unusual circumstances. Requests based on major reorganization, base closing, restructuring, or other unusual circumstances that apply agencywide must be made by an official at the headquarters level of the Department or agency. Requests involving extension of appointments to a specific position or project based on other unusual circumstances may be submitted by the employing office to the appropriate OPM service center.

7. In § 316.402, the heading and paragraphs (a) and (b)(3) are revised to read as follows:

**§ 316.402 Procedures for making temporary appointments.**

(a) *General rule.* Except as provided in paragraph (b) of this section, agencies must make temporary limited appointments either by selection from a register or outside a register, in accordance with the procedures set out in 5 CFR part 333.

(b) * * *

(3) A former temporary employee of the agency who was originally appointed from a register or under the provisions of part 333 of this chapter and whose service meets the time limits for reappointment set out in § 316.401;

* * * * *

[FR Doc. 94-22447 Filed 9-12-94; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 94-059-1]**

### Gypsy Moth Generally Infested Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the list of generally infested areas under the gypsy moth quarantine and regulations by removing and adding areas in Ohio and Virginia. These changes affect 7 areas in Ohio and 5 areas in Virginia. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of gypsy moth and delete unnecessary restrictions on the interstate movement of regulated articles.

**DATES:** Interim rule effective September 13, 1994. Consideration will be given only to comments received on or before November 14, 1994.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94-059-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry McGovern, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 643, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

**SUPPLEMENTARY INFORMATION:**

### Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45-12, and referred to below as the regulations), quarantine certain States because of the gypsy moth, and restrict the interstate movement of certain articles from generally infested areas in the quarantined States to prevent the artificial spread of the gypsy moth.

In accordance with § 301.45-2 of the regulations, generally infested areas are, with certain exceptions, those areas in which a gypsy moth general infestation has been found by an inspector, or each portion of a State which the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. Less than an entire State will be designated as a generally infested area only if: (1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles; and, (2) the designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

### Designation of Areas as Generally Infested Areas

We are amending § 301.45-3(a) of the regulations, which lists generally infested areas, by adding Carroll, Cuyahoga, Jefferson, Lucas, Portage, Stark, and Summit Counties in Ohio, and Bath, Greensville and Highland Counties and the city of Emporia in Virginia to the list of generally infested areas.

We are taking this action because surveys conducted by the United States Department of Agriculture (USDA) resulted in the detection of all life stages of the gypsy moth and the determination that reproducing populations do exist at significant levels in these areas. Eradication of these populations is not considered feasible because these areas are immediately adjacent to areas currently recognized to be generally infested and therefore subject to continued reinfestation.

### Removal of Areas From List of Generally Infested Areas

We are also amending § 301.45-3(a) by removing Franklin County in Virginia from the list of generally infested areas.

We are taking this action because Franklin County was previously listed in error. There is no basis for listing this area as a generally infested area. This action removes unnecessary restrictions on the interstate movement of regulated articles from this area. A map designating the regulated areas is as follows:

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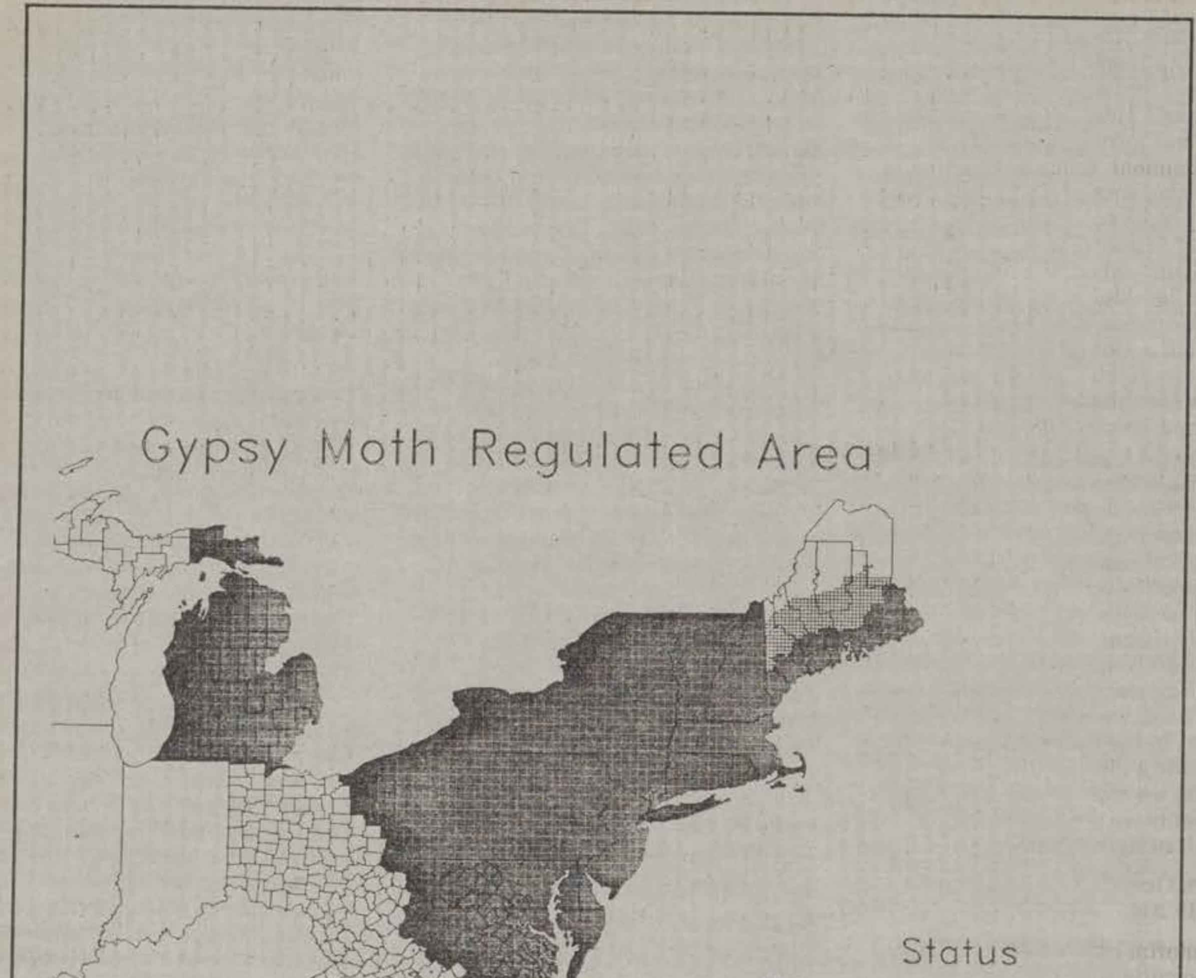


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**Emergency Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary because of the possibility that the gypsy moth could be spread artificially to noninfested areas of the United States, where it could cause economic loss due to defoliation of susceptible forest areas. Also, where gypsy moth no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This interim rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action affects the interstate movement of regulated articles and outdoor household articles from and through gypsy moth regulated areas in Ohio and Virginia. There are several types of restrictions that will apply to the newly-listed areas in these States. These restrictions will have their primary impact on persons moving households, nursery stock, logs and wood chips, and mobile homes out of a generally infested area.

Individual and commercial movers moving outdoor household articles (OHA) to areas outside the generally infested area must attach to the articles either a certificate issued by an inspector, or an OHA document issued by the owner of the articles. Most individual homeowners moving their own articles who comply with the regulations choose to self-inspect and issue an OHA document. This takes a few minutes and involves no monetary cost. Individuals may also have State certified pesticide applicators, trained by the State or USDA, inspect and issue certificates.

Persons moving regulated articles from a generally infested area (significant examples include logs, pulpwood and wood chips; mobile homes; and nursery stock) must obtain a certificate or limited permit to move the articles. There is one exception to this requirement, for logs, pulpwood and wood chips. This exception allows the person moving such articles to self-certify on the waybill that he or she has inspected the articles. This exception minimizes costs with regard to logs, pulpwood, and wood chips.

Persons moving mobile homes and nursery stock must obtain a certificate or limited permit. They may obtain one from an inspector, or a qualified certified applicator. Inspectors will issue these documents at no charge, but costs may result from delaying the movement of commercial articles while waiting for the inspection. Documents self-issued under a compliance agreement avoid this delay costs, but result in costs associated with salary and recordkeeping for the self-inspections.

When inspection of regulated articles or outdoor household articles reveals gypsy moth, treatment is often necessary. Treatment is done by qualified certified applicators, which are private businesses that charge, on the average, $50 to $100 to treat a shipment of articles. Most qualified certified applicators are small businesses. By declaring an area as a generally infested area, the regulations may increase business for the qualified certified applicator located in generally infested areas. It is estimated that these businesses will average $50 to $150 per month in additional income per business. Since the seven counties in Ohio to be regulated contain the metropolitan areas of Akron, Cleveland, and Toledo, we expect that several hundred shipments containing outdoor household articles will require inspection to move out of the generally infested area. We anticipate training up to 24 qualified certified applicators to perform these inspections.

The majority of direct costs from this rule would be incurred by establishments moving trees or shrubs with roots, such as nurseries. We estimate that approximately 130 such establishments move approximately 1,050 shipments of trees and shrubs each year to areas outside the generally infested areas. All of these establishments are believed to be small entities. These establishments would need to be inspected, either by an inspector or through self-inspection under a compliance agreement. If the inspection reveals signs of gypsy moth, the establishment would have to be treated in order to ship regulated articles outside the generally infested area. We estimate that annually, approximately 10 percent of these establishments (13 establishments) will be required to treat the establishment, and that the average area to be treated will be 17 acres. At an average treatment cost of $10 per acre, the average total annual cost to each establishment would be $170.

The Christmas tree industry would also be impacted by this rule change, since Christmas trees moved interstate from generally infested areas to areas not generally infested would have to be moved under a certificate or permit. We estimate that there are about 5 Christmas tree producers in the generally infested areas who ship approximately 100 trees each year to nonregulated areas. All of these establishments are believed to be small entities. Services of an inspector will be available without charge to inspect the premises and issue certificates and permits. We estimate that 10 percent of these premises will be found to contain gypsy moth, and will require treatment in order to ship trees. The average area to be treated is estimated to be 80 acres, and treatment costs are estimated to average $10 per acre. Therefore, we estimate that the total annual treatment costs for one Christmas tree producer would be approximately $800.

It is expected that, in most cases, Christmas tree growers would meet the requirements for certification by having inspectors determine that the plantations where the trees are grown are free from gypsy moth. This alternative would be less costly than inspecting or treating individual shipments of trees and would minimize the economic impact of the change to the regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

*Executive Order 12372*

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

*Executive Order 12778*

This rule has been reviewed under Executive Order 12778, Civil Justice

Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in §§ 301.45 through 301.45–12 have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0088.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

**§ 301.45 [Amended]**

2. In § 301.45–3(a), the list of generally infested areas in Virginia is amended by removing "*Franklin County.* The entire county."

3. In § 301.45–3(a), the list of generally infested areas in Ohio and Virginia is amended by adding, in alphabetical order, the following entries:

**§ 301.45–3 Generally infested areas.**

* * * * *

Ohio

* * * * *

*Carroll County.* The entire county.

* * * * *

*Cuyahoga County.* The entire county.

* * * * *

*Jefferson County.* The entire county.

* * * * *

*Lucas County.* The entire county.

* * * * *

*Portage County.* The entire county.
*Stark County.* The entire county.
*Summit County.* The entire county.

* * * * *

Virginia

* * * * *

*City of Emporia.* The entire city.

* * * * *

*Bath County.* The entire county.

* * * * *

*Greensville County.* The entire county.

* * * * *

*Highland County.* The entire county.

* * * * *

**§§ 301.45–5, 301.45–6, 301.45–8, and 301.45–12 [Amended]**

4. Sections 301.45–5, 301.45–6, 301.45–8, and 301.45–12 are amended by revising the OMB control number citation at the end of each of these sections to read as follows: "(Approved by the Office of Management and Budget under control number 0579–0088)".

Done in Washington, DC, this 7th day of September 1994.

**Terry L. Medley,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 94–22610 Filed 9–12–94; 8:45 am]

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## Agricultural Marketing Service

## 7 CFR Parts 916 and 917

**[Docket Nos. FV94–916–1–FIR and FV94–916–2–FIR]**

## Nectarines and Peaches Grown in California; Finalize Revised Handling Requirements for Fresh Nectarines and Peaches

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

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes without change two interim final rules which revised the handling requirements for California nectarines and peaches by expanding the regulatory periods and by modifying the grade, maturity, size, container, and pack requirements for fresh shipments of these fruits, beginning with 1994 season shipments. This finalization 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:** October 13, 1994.

**FOR FURTHER INFORMATION CONTACT:** Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–5127; or Terry Vawter, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Marketing Order Nos. 916 and 917 [7 CFR Parts 916 and 917] regulating the handling of nectarines and peaches grown in California, 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.

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

This rule has been reviewed under Executive Order 12778, 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. 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 about 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 producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. A majority of these handlers and producers may be classified as small entities.

The Nectarine Administrative Committee (NAC) recommended revision of the handling requirements for California nectarines, and the Peach Commodity Committee (PCC) recommended revision of the handling requirements for California peaches. These committees meet prior to and during each season to review the rules and regulations effective on a continuous basis for California nectarines and peaches under the orders. These 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.

This rule finalizes two interim final rules that revised the handling requirements for nectarines in § 916.350 California Nectarine Container and Pack Regulation [7 CFR 916.350], and in § 916.365 California Nectarine Grade and Size Regulation [7 CFR 916.365], and for peaches in § 917.442 California Peach Container and Pack Regulation [7 CFR 917.442] and in § 917.459 California Peach Grade and Size Regulation [7 CFR 917.459]. The first interim final rule was issued on March 29, 1994, and published in the **Federal Register** [59 FR 15835, April 5, 1994], and the second interim final rule was issued on June 9, 1994, and published in the **Federal Register** [59 FR 31118, June 17, 1994].

The first interim final rule provided a 30-day comment period ending May 5, 1994, and two comments were received. The first comment received was from John Kovacevich, Jr., a California peach grower and shipper, requesting a change in the peach grade requirements to permit handlers to ship peaches with additional amounts of open sutures. The change requested by this commentor was included in the first interim final rule.

The second comment received was from Harold McClarty of The HMC Group of Kingsburg, California, supporting the weight-count revisions made in the handling requirements for fresh nectarines and peaches by the first interim final rule, since such revisions will be beneficial when they packed fruit in volume-filled containers.

The second interim final rule provided a 30-day comment period ending July 18, 1994, and one comment was received. The comment was received from Gary W. Van Sickle, Field Director for the PCC and the NAC, reaffirming the PCC's and the NAC's support of the revised pack requirements contained in the second interim final rule.

## Regulatory Periods (Nectarines)

The first interim final rule amended paragraph (a) in § 916.350 and paragraph (a) in § 916.356 to change the regulatory periods in each of these sections to April 1 through October 31 each year, so that all nectarine shipments made each season are covered by these regulatory requirements. Correspondingly, paragraph (a)(7) of § 916.356 was revised to change the beginning date of the regulatory requirements to April 1 from April 15 each year. Handlers ship fresh nectarines during the April 1–April 15 period when the harvest season begins early. The NAC unanimously recommended this change. Prior to amendment, §§ 916.350 and 916.356 were effective for the period April 15 through October 31 each year.

## Container and Pack Requirements (Nectarines)

Section 916.350 specifies container and pack requirements for fresh nectarine shipments. Paragraph (a)(4)(iv) of § 916.350 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of nectarines in a 16-pound sample for each tray-pack size designation. The first interim final rule revised paragraph (a)(4)(iv) of § 916.350 by modifying Table I to specify weight-count standards for early-season and mid-season nectarine varieties, and by adding a new Table 2 to specify weight-count standards for late-season nectarine varieties.

The NAC recommended these revised container marking requirements for nectarines after a comprehensive review of the appropriate size pack-count relationships between the tray-pack containers and loose-filled or tight-filled containers for all nectarine varieties. The revised provisions more precisely reflect the characteristics of different varieties of fruit during the course of the season.

The first interim final rule also revised § 916.350 by adding a proviso to paragraph (a)(4)(iv), and revises § 916.356 by redesignating current paragraph (b) as (c) and adding a new paragraph (b) to that section. These revisions specify the procedure to be used in determining whether nectarines meet the minimum size requirements specified for each size category in this section when applying the 16-pound sample requirements. Under this procedure, a sample consisting of one-half of the number of fruit specified for a 16-pound sample for a particular size category shall be used, provided such sample weighs at least 8 pounds. When one-half the specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit is used to determine the sample weight. If a sample fails with respect to minimum size requirements on the basis of an 8-pound sample, a full 16-pound sample must be used to determine if the fruit meets minimum size requirements.

The NAC recommended this sampling procedure change after determining that the size of nectarines could be adequately determined by using an 8-pound sample in most instances, and finding that application of this procedure would reduce inspection time and inspection costs.

The second interim final rule further revised § 916.350 by adding a new proviso to paragraph (a)(1) specifying that the nectarines in any volume-filled container need only be filled to within one inch of the top of the container. The second interim final rule also removed the proviso in paragraph (a)(1) of § 916.350 reading "That nectarines in any container shall be fairly uniform in size", because such requirements are included within the definition of "standard pack" in the United States Standards for Grades of Nectarines, and therefore are not needed in this paragraph.

The NAC recommended these revised pack requirements for fresh nectarines in volume-filled containers after a comprehensive review of changes in the nectarine industry packing practices over the years, and the need to make appropriate changes in the pack requirements to reduce bruising of the fruit due to excessively tight packs. The revision provided handlers with more flexibility in packing their nectarines and selecting the appropriate size container for certain volume-filled packs to help prevent fruit bruising.

## Maturity Requirements (Nectarines)

Section 916.356 specifies maturity guides for fresh nectarines in paragraph (a)(1)(i), including Table I, for fruit being inspected and certified as meeting the maturity requirements for "well matured" fruit. Such maturity guides (e.g., color chips) are specified in Table I of § 916.356 for nectarines. The first interim final rule revised Table I of paragraph (a)(1)(i) of § 916.356 for nectarines to add maturity guides for 18 nectarine varieties and to change the maturity guide for two nectarine varieties.

The NAC recommended these maturity guide changes for these nectarine varieties based on a continuing review of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for such varieties.

### Size Requirements (Nectarines)

Section 916.356 specifies size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). The first interim final rule revised § 916.356 to establish variety-specific size requirements for seven nectarine varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1993 season. Paragraph (a)(3) was revised to include the May Kist variety; and paragraph (a)(6) of § 916.356 was revised to include the Arctic Rose, Del Rio Rey, Kay Diamond, Late Red Jim, Prima Diamond, and Red Glen varieties.

The first interim final rule also revised § 916.356 to remove five nectarine varieties from the variety-specific size requirements specified in the section, because less than 5,000 packages of each of these varieties were produced during the 1993 season. Paragraph (a)(4) of that section was revised to remove the Apache and Early May Grande nectarine varieties; and paragraph (a)(6) was revised to remove the Nectarine #4, Tasty Free, and 9–86–04–87 nectarine varieties. The nectarine varieties removed from the nectarine variety-specific list became subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The first interim final rule also lowered the minimum size requirement for the Zee Grand variety by permitting as many as 88 nectarines to be packed in a lug box rather than 84 nectarines, and as many as 83 nectarines when packed otherwise rather than 75 nectarines. This was accomplished by reassigning that variety to paragraph (a)(4) from paragraph (a)(5) in § 916.356. The NAC recommended this change based on a more accurate evaluation of this variety's sizing and maturity characteristics.

Further, in § 916.356, paragraphs (a)(6)(i) and (a)(9)(i) were revised to permit as many as 84 nectarines to be packed in a No. 22D standard lug box if they are "well matured", and paragraphs (a)(6)(ii) and (a)(9)(ii) were revised to permit as many as 75 nectarines in a 16-pound sample if they are "well matured". These changes permit late-season nectarine varieties to be shipped to the fresh market at a slightly smaller size than in past seasons, if they meet the higher "well matured" maturity standard. The higher maturity standard is important for such smaller size fruit, because it will assure that the smaller fruit is of acceptable maturity and quality to be shipped to the fresh market in the interest of growers, handlers, and consumers.

In addition, the first interim final rule changed the minimum size requirements for several varieties of nectarines packed in loose-filled and tight-filled containers by revising the count-size for nectarines specified in paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(7)(ii), and (a)(8)(ii). These size changes correspond to the weight-count changes made in column 2 of both Table I for early-season and mid-season nectarine varieties, and Table 2 for late-season nectarine varieties cited in paragraph (a)(4)(iv) of § 916.350.

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. The first interim final rule was designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

### Regulatory Periods (Peaches)

The first interim final rule amended paragraph (a) in § 917.442 and paragraph (a) in § 917.459 to change the regulatory periods in each of these sections to April 1 through November 23 each year, so that all peach shipments made each season are covered by these regulatory requirements. Correspondingly, paragraph (b) of § 917.459 was revised to change the beginning date of the regulatory requirements to April 1 from April 15 each year. Handlers ship fresh peaches during the April 1–April 15 period when the harvest season begins early. The PCC unanimously recommended this change. Prior to amendment, §§ 917.442 and 917.459 were effective for the period April 15 through November 23 each year.

### Container and Pack Requirements (Peaches)

Section 917.442 currently specifies container and pack requirements for fresh peach shipments. Paragraph (a)(4)(iv) of § 917.442 specifies the tray-pack size designations which must be marked on loose-filled or tight-filled containers, depending on the size of the fruit. The size designations specify the maximum number of peaches in a 16-pound sample for each tray pack size designation. The first interim final rule revised paragraph (a)(4)(iv) of § 917.442 by modifying Table I to specify weight-count standards for early-season and mid-season peach varieties, and by adding a new Table 2 to specify weight-count standards for late-season peach varieties.

The PCC recommended these revised container marking requirements for peaches after a comprehensive review of the appropriate size pack-count relationships between the tray-pack containers and loose-filled or tight-filled containers for all peach varieties. The revised provisions more precisely reflect the characteristics of different varieties of fruit during the course of the season.

The first interim final rule also revised § 917.442 by adding a proviso to paragraph (a)(4)(iv), and revised § 917.459 by redesignating current paragraph (d) as (e) and by adding a new paragraph (d) to that section. These revisions specify the procedure to be used in determining whether peaches meet the minimum size requirements specified for each size category in this section when applying the 16-pound sample requirement. Under this procedure a sample consisting of one-half of the number of fruit specified for a 16-pound sample for a particular size category shall be used, provided such sample weighs at least 8 pounds. When one-half the specified number of fruit in a sample results in a number ending with one-half a fruit, the smaller full number of fruit is used to determine the sample weight. If a sample fails with respect to minimum size requirements on the basis of an 8-pound sample, a full 16-pound sample must be used to determine if the fruit meets the minimum size requirements.

The PCC recommended this sampling procedure change after determining that the size of peaches could be adequately determined by using an 8-pound sample in most instances, and finding that application of this procedure would reduce inspection time and inspection costs.

The second interim final rule further revised § 917.442 by adding a new proviso to paragraph (a)(1) specifying that the peaches in any volume-filled container need only be filled to within one inch of the top of the container. The PCC recommended these revised pack requirements for fresh peaches in volume-filled containers after a comprehensive review of changes in the peach industry packing practices over the years, and the need to make appropriate changes in the pack requirements to reduce bruising of the fruit due to excessively tight packs. The revision provided handlers with more flexibility in packing their peaches and selecting the appropriate size container for certain volume-filled packs to help prevent fruit bruising.

### Grade Requirements (Peaches)

Section 917.459 specifies grade requirements for peaches in paragraph (a)(1), requiring peaches shipped fresh to meet the requirements of the U.S. No. 1 grade. The first interim final rule revised paragraph (a)(1) of § 917.459 to provide an additional 25 percent tolerance for fruit damaged by open sutures, but not seriously damaged, in addition to the 10 percent general lot tolerance currently permitted under the U.S. No. 1 grade.

The PCC recommended this change to permit handlers to ship peaches with additional amounts of open sutures. Open sutures are not considered to be a serious grade defect since they affect only the appearance of the fruit. The open suture condition occurs infrequently in peaches and is most likely due to unusual weather and climatic conditions. However, this condition can cause considerable economic loss to growers when it does occur, because it sometimes affects a large portion of their crop.

### Maturity Requirements (Peaches)

Section 917.459 specifies maturity guides for fresh peaches in paragraph (a)(1)(i), including Table I, for fruit being inspected and certified as meeting the maturity requirements for "well matured" fruit. Such maturity guides (e.g., color chips) are specified in Table I of § 917.459 for peaches. The first interim final rule revised Table I of paragraph (a)(1)(i) of § 917.459 for peaches to add maturity guides for 19 peach varieties and to change the maturity guide for one peach variety.

The PCC recommended these maturity guide changes for these peach varieties based on a continuing review of their individual maturity characteristics, and the identification of the appropriate color chip corresponding to the "well matured" level of maturity for such varieties.

### Size Requirements (Peaches)

Section 917.459 specifies size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). The first interim final rule revised § 917.459 by redesignating current paragraph (a)(6) as paragraph (a)(3) and current paragraphs (a)(3), (a)(4), and (a)(5) as paragraphs (a)(4), (a)(5), and (a)(6), respectively, so that the size regulations are in sequential order. The first interim final rule also revised § 917.459 to establish variety-specific size requirements for five peach varieties that were produced in commercially significant quantities of more than 10,000 packages for the first time during the 1993 season. In § 917.459 redesignated paragraph (a)(5) was revised to include the Crimson Lady and Rich May peach varieties; and redesignated paragraph (a)(6) was revised to include the Fancy Lady, Snow Ball, and Sugar Lady peach varieties.

The first interim final rule also revised § 917.459 to remove four peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of each of these varieties were produced during the 1993 season. In § 917.459 redesignated paragraph (a)(5) of § 917.459 was revised to remove the Flavor Red peach variety; and redesignated paragraph (a)(6) was revised to remove the July Lady, Red Cal, and Redglobe peach varieties. The peach varieties removed from the variety-specific list became subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The first interim final rule also amended § 917.459 by revising paragraph (b) to change the ending date of the regulatory requirements for the non-listed peach varieties referred to in that paragraph to June 30 from July 2, and paragraph (c) to change the beginning date of the regulatory requirements for the non-listed peach varieties referred to in that paragraph to July 1 from July 3. These changes reflect the sizing characteristics of such peach varieties.

Further, in § 917.459 redesignated paragraph (a)(6)(i) was revised to permit as many as 80 peaches to packed in a No. 22D standard lug box if they are "well matured", and redesignated paragraph (a)(6)(iii) was revised to permit as many as 73 peaches in a 16-pound sample if they are "well matured". These changes permit certain late-season peach varieties to be shipped to the fresh market at a slightly smaller size than in past seasons, if they meet the higher "well matured" maturity standard. The higher maturity standard is important for such smaller size fruit, because it will assure that the smaller fruit is of acceptable maturity and quality to be shipped to the fresh market in the interest of growers, handlers, and consumers.

In addition, the first interim final rule changed the minimum size requirements for several varieties of peaches packed in loose-filled and tight-filled containers by revising the count-size for peaches specified in paragraphs (a)(3)(iii), (a)(4)(iii), and (a)(5)(iii). These size changes correspond to the weight-count changes made in column 2 of both Table I for early-season and mid-season peach varieties, and Table 2 for late-season peach varieties cited in paragraph (a)(4)(iv) of § 917.442.

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 sizes of fruit. The first interim final rule was designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions.

This rule reflects the committees' and the Department's appraisal of the need to finalize the revised handling requirements for California nectarines and peaches, as specified. The Department's determination is that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

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

Based on the above, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that the finalization, as hereinafter set forth, 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.

For the reasons set forth in the preamble, 7 CFR Parts 916 and 917 are amended as follows:

## PART 916—NECTARINES GROWN IN CALIFORNIA

1. Accordingly, the interim final rules amending 7 CFR Part 916 which were published at 59 FR 15835 on April 5, 1994, and at 59 FR 31118 on June 17, 1994, are each adopted as a final rule without change.

## PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

2. Accordingly, the interim final rules amending 7 CFR Part 917 which were published at 59 FR 15835 on April 5, 1994, and at 59 FR 31118 on June 17, 1994, are each adopted as a final rule without change.

Dated: September 8, 1994.

**Eric M. Forman,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–22614 Filed 9–12–94; 8:45 am]

BILLING CODE 3410–02–P

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## 7 CFR Part 929

**[FV94–929–1FIR]**

## Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Changes to the Rules and Regulations

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing the rules and regulations under the cranberry marketing order. The marketing order regulates the handling of cranberries grown in 10 States and is administered locally by the Cranberry Marketing Committee (Committee). This rule revises or deletes language in the order's rules and regulations to reflect amendatory changes to the marketing order completed in 1992. This rule makes the order's rules and regulations consistent with the current marketing order language.

**EFFECTIVE DATE:** October 13, 1994.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Mark Hessel, Marketing Specialists, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 States, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C 601–674], hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12778, 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

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 30 handlers of cranberries who are subject to regulation under the order and approximately 1,050 producers of cranberries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This rule finalizes revisions or deletions to the language in the order's rules and regulations to reflect amendatory changes to the order completed in 1992. This rule makes the order's rules and regulations consistent with current order language. These changes were unanimously recommended by the Cranberry Marketing Committee (Committee) at its March 1, 1994, meeting.

The interim final rule was issued on July 11, 1994, and published in the **Federal Register** [59 FR 36021, July 15, 1994], with an effective date of July 15, 1994. That rule amended §§ 929.107, 929.108, 929.110, 929.148, 929.150, and 929.153 of the rules and regulations in effect under the order. That rule provided a 30-day comment period which ended August 15, 1994. No comments were received.

In 1992, the cranberry marketing order was amended [57 FR 38748, August 27, 1992] to change, among other provisions, the volume control features of the order. Prior to the amendment, the order authorized a base quantity program in which each producer received a base quantity calculated by the Committee from a representative period in the order. Base quantity was annually distributed to existing producers and new producers based on a formula in the order. The 1992 order amendments authorized a volume control program to be based on the sales history of each producer. The Committee now calculates a sales history for each producer based on the average of sales for a specified period for each producer or, in the case of a new producer, sales history is based on a State's average yield per acre. Other order amendments were made to reflect current industry practices.

The first change revises section 929.107 which currently provides the basis for determining established cranberry acreage. The section is revised by deleting various terms, dates, and section references. The term "established" cranberry acreage and the reference to section 929.16 are no longer applicable since they were removed by the 1992 amendment. The reference to growing cranberries during a specified period of time (i.e., 1965–66 through 1967–68) and other similar date references are removed since producers are no longer required to produce during this period to have a commercial crop of cranberries. Other modifications are made in the section for clarity.

The second change deletes section 929.108 which provides for procedures to substantiate a firm and substantial commitment for use in determining base quantities. This section is no longer applicable since the order amendments authorize a sales history to be computed for every producer. New or existing producers no longer have to show a firm and substantial commitment to receive base quantity.

The third change revises section 929.110 which provides for transfers or sales of cranberry acreage during the representative period. This section is revised by deleting the term "representative period." This term is no longer applicable since all reference to a representative period for computing base quantities was removed by the 1992 amendment. Producers must inform the Committee at any time when transfers or sales of acreage are made. Also, the term "base quantity" is deleted and replaced with the term "sales history." Other minor changes are made to the section to make it consistent with the order amendment.

The fourth change deletes section 929.148 which provides factors to be considered when assigning or adjusting base quantities for producers. This section is no longer applicable since the order amendment authorizes the computation of a sales history for each producer. These factors are not used when calculating sales history.

The fifth change revises section 929.150(a) which provides for the transfer or assignment of base quantities. This section is revised by deleting the term "base quantity" and replacing it with the term "sales history." The term base quantity is no longer applicable since the order amendment authorizes a sales history to be calculated for each producer.

The last change deletes section 929.153 which provides for the establishment and distribution of a base quantity reserve. This section is no longer applicable since the 1992 order amendment provides for a volume control program to be based on sales histories of producers. A producer's sales history is updated annually based on the highest four out of six years' sales. Therefore, a base quantity reserve is not necessary for updating producers' sales histories or for allowing entry of new growers.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581–0103.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** [59 FR 36021, July 15, 1994] will tend to effectuate the declared policy of the Act.

## List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

## PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Accordingly, the interim final rule amending 7 CFR Part 929 which was published at 59 FR 36021 on July 15, 1994, is adopted as a final rule without change.

Dated: September 8, 1994.

**Eric M. Forman,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 94–22617 Filed 9–12–94; 8:45 am]

BILLING CODE 3410–02–P

**7 CFR Parts 932 and 944**

**[Docket No. FV94–932–1IFR]**

## Olives Grown in California and Imported Olives; Establishment of Limited Use Olive Requirements During the 1994–95 Crop Year

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes the use of smaller sized olives in the production of limited use styles for California olives during the 1994–95 crop year. This action is intended to allow more olives into fresh market channels and is consistent with current market demand for olives. As required under section 8e of the Agricultural Marketing Agreement Act of 1937, this action also changes the import regulation so that it conforms with the requirements established under the California olive marketing order.

**DATES:** Effective September 16, 1994; comments received by October 13, 1994 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or by facsimile at 202–720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456; telephone (202) 720–5127, or Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, CA 93721, telephone (209) 487–5901.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 148 and Order No. 932 [7 CFR Part 932], as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which requires the

Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including olives, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

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

This rule has been reviewed under Executive Order 12778, 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 608(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 requesting 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

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

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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are 5 handlers of California olives that will be subject to regulation under the order during the current season, and there are about 1,200 olive producers in California. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those whose annual receipts are less than $500,000, and small agricultural service firms, which include handlers and importers, have been defined by the Small Business Administration as those having annual receipts of less than $5,000,000. None of the domestic olive handlers may be classified as small entities. The majority of olive producers and importers may be classified as small entities.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. The majority of olives are produced in central California. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. A few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 163,023 tons during the 1992–93 crop year. The California Olive Committee (committee) indicated that 1993–94 production totalled about 120,049 tons. Total production for the 1994–95 crop year is estimated to be 95,000 tons. Because olive trees need to restore their nutrients from one season to the next, various varieties of olives produced in California have alternate bearing tendencies. This results in high production one year and low the next, which usually causes the total crop to vary greatly from year to year. This crop year's estimated production is expected to be smaller than last year due to weather conditions early in the season which resulted in poor fruit pollination. However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1994–95 crop year to meet market demand for limited use styles of canned olives. Limited use olives are too small to meet the minimum size requirements established for whole and whole pitted canned ripe olives. However, they are large enough to be suitable for processing into limited use styles such as wedges, halves, slices, or segments. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as crushing into oil.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Until October 1, 1991, paragraph (a)(3) also prescribed minimum sizes, by variety group, which could be authorized for use in the production of limited use styles by the Secretary.

Effective October 1, 1991, certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes authorized for limited use specified in § 932.52(a)(3) of the marketing order were suspended. The committee may now recommend the use of olives for limited uses that are smaller than those previously permitted under the order. Minimum size and grade requirements may be recommended annually by the committee and approved by the Secretary. During the past three crop years, 1991–92, 1992–93, and 1993–94, the committee recommended sizes smaller than those previously authorized.

The minimum sizes which could previously be authorized for limited uses were established in a 1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which could be authorized for limited uses had to be disposed of through less profitable non-canning uses such as crushing for oil. Returns to producers are lower on fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was promulgated in 1965.

This action will help growers and handlers to meet the growing market demand for limited use style olives based upon current conditions. The limited use size requirements allow the use of sizes which would otherwise have to be disposed of for less profitable, non-canning uses. Permitting the use of such smaller olives for limited use styles would therefore improve grower returns.

On July 13, 1994, the committee recommended by a vote of 15–1, to establish grade and size regulations for limited use size olives during the 1994–95 crop year pursuant to paragraph (a)(3) of § 932.52 of the order. The one handler member who dissented was concerned that approval of limited use size olives would be detrimental to handlers, due to already large inventories of such olives from the two previous seasons. The recommended grade and size requirements are the same as those established during the 1990–91 crop year, which means slightly larger minimum sizes than were in effect during the 1991–92, 1992–93, and 1993–94 crop years.

The specified sizes for the different olive variety groups are the minimum sizes which are deemed desirable for use in the production of limited use styles at this time. As in past years, permitting the use of the smaller olives in the production of limited use styles allowed handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers will be able to market more olives than would be permitted in the absence of this relaxation in size requirements.

The committee also based its decision on certain production and market factors. The last three crop years were the first crop years that limited use olives were authorized at sizes below the 1990–91 crop year minimum size requirements. Prior to the 1990–91 crop year, the committee investigated limited use olives that were below permitted minimum sizes. From investigations and surveys within the industry, the committee determined that limited use olives below 1990–91 minimum sizes could be efficiently sliced using current technology. However, consumer interest in and need for such olives also had to be determined, specifically for smaller sliced olive rings. Thus, minimum size requirements below the 1990–91 crop year were recommended and became effective for limited use olives.

During the following three seasons, the industry experienced a higher percentage of broken pieces in the smaller olives than with the slightly larger sizes. The U.S. Standards for Grades of Canned Ripe Olives (Standards) define a broken piece as any piece of olive that is less than three quarters of a full unit. This situation had a negative impact on the California olive market as the extra broken pieces caused customers to complain about the lack of uniformity and poorer quality of product from these smaller sizes. Such olives also had to compete with imported sliced olives that had fewer broken pieces. Therefore, the committee recommended slightly larger minimum size requirements for limited use olives in order to improve the quality of and enhance the market for California limited use olives.

Also, the committee estimates that production for this crop year is expected to be at 95,000 tons, which is smaller than the previous two seasons. Weather conditions early in the crop year caused poor pollination resulting in a smaller crop with an uneven distribution of sizes. The 1992–93 and 1993–94 crop years produced large crops of 163,023 tons and 120,049 tons, respectively. During years with large olive crops, the ratio of limited use olives to other sizes tends to be higher; there are more limited use size olives in proportion to the other sizes. During years with small olive crops, the ratio of smaller olives to other sizes is smaller; there tends to be fewer limited use size olives in proportion to the other sizes. The increased availability of limited use sized fruit could be reflected in handler processing for the last three seasons. For example, during the 1992–93 crop year, 19 percent of the olives (163,024 tons) processed by handlers were limited use, and during the 1991–92 crop year, 11 percent of total olives (63,259 tons) processed by handlers were limited use. Although limited use minimum sizes were larger during the 1990–91 season, limited use olive processed by handlers were 16 percent of total olives (126,879 tons) purchased by handlers. Thus, unlike the two previous seasons, fewer small limited use olives are expected to be harvested this season. The percentage of limited use olives is expected to be smaller. The slight increase in minimum limited use size requirements being established for the 1994–95 season is therefore not expected to greatly impact available supplies.

Thus, it is found that permitting limited use olives as recommended by the committee is expected to improve market conditions, and grower returns, and meet market needs for limited use style olives.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This action allows smaller olives for limited use styles under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in *Olive Regulation 1* [7 CFR § 944.401]. All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the Standards. The term does not include Spanish-style green olives.

Any lot of olives failing to meet the import requirements may be exported, disposed of, or shipped for exempt uses. Exportation or disposal of such olives would be accomplished under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Exempt olives are those imported for processing into oil or donation to charity. Any person may also import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This interim final rule modifies paragraph (b)(12) of the olive import regulation to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles during the 1994–1995 crop year. This rule also establishes size regulations for such olives in paragraph (b)(12).

The committee recommended to authorize establishment of minimum sizes for use in the production of limited use styles during the 1994–95 crop year. The sizes are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is continued in the import regulation to apply comparable requirements for varieties not grown domestically. The minimum sizes for import requirements are as follows:

| | |
|---|---|
| Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties. | 1/90 pound. |
| Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties. | 1/140 pound. |
| Variety Group 2, except the Obliza variety. | 1/180 pound. |
| Variety Group 2 of the Obliza variety. | 1/140 pound. |
| Olives not identifiable as to variety or variety group. | 1/180 pound. |

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size.

Permitting the use of smaller olives in the production of limited use styles will allow importers to take better advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this action, the smaller fruit could not be imported for limited uses, and would have to be disposed of through less profitable, non-canning uses under the supervision of the inspection service, exported, or utilized in exempt outlets.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this interim final rule.

After consideration of all relevant material presented, including the committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1994–95 crop year began August 1, 1994; (2) this rule relaxes minimum size requirements; (3) California olive handlers are aware of this rule as it was discussed and recommended at a public meeting; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

**List of Subjects**

*7 CFR Part 932*

Marketing agreements, Olives, Reporting and recordkeeping requirements.

*7 CFR Part 944*

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble 7 CFR Parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 932 and 944 continue to read as follows:

**Authority:** 7 U.S.C. 601–674.

## PART 932—OLIVES GROWN IN CALIFORNIA

2. Table II of § 932.152 is revised to read as follows:

**§ 932.152 Outgoing Regulations.**

* * * * *

(g) * * *

(1) * * *

TABLE II.—LIMITED USE SIZE OLIVES

| Variety | Average count range (per pound) |
|---|---|
| Group 1, except Ascolano, Barouni, and St. Agostino. | 76–90, inclusive. |
| Group 1, Ascolano, Barouni, and St. Agostino. | 106–140, inclusive. |
| Group 2, except Obliza. | 141–180, inclusive. |
| Group 2, Obliza ....... | 128–140, inclusive. |

* * * * *

3. Section 932.153 is revised to read as follows:

**§ 932.153 Establishment of grade and size requirements for processed 1994–95 crop year olives for limited uses.**

(a) *Grade.* On and after August 1, 1994, any handler may use processed olives of the respective variety group in the production of limited use styles of canned ripe olives if such olives were processed after July 31, 1994, and meet the grade requirements specified in paragraph (a)(1) of § 932.52 as modified by § 932.149.

(b) *Sizes.* On and after August 1, 1994, any handler may use processed olives in the production of limited use styles of canned ripe olives if such olives were harvested during the period August 1, 1994, through July 31, 1995, and meet the following requirements:

(1) The processed olives shall be identified and kept separate and apart from any olives harvested before August 1, 1994, or after July 31, 1995.

(2) Variety Group 1 olives, except the Ascolano, Barouni, or St. Agostino varieties, shall be of a size which individually weigh at least 1/90 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/90 pound.

(3) Variety Group 1 olives of the Ascolano, Barouni, or St. Agostino varieties shall be of a size which individually weigh at least 1/140 pound: *Provided,* That no more than 35 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

(4) Variety Group 2 olives, except the Obliza variety, shall be of a size which individually weigh at least 1/180 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/180 pound.

(5) Variety Group 2 olives of the Obliza variety shall be of a size which individually weigh at least 1/140 pound: *Provided,* That not to exceed 35 percent of the olives in any lot or sublot may be smaller than 1/140 pound.

## PART 944—FRUITS; IMPORT REGULATIONS

4. Section 944.401 is amended by revising paragraph (b)(12) to read as follows:

**§ 944.401 Olive Regulation 1.**

* * * * *

(b) * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period August 1, 1994, through July 31, 1995, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

(i) Whole ripe olives of Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/90 pound (5 grams) each.

(ii) Whole ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/140 pound (3.2 grams) each.

(iii) Whole ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(iv) Whole ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 35 percent of the olives, by count, may be smaller that 1/140 pound (3.2 grams) each.

(v) Whole ripe olives not identifiable as to variety or variety group of size that not more than 35 percent of olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

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