

requirements specified in these paragraphs because less than 5,000 containers of each of these varieties were produced during the 2002 season. Specifically, the introductory text of paragraph (a)(3) of § 916.356 is revised to remove the Johnny's Delight and May Jim nectarine varieties; the introductory text of paragraph (a)(4) of § 916.356 is revised to remove the Scarlet Jewels and Star Brite nectarine variety; and the introductory text of paragraph (a)(6) of § 916.356 is revised to remove the Arctic Gold, Kay Diamond, Prima Diamond XVI, Spring Diamond, Spring Red, Summer Beaut, and Sunectight (Super Star) 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 revises § 917.459 to establish variety-specific minimum size requirements for 12 peach varieties that were produced in commercially-significant quantities of more than 10,000 containers for the first time during the 2002 season. This rule also removes the variety-specific minimum size requirements for 10 varieties of peaches whose shipments fell below 5,000 containers during the 2002 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Springtreat (60EF32) variety of peaches, which was recommended for regulation at a minimum size 80. Studies of the size ranges attained by the Springtreat (60EF32) variety revealed that 100 percent of the containers met the minimum size of 80 during the 2002 season. The sizes ranged from size 50 to size 80, with 8.2 percent of the containers meeting the size 50, 41.2 percent meeting the size 60, 37.6 percent meeting the size 70, and 12.9 percent meeting the size 80.

A review of other varieties with the same harvesting period indicated that the Springtreat (60EF32) 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 harvesting period, as well. Thus, the recommendation to place the Springtreat (60EF32) variety in the variety-specific minimum size

regulation at a minimum size 80 is appropriate. This recommendation, as with all other size recommendations for peaches, results from size studies conducted over a three-year period.

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)(5) of § 917.459 is revised to include the Happy Dream, Magenta Queen, Springtreat (60EF32), and Spring Flame 21 peach varieties; and the introductory text of paragraph (a)(6) of § 917.459 is revised to include the August Flame, Henry II, June Flame, Pink Giant, Prima Peach XV, Red Giant, Snow Beauty, and Snow Princess peach varieties.

This rule also revises the introductory text of paragraph (a)(3) of § 917.459 to remove the Topcrest peach variety; revises the introductory text of paragraph (a)(5) of § 917.459 to remove the White Dream peach variety; and revises the introductory paragraph (a)(6) of § 917.459 to remove the Cal Red, Champagne, Flaming Dragon, Garnet Jewel, Lacey, Madonna Sun, Morning Lord, and Red Sun 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 2002 season.

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

The 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.

This rule reflects the committees' and USDA's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. USDA believes that this rule will have a beneficial impact on producers,

handlers, and consumers of fresh California nectarines and peaches.

This rule establishes 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 will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries to provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruit in the interests of producers, handlers, and consumers.

#### Initial Regulatory Flexibility Analysis

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

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

There are approximately 300 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 include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those whose annual receipts are less than \$5,000,000. 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 less than 20 handlers in the industry who could be defined as other than small entities. For the 2002 season, the committees' staff estimated that the average handler price received was \$9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 556,000 containers to have annual receipts of \$5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2002