

each variety by the variety's name. These variety-specific requirements are applied based upon the name of the variety, the size each variety is known to attain, the appropriate maturity guide (e.g., color chip) for the variety, and the historic harvest period specific to each named variety.

In §§ 916.60 and 917.50, handlers are required to report on shipments of nectarines and peaches. Sections 916.160 and 917.178 of the orders' rules and regulations specify the types of reports that handlers must file with the committees. Among the requirements, handlers must report the total shipments of nectarines and peaches by variety by November 15 of each year.

Thus, ensuring that each variety is regulated and reported on using the appropriate name is important to the operation of the nectarine and peach marketing orders.

Some handlers are using trademark names in place of the variety name. Thus, inspection service may not be able to provide appropriate inspection for a variety with an unfamiliar name. Accordingly, paragraphs (a)(2) of §§ 916.350 and 917.442 are amended by adding that a marketing name, trademark or brand name may be associated with the variety name, but cannot be substituted for a variety name.

This amended 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 each season meet the handling requirements established under each of these orders. This amended rule will also help the California nectarine and peach industries continue to provide fruit desired by consumers. This amended 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 season, the committees' staff estimates that small handlers represent approximately 94 percent of all the handlers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. For the 2002 season, the committees' staff estimated the average producer price received was \$4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 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 2002 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry. With an average producer price of \$4.00 per container or container equivalent, and a combined packout of nectarines and peaches of 45,354,000 containers, the value of the 2002 packout level is estimated to be \$181,416,000. Dividing this total estimated grower revenue figure by the estimated number of producers (1,800) yields an estimate of average revenue per producer of about \$101,000 from the sales of peaches and nectarines.

This rule amends a prior interim final rule that changed the handling

requirements under the orders. The prior interim final rule was published in the **Federal Register** on April 9, 2003 (68 FR 17257). That rule modified §§ 916.115, 916.350, 916.356, 917.150, 917.442, and 917.459, which regulate handling of nectarines and peaches, respectively, under the orders.

In addition, this interim final rule revises the net weight for five down Euro containers, exempts Peento type peaches from all round variety weight-count standards, and clarifies provisions relating to the use of variety names.

Under §§ 916.52 and 917.41 of the orders, grade, size, maturity, container, container marking, and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. The NAC and PCC met on May 1, 2003, and recommended that these handling requirements be revised for the 2003 season. These recommendations had been presented to the committees by the Stone Fruit Grade and Size Subcommittee, which is charged with review and discussion of such changes.

The Stone Fruit Grade and Size Subcommittee discussed the 31-pound net weight requirement for volume-filled five down Euro containers at its meeting on April 8, 2003. At that time, one handler advised that the current net weight of 31 pounds is not flexible enough to afford him the opportunity to meet the demands of his buyers. The handler noted that one large customer has begun demanding volume-filled boxes of nectarines and peaches in a 29-pound box rather than a 31-pound box, which makes the volume-filled container weight consistent with the tray-packed container weight. The handler added that he was unable to provide what his customer wanted, given that the current requirements limit him to a box with a 31-pound minimum weight. In the absence of change, the handler would be forced to ship 31 pounds to the customer, and risk receiving payment for only the 29 pounds the customer wanted.

The subcommittee agreed that the 31-pound box did not provide enough flexibility for all handlers and unanimously recommended that the minimum 31-pound requirement for volume-filled containers be revised. The alternative would have meant that this handler at least would have been unable to meet the demands of a buyer without pricing considerations. In an effort to enhance each handler's ability to provide what the market demands, such an alternative was unacceptable.