 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than $6,500,000. Small agricultural producers are defined by the Small Business Administration 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 could be defined as other than small entities. For the 2005 season, the committees' staff estimates that the average handler price received was $10.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 650,000 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 2005 season, the committees' staff estimates that small handlers represent approximately 86 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 10 percent of the producers in the industry could be defined as other than small entities. For the 2005 season, the committees' staff estimates that the average producer

price received was $5.25 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 142,858 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 2005 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 $5.25 per container or container equivalent, and a combined packout of nectarines and peaches of approximately 38,776,500 containers, the value of the 2005 packout is estimated to be $203,576,600. Dividing this total estimated grower revenue figure by the estimated number of producers (800) yields an estimated average revenue per producer of about $254,471 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. NAC and PCC met on February 3, 2006, and unanimously recommended that these handling requirements be revised for the 2006 season. These recommendations had been presented to the committees by various subcommittees, each charged with review and discussion of the changes. The changes: (1) Revise varietal size, maturity, and pack requirements to reflect changes in production and marketing practices; (2) authorize continued shipments of ''CA Utility'' quality nectarines and peaches during the 2006 and subsequent seasons; (3) establish weight-count standards for Peento type nectarines packed in volume-filled containers; and (4) eliminate the varietal container marking requirements for nectarines and peaches.

Minimum Maturity and Size Levels—Discussions and Alternatives

Sections 916.356 and 917.459 establish minimum fruit maturity levels. This rule continues in effect the annual 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 SPI 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 establish minimum sizes for various varieties of nectarines and peaches. This rule continues in effect the adjustments to the minimum sizes authorized for certain varieties of each commodity for the 2006 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' practices and represent a significant change in the regulations as they currently exist; would ultimately increase the amount of less acceptable fruit being marketed to consumers; and would be contrary to the long-term interests of producers, handlers, and consumers. For these reasons, this alternative was not recommended.

Grade and Quality Requirements—Discussions and Alternatives

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of ''CA Utility'' quality nectarines and peaches as an experiment during the 1996 season only. Such shipments have subsequently been permitted each season. Although ''CA Utility'' fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements, it has been accepted in many markets. Between 1996 and 2004, shipments of ''CA Utility'' quality fruit ranged from 1 to 6 percent of total nectarine and peach shipments. In 2005, shipments of ''CA Utility'' quality fruit were 8.6 percent and 7.1 percent of total nectarine and peach shipments, respectively.

This rule continues in effect the authorization for continued shipments of ''CA Utility'' quality nectarines and peaches during the 2006 and subsequent seasons. Not authorizing such shipments would curtail shipments of fruit for which there is an appropriate market. Because ''CA Utility'' is widely accepted, it is no longer necessary to reconsider this authorization on an annual basis.

Weight-Count Standards—Discussions and Alternatives

Section 916.350 also establishes weight-count standards for nectarines packed in volume-filled containers. These standards define a maximum number of nectarines in a 16-pound sample when such fruit, which may be packed in tray-packed containers, is converted to volume-filled containers.

Peento type nectarines were formerly packed exclusively in trays because of their high market value. With increased production and lowered market value, retailers have begun requesting that packers place the donut-shaped fruit in volume-filled containers. Peento type nectarines fit into the boxes differently than spherical nectarines, so it is necessary to assign appropriate weight counts for Peento type nectarines in volume-filled containers.

The committee staff was directed to collect data during the 2005 season from which recommendations for change could be made. Extensive sampling of Peento type nectarines of various sizes provided the information needed for the committee to make recommendations regarding the new weight-count standards. The Tree Fruit Quality subcommittee reviewed these standards at their meeting on November 10, 2005. The standards were then presented to NAC, who unanimously recommended adding the new weight count standards for Peento type nectarines to the regulations at their meeting on February 3, 2006.

Without the appropriate weight-counts, Peento type nectarines cannot be packed in volume-filled containers. NAC believes that the recommended weight-count standards will satisfy the stated needs of retailers, will open additional market opportunities for the industry and will provide for uniformity of sizes between nectarines packed in tray- and volume-filled containers.

Varietal Container Marking Requirements—Discussions and Alternatives

Sections 916.350 and 917.442 of the orders' rules and regulations require

that all containers of nectarines and peaches be marked with the fruit's varietal name, if known.

Many industry members believe that variety recognition may limit the industry's ability to provide the best quality fruit at any given time during the harvest season. Factors such as weather can contribute to wide variability in harvest dates for individual varieties from year to year, making it difficult to meet customer demands on a timely basis. The committees believe that eliminating the varietal container marking requirement will ease the transition that occurs when older trees are replaced with newly introduced varieties. New varieties may be substituted for obsolete varieties without risking the loss of market opportunities. Therefore, industry members have suggested that elimination of the varietal container marking requirement will enable them to supply whichever varieties are appropriately mature throughout the season without regard for variety identity. They believe that consumer satisfaction will be raised, which will in turn increase returns to growers and handlers.

The Tree Fruit Quality Subcommittee discussed the issue at many of their recent meetings. Some members suggested that the requirement be left in place so that marketers and consumers would know what varieties of fruit they purchased and be encouraged to make repeat purchases. But the majority of subcommittee members voted to recommend elimination of the varietal container marking requirement, citing brand and commodity recognition in the market and easier transition to newer varieties as justification for the change. The Tree Fruit Subcommittee made the recommendation to both NAC and PCC, who agreed that varietal markings are no longer necessary or prudent, and in turn recommended at their February 3, 2006, meetings that the varietal container marking requirement be eliminated.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including recommendations by various subcommittees, comments of persons at subcommittee meetings, and comments received by committee staff. Such subcommittees include the Tree Fruit Quality Subcommittee, the Size Nomenclature Review Group, the Marketing Order Amendment Task Force, and the Executive Committee.

At the meetings, the impact of and alternatives to these recommendations are deliberated. These subcommittees, like the committees themselves, frequently consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. Like all committee meetings, subcommittee meetings are open to the public and comments are widely solicited. In the case of the Tree Fruit Quality Subcommittee, many growers and handlers who are affected by the issues discussed by the subcommittee attend and actively participate in the public deliberations, or call and/or write in their concerns and comments to the staff for presentation at the meetings. In addition, minutes of all subcommittee 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.

An interim final rule concerning this action was published in the **Federal Register** on April 10, 2006. Copies of the rule were posted on the committees' Web site and were also made available through the Internet by USDA and the Office of the Federal Register. That rule provided a 60-day comment period, which ended on June 9, 2006. One comment was submitted on the rule. The commenter pointed out that obsolete language that had previously been removed from § 916.356(a)(1) (69 FR 44457, July 26, 2004) was inadvertently included in the interim final rule. Therefore, this rule revises paragraph (a)(1) of § 916.356 by removing the obsolete language regarding the color requirement exemption for U.S. No. 1 grade nectarines.

Each of the recommended handling requirement changes for the 2006 season is expected to generate financial benefits for producers and handlers through increased fruit sales, compared to the situation that would exist if the changes were not adopted. Both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be substantially different between large and small entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine or 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.

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.

USDA 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 CFR 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, 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 3, 2006, teleconference meeting all entities, large and small, were encouraged to express views on these issues. These regulations were also reviewed and thoroughly discussed at public subcommittee meetings held on November 30, 2004, and April 19, September 2, October 5, and November 10, 2005.

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, the comment received, and other information, it is found that finalizing the interim final rule, with a change, as published in the **Federal Register** (71 FR 17970, April 10, 2006), will 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.

■ Accordingly, the interim final rule amending 7 CFR parts 916 and 917, which was published in the **Federal Register** at 71 FR 17970 on April 10, 2006, is adopted as a final rule with the following change:

PART 916—NECTARINES GROWN IN CALIFORNIA

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

Authority: 7 U.S.C. 601–674.

§ 916.356 [Amended]

■ 2. Section 916.356 paragraph (a)(1) introductory text is amended by removing words ''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:''.

Dated: September 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–7868 Filed 9–20–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 060525140–6221–02; I.D. 051106B]

RIN 0648–AT75

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 13C

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 13C to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared and submitted by the South Atlantic Fishery Management Council (Council). Amendment 13C establishes management measures to end overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass and measures to allow moderate increases in recreational and commercial harvest of red porgy consistent with the rebuilding program for that stock.

For the commercial fisheries, this final rule establishes restrictive quotas for snowy grouper, golden tilefish, vermilion snapper, and black sea bass and, after the quotas are met, prohibits all purchase and sale of the applicable species and restricts all harvest and possession to the applicable bag limit; establishes restrictive trip limits for snowy grouper and golden tilefish; requires at least 2-inch (5.1-cm) mesh in the back panel of black sea bass pots; requires black sea bass pots to be removed from the water after the quota is reached; changes the fishing year for black sea bass; increases the trip limit for red porgy; establishes a red porgy quota that would allow a moderate increase in harvest; and, after the red porgy quota is reached, prohibits all purchase and sale and restricts all harvest and possession to the bag limit.

For the recreational fisheries, this final rule reduces the bag limits for snowy grouper, golden tilefish, and black sea bass; increases the minimum size limit for vermilion snapper and black sea bass; changes the fishing year for black sea bass; and increases the bag limit for red porgy.

The intended effects of this final rule are to eliminate or phase out overfishing of snowy grouper, golden tilefish, vermilion snapper, and black sea bass; and increase red porgy harvest consistent with an updated stock assessment and rebuilding plan to achieve optimum yield. Finally, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for those collections.

DATES: This final rule is effective October 23, 2006.

ADDRESSES: Copies of the Final Regulatory Flexibility Analysis (FRFA) and the Record of Decision (ROD) may be obtained from John McGovern, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *John.McGovern@noaa.gov.*

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted in writing to Jason Rueter at the Southeast Regional Office address (above) and to David Rostker, Office of Management and Budget (OMB), by e-mail at *David_Rostker@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: John McGovern, telephone: 727–824–5305; fax: 727–824–5308; e-mail: *John.McGovern@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On May 18, 2006, NMFS published a notice of availability of Amendment 13C and requested public comment (70 FR 28841). On June 9, 2006, NMFS published the proposed rule to implement Amendment 13C and requested public comment (71 FR 33423). NMFS approved Amendment 13C on August 14, 2006. The rationale for the measures in Amendment 13C is provided in the amendment and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received a total of 32 comment letters: 17 addressed Amendment 13C, 6 addressed the Final Environmental Impact Statement (FEIS) associated with Amendment 13C, and 9 addressed the proposed rule. Four of these comment letters supported the proposed actions. The remaining comment letters opposed one or more of the proposed actions for reasons summarized below. Similar comments are consolidated, and each is followed by NMFS's response.

Comment 1: Concerns were raised about edits made to Amendment 13C after it was approved by the Council and its Scientific and Statistical Committee (SSC), and before it was transmitted for Secretarial review. At issue is whether NMFS altered the document without the Council's knowledge and in a way that was inconsistent with the Council's intent.

Response: At the December 2005 meeting, the Council chose several different preferred alternatives than those in the public hearing draft of Amendment 13C. Thus, when approving Amendment 13C for Secretarial review during its December 2005 meeting, the Council requested the NMFS and Council staffs work together through an Interdisciplinary Plan Team (IPT) to finalize the integrated amendment for Secretarial review. Specifically, the Council directed the IPT to modify a number of preferred alternatives, and to ''* * * complete the document as reflected by all the discussion here at this meeting with the preferreds and everything else.'' The IPT made the requested edits following the December Council meeting. Edits included modifying and supplementing analyses, as needed, to describe the effects of the Council's revised preferred alternatives that were chosen to further mitigate the unavoidable short-term