

**PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS****§ 273.9 [Amended]**

3. In § 273.9, the second sentence of paragraph (b)(5)(i) is amended by removing the words “for purposes of recouping from a household an overpayment which resulted from the household’s intentional failure to comply with the other program’s requirements”.

4. In § 273.11, paragraph (k) is revised to read as follows:

**§ 273.11 Action on households with special circumstances.**

\* \* \* \* \*

(k) *Failure to comply with another assistance program’s requirements.* A State agency shall not increase food stamp benefits when a household’s benefits received under another means-tested Federal, State or local welfare or public assistance program, which is governed by welfare or public assistance laws or regulations and which distributes public funds, have been decreased (reduced, suspended or terminated) due to an intentional failure to comply with a requirement of the program that imposed the benefit decrease. This provision does not apply in the case of individuals or households subject to a food stamp work sanction imposed pursuant to 7 CFR 273.7(g)(2). State agency procedures shall adhere to the following minimum conditions:

(1) This provision must be applied to all applicable cases. If a State agency is not successful in obtaining the necessary cooperation from another Federal, State or local means-tested welfare or public assistance program to enable it to comply with the requirements of this provision, the State agency shall not be held responsible for noncompliance as long as the State agency has made a good faith effort to obtain the information.

(2) A State agency shall not reduce, suspend or terminate a household’s current food stamp allotment amount when the household’s benefits under another applicable assistance program have been decreased due to an intentional failure to comply with a requirement of that program.

(3) A State agency must adjust food stamp benefits when eligible members are added to the food stamp household regardless of whether or not the household is prohibited from receiving benefits for the additional member under another Federal, State or local welfare or public assistance means-tested program.

(4) Changes in household circumstances which are not related to

a penalty imposed by another Federal, State or local welfare or public assistance means-tested program shall not be affected by this provision.

Dated: April 23, 1996.

Ellen Haas,

*Under Secretary for Food, Nutrition, and Consumer Services.*

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**Agricultural Marketing Service****7 CFR Parts 916 and 917**

[Docket No. FV95-916-5FR]

**Nectarines and Peaches Grown in California; Relaxation of Quality Requirements for Fresh Nectarines and Peaches**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule relaxes, for the 1996 season only, the quality requirements for California nectarines and peaches. This rule establishes a “CA Utility” quality requirement, based on minimum quality standards established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be contained in the utility pack. This final rule also requires that containers of nectarines and peaches meeting the “CA Utility” quality requirement be clearly marked “CA Utility.” This final rule will allow more nectarines and peaches into fresh market channels, and is designed to benefit growers and consumers.

**EFFECTIVE DATE:** This final rule becomes effective May 2, 1996.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Johnson, 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) 720-2861; or Terry Vawter, Marketing Specialist, 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 final 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, 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.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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. 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.

This final rule establishes, for the 1996 season only, a "CA Utility" quality requirement and a container marking requirement for shipments of "CA Utility" fruit.

Minimum grade requirements for fresh nectarines and peaches grown in California are in effect under § 916.356 and § 917.459, respectively. This rule amends §§ 916.356 and 917.459 by revising paragraph (a)(1) under each section to permit shipments of fruit meeting "CA Utility" quality requirements. "CA Utility" quality requirements are the same as the requirements set forth in the California Agricultural Code for nectarines and peaches with the exception that not more than 30 percent of the fruit in a container may meet or exceed the requirements of the U.S. No. 1 Grade Standard. "CA Utility" fruit must be inspected by the Federal or Federal-State Inspection Service and certified as meeting the "CA Utility" quality requirements. "CA Utility" fruit are subject to assessment, maturity, size and all other requirements of the orders.

This rule also amends §§ 916.350 and 917.442 by adding a paragraph to each section to specify that each package or container of nectarines and peaches shipped, meeting the requirements of the newly established "CA Utility" quality, must be conspicuously marked with the words "CA Utility" on a visible display panel.

Shipments of California nectarines and peaches are subject to minimum grade, size, and maturity requirements under the provisions of Marketing Orders 916 (section 916.356) during the period April 1 through October 31 each year and 917 (section 917.459) during the period April 1 through November 23 each year. Currently, nectarine shipments are required to meet the requirements of U.S. No. 1 Grade, except less scarring is permitted than under the U.S. No. 1 Grade, and the tolerance for fruit that is not well formed is greater than the U.S. No. 1 Grade. Different minimum size requirements are in effect for different groupings of nectarine varieties.

Peach shipments are currently required to meet the requirements of U.S. No. 1 Grade, except there is an additional tolerance for fruit damage caused by open sutures. Also, different minimum size requirements are in effect for different groupings of peach varieties.

Both the nectarine and peach regulations allow the shipment of fruit

one size smaller than the specified minimum if the fruit meets higher maturity requirements. Both nectarine and peach shipments are also subject to container, pack, and container marking requirements.

Prior to the 1995 shipping season, the Nectarine Administrative and Peach Commodity Committees (Committees), the agencies responsible for local administration of the orders, considered recommending a change in the nectarine and peach regulations to allow a utility grade for these fruits. (Utility grade is a lower quality fruit than U.S. No. 1.) During the 1995 season, changes were made to allow the shipment of a utility grade for California plums, which are regulated under a State program. The plum utility grade was based on California Agricultural Code requirements. The Committees voted not to recommend a utility grade for nectarines and peaches for the 1995 season. The Committees did, however, hire Dr. Dennis Nef, California State University, Fresno, to conduct a research project to study the potential impact of a utility grade for nectarines and peaches. The Committees also believed that industry experience with the plum utility grade would be helpful in making future recommendations for appropriate quality requirements for nectarines and peaches. The report prepared by Dr. Nef was presented to the Nectarine and Peach Grade and Size Subcommittees in October 1995. The report found that about 22 percent of the peaches sampled in packinghouse cull bins in 1995 would have met California Agricultural Code requirements. Of the nectarines sampled from packinghouse culls in that year, about 6 percent would have met California Agricultural Code requirements, and an additional 14 percent failed marketing order quality requirements but met U.S. No. 1 Grade requirements (as indicated previously, the nectarine requirements under the order permit less fruit scarring than allowed under the U.S. No. 1 Grade). The report pointed out that these findings were based on a season which was marked by unusual crop and weather conditions. After reviewing the report, the nectarine and peach subcommittees voted not to recommend to the full Committees that a utility grade be implemented in 1996 for nectarines and peaches, citing the unusual weather conditions that resulted in below normal crop production. They believed that Dr. Nef's research project should be continued for another year to allow for the collection of data based on a more typical season.

On November 29, 1995, the Department wrote to the Committees,

recommending that a utility grade be adopted for nectarines and peaches for the 1996 season beginning April 1, 1996. The Committees met on December 6-7, 1995, to discuss possible implementation of a utility grade for nectarines and peaches for the 1996 season. Committee members and others in attendance at the meetings expressed views in opposition to and in support of implementing a utility grade.

Commentors in opposition to a utility grade for nectarines and peaches stated that the 1995 season was not a normal season for plums, nectarines, or peaches and should not be used as a basis for recommending a utility grade. They also said that the tree fruit industry is facing competition in both domestic and in foreign markets. One commentor stated that utility grade fruit would damage the reputation of California-produced tree fruit and another stated that poor quality California plums had been shipped to Hong Kong during the 1995 season, and that these plums had damaged the overall reputation of California plums. One commentor stated that allowing a utility grade would result in inspections of fruit which would only serve to verify that the fruit in the container is poor quality. Others stated that lower quality fruit is not wasted and may be used for cattle feed. Another stated that the results of the recent grower referendum indicated support for the continuation of the program and the continuation of current quality standards.

One commentor in support of a utility grade for nectarines stated that the implementation of a utility grade for plums in 1995 resulted in a \$10 million increase in plum grower revenue. Commentors noted that less than 10 percent of the plum pack was utility grade. One commentor stated that while less than one percent of his organization's plum pack was utility grade, this lower grade should be available for use by nectarine and peach handlers if a market exists. Others commented that the Department had recommended a utility grade for nectarines and peaches for one year only—1996.

Committee members and others who commented at the December 1995 Committee meetings indicated that a niche market may exist for utility grade fruit and that the opportunity should be made available to market lower quality fruit to meet demand. Reducing quality requirements would allow more fruit to be marketed. The lower quality fruit would be made available at lower prices, which would especially benefit lower income consumers.

Data on recent production of California nectarines and peaches in relation to season average producer prices appear to indicate that lesser quality fruit could be marketed successfully without interfering with sales of higher quality fruit. The limited additional quantity expected to be made available would be expected to have a minimal effect on consumer purchases and season average producer prices for California nectarines and peaches. Sales of lesser quality fruit to a niche market could increase producer revenue and promote consumer satisfaction.

The implementation of utility quality requirements for the 1996 season would authorize fruit meeting these requirements to be shipped to market and would provide information on consumer and retailer acceptance of such fruit. This information could then be used to supplement information collected by Dr. Nef and assist the Committees in developing appropriate quality requirements for the 1997 season.

Based on the foregoing, the Department proposed that a utility grade for nectarines and peaches be implemented on a temporary basis for the 1996 season. The Department proposed, for purposes of this regulation, to define "CTFA Utility" to mean fruit which meets the requirements of the U.S. No. 2 Grade defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160) and the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223), except that misshapen fruit and fruit with serious damage due to scarring would be permitted.

In order to prevent confusion in the marketplace and to clearly differentiate shipments of "CTFA Utility" fruit from better quality fruit, the Department proposed requiring containers of "CTFA Utility" fruit to be conspicuously marked with the words "CTFA Utility". In addition, it was proposed that shipments of such fruit continue to be required to meet the same container, pack, and container marking requirements in effect for shipments of higher quality fruit.

A proposed rule concerning this action was published in the March 4, 1996, Federal Register (61 FR 8225), with a 30-day comment period ending on April 3, 1996. Nine comments were received. Jonathan Field, Manager of the California Tree Fruit Agreement, and John Tos, Chairman of the Peach Commodity Committee, submitted comments on behalf of the Committees, recommending modifications to the proposed rule as published. Six other

commentors supported the establishment of a utility quality requirement, but did not fully agree with the Committees' comments: Harry Snyder, Consumers Union of U.S., Inc; Joe Caram, nectarine grower, Reedley, California; Steven Booz, Reedley, California; Richard Mittry, tree fruit grower, Sultana, California; Dan Gerawan, tree fruit grower-shipper, Reedley, California; and Craig Rasmussen, a grower and packer of California tree fruit, Reedley, California.

One comment received from Leroy Giannini, a grower-handler of California tree fruit, Dinuba, California, opposes the establishment of utility quality requirements. Mr. Giannini states that California nectarines and peaches have grown in production over the last 30 years from 1 million cartons annually to almost 20 million cartons. He attributed this growth to the industry's quality assurance program. Mr. Giannini states further that during the 1995 season, "Utility" grade plums were marked up at retail, but neither grower nor consumer interests were well served. Mr. Giannini believes that the goal of providing lower cost plums to consumers through implementation of the "Utility" grade failed to materialize.

Comments supporting modification of the proposed rule addressed revisions in four areas: Whether the utility quality requirements should be based on the U.S. Standards for Grades; whether there should be a limit on the amount of U.S. No. 1 grade fruit in the utility pack; where utility quality fruit should be permitted to be marketed; and how utility quality fruit should be labeled.

#### The Basis for Utility Quality Requirements

As previously indicated, the Department proposed defining utility quality in terms of a modified U.S. No. 2 grade. In Messrs. Field and Tos's comments, they state that the Committees support basing nectarine and peach utility quality requirements on the minimum quality standards established in the California Agricultural Code. The Committees believe the quality requirements for California nectarines and peaches should be consistent with the minimum requirements in place for the California plum utility grade, which are based on the California Agricultural Code.

In addition to providing consistency within the California tree fruit industry, the Committees believe that basing the utility quality requirements on the California Agricultural Code will result in lower inspection costs. Mr. Field provided a letter from Mr. John Wiley, Branch Chief, Shipping Point

Inspection, California Department of Food and Agriculture, which stated that requiring inspectors to review product for a quality requirement which is not a part of their normal procedures would increase the cost of inspection, thereby increasing program costs, particularly to small growers. Mr. Wiley stated further that, having a proposed quality requirement of U.S. No. 2 with different tolerances for peaches and nectarines, would increase the time required for training and supervision as well as increase the potential for confusion by inspectors and the difficulty of differentiating between the various grades.

Mr. Gerawan supported using the California Agricultural Code as a basis for utility quality requirements. The remaining commentors did not state specifically whether they supported this proposed modification or not. The Department believes that the Committees' and Mr. Gerawan's arguments have merit. Also, defining the utility quality requirements in terms of the California Agricultural Code should not result in any less fruit being made available to fresh markets. For these reasons, the Committees' and Mr. Gerawan's proposed revision is adopted.

#### Limitation of U.S. No. 1 Grade Fruit in Utility Packs

The Committees support limiting the amount of U.S. No. 1 grade fruit that can be included in a utility pack. Specifically, they support a limit of 15 percent in any container. Mr. Field, in his comment, states that a utility quality requirement must be clearly distinct from a U.S. No. 1 grade. Failure to provide a clear distinction could cause confusion in the marketplace and would not meet the goal of providing low-cost fruit to low-income consumers. Mr. Field contends that the Department failed to address this issue in its proposal which to allow for a U.S. No. 2 grade, with a 100 percent tolerance for misshapen and seriously scarred fruit; and that such action would, in effect, do away with regulatory grades in place for California nectarines and peaches. Mr. Field states that containers could be marked as utility without regard to the amount of U.S. No. 1 therein. Fruit could be packed at 80-85 percent U.S. No. 1 and fail marketing order requirements, but rather than be repacked, it could be marked utility and marketed. This would cause confusion in the marketplace since the fruit would not be adequately distinguished from U.S. No. 1 grade fruit. By the same token, a container of nectarines or peaches could have 0 percent U.S. No. 1 or 100 percent U.S. No. 1 product

inside, but could be marked utility for whatever reason the shipper determined appropriate. According to Mr. Field, this clearly demonstrates why the Committees believe it is necessary to establish a maximum tolerance of 15 percent for U.S. No. 1 grade fruit in containers marketed as utility grade fruit.

In the comments received in support of the proposed rule, five commentors stated that the Department should not set a 15 percent tolerance on U.S. No. 1 grade fruit in containers marked utility. These commentors contend that it would be too difficult and costly for packers to meet a 15 percent tolerance because some containers would not meet the utility quality requirements because they would have too much "good fruit" in the box. These commentors could see no reasonable justification for limiting the amount of good quality fruit in a utility pack.

Mr. Rasmussen offered a compromise. He believes that there should be a limit on the amount of U.S. No. 1 grade fruit in the utility pack to ensure a distinct difference between the packs, but states the 15 percent limit supported by the Committees was overly restrictive. He supports a limit of 30 percent. This limit has proved workable for the California plum industry's use of a utility grade standard.

The Department finds that Mr. Rasmussen's suggested revision is reasonable. Thus, this rule provides that the amount of fruit in a container of utility quality fruit that meets or exceeds the requirements of a U.S. No. 1 grade cannot exceed 30 percent.

#### Where Utility Quality Fruit May Be Shipped

The Committees, through Mr. Field, also comment that on an experimental basis, utility quality fruit should be limited to the domestic markets. Mr. Field opines that under sections 916.54 and 917.43 of the orders, special purpose shipments can be made for research purposes for special markets. Mr. Field believes that this authority allows restricting utility grade shipments, which would enable the nectarine and peach industries to continue studying the utility quality requirements, the availability of lower quality fruit to lower income consumers, and the benefits of making the lower quality product available. Mr. Field believes limiting shipments of utility quality fruit to the domestic market would allow for these studies to progress and would allay the fears of the industries that low quality fruit in export markets is to the long term detriment of the industries.

Five commentors state that there is no rationale for restricting the sale of utility quality California nectarines and peaches to Mexico, where there is believed to be strong market demand for the product. One commentor—Mr. Rasmussen—did not state a position on this subject.

The Committees did not provide sufficient evidence that the adoption of the CA Utility requirement for the 1996 season only would result in any damage to export markets. Thus, the Committees' proposal is denied.

#### Labeling Requirements for Utility Quality Fruit

The Committees, through Mr. Field, comment that the name of the proposed quality requirement, "CTFA Utility" should be known instead as "USDA Utility". The Committees believe that since the Department initially proposed the utility quality requirements, such quality requirements should be called "USDA Utility." It is the consensus of the Committees that the California quality image could be diluted by using "California" or "CTFA" to describe the lower quality product.

Mr. Field also states that containers of utility quality California nectarines and peaches should meet all size, marking, and standard container requirements, with the additional requirement that the marking of "USDA Utility" should be a minimum height of 3/4 inches and on the visible display panel of the box. (The proposed rule did not specify where such marking should appear.) As provided in the proposed rule, consumer bags or packages are also required to be to be marked. Requiring the marking to be on a visible display panel and on consumer packages will enable consumers and retailers to identify the fruit as utility quality when it is palletized or on display at the retail level.

Mr. Rasmussen is the only other commentor who expresses an opinion on this issue. He states that the utility quality peaches and nectarines should be known as "CA Utility." This is comparable to the designation used for California plums, and having the same nomenclature for peaches and nectarines would be advantageous from the standpoint of maintaining uniformity among the three commodities and creating less confusion in the marketplace.

The Department finds that Mr. Rasmussen's position has merit and is therefore adopted. Further, the Committees' proposal to require the marking on a visible display panel also has merit and is incorporated in this final rule.

The intent of this rule is to establish a minimum quality requirement for California nectarines and peaches to allow more fruit into fresh market channels, ensure customer satisfaction and improve returns to producers. Moreover, as previously stated, information gathered as a result of allowing shipments of "CA Utility" quality fruit, for the 1996 season, can be used to help determine appropriate quality requirements for California nectarines and peaches for the 1997 season.

This rule reflects the Department's appraisal of the need to revise the quality and container marking requirements for California nectarines and peaches. The Department believes that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

Based on available information, 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 matter presented, including the information and recommendations submitted by the Committees, the comments received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register (5 U.S.C. 553) because this rule should apply to as many shipments of California nectarines and peaches as possible. The shipping seasons for both California nectarines and peaches began on April 1, 1996. Further, handlers are aware of this rule, which was recommended in a proposed rule in early March and discussed in public meetings of the Committees. Also, this rule provides an additional alternative for handlers of California nectarines and peaches, and no additional time is needed for those handlers to comply with the relaxed quality requirements. Finally, a 30-day comment period was provided for in the proposed rule, and all comments have been considered in developing this final rule.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

**7 CFR Part 917**

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

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

1. The authority citation for 7 CFR Parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601-674.

**PART 916—NECTARINES GROWN IN CALIFORNIA**

2. Section 916.350 is amended by adding a new paragraph (d) to read as follows:

**§ 916.350 California Nectarine Container and Pack Regulation.**

\* \* \* \* \*

(d) During the period April 1 through October 31, 1996, each container or package when packed with nectarines meeting CA Utility requirements, shall bear the words "CA Utility", along with all other required container markings, in letters of 3/4 inch minimum height on the visible display panel. Consumer bags or packages must also be clearly marked on the bag or package as "CA Utility" along with other required markings.

3. Section 916.356 is amended by revising paragraph (a)(1) to read as follows:

**§ 916.356 California Nectarine Grade and Size Regulation.**

(a) \* \* \*

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: Provided, that nectarines 2 inches in diameter or smaller, shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle 3/8 inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light colored, fairly smooth scars which exceed an aggregate area of a circle 1/2 inch in diameter: Provided further, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen. Provided further, That during the period April 1 through October 31, 1996, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 30 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade and that such nectarines are mature and are:

(i) Free from insect injury which has penetrated or damaged the flesh; split

pits which cause an unhealed crack or one or more well healed cracks which, either singly or in the aggregate, are more than 3/8 inch in length; mold, brown rot, and decay which has affected the edible portion; and

(ii) Free from serious damage due to skin breaks, cuts, growth cracks, bruises, or other causes.

(iii) Tolerances. Not more than 10 percent, by count, of the nectarines in any one container may be below the requirements which are prescribed by this subparagraph, including not more than 5 percent, by count, for any one defect, except split pits. An additional tolerance of 10 percent, by count, of the nectarines in any one container or bulk lot may contain nectarines affected with split pits. This means a total tolerance of 20 percent is allowed for all defects, including split pits, but not to exceed 15 percent for split pits alone.

\* \* \* \* \*

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

3. Section 917.442 is amended by adding a new paragraph (d) to read as follows:

**§ 917.442 California Peach Container and Pack Regulation.**

\* \* \* \* \*

(d) During the period April 1 through November 23, 1996, each container or package when packed with peaches meeting CA Utility requirements, shall bear the words "CA Utility", along with all other required container markings, in letters of 3/4 inch minimum height on the visible display panel. Consumer bags or packages must also be clearly marked on the bag or package as "CA Utility" along with other required markings.

4. Section 917.459 is amended by revising paragraph (a)(1) to read as follows:

**§ 917.459 California Peach Grade and Size Regulation.**

(a) \* \* \*

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: Provided, that an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged. Provided, That during the period April 1 through November 23, 1996, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 30 percent of the peaches in any container meet or exceed the requirements of the U.S. No.

1 grade and that such peaches are mature and are:

(i) Free from insect injury which has penetrated or damaged the flesh; split pits which cause an unhealed crack or one or more healed cracks which, either singly or in the aggregate, are more than 1/2 inch in length; and mold, brown rot, and decay; and

(ii) Free from serious damage due to cuts, skin breaks, growth cracks, bruises, scab, rust, blight, disease, hail or other causes. Damage to any peach is serious when it causes a waste of 10 percent or more, by volume, of the individual peach.

(iii) Tolerances. Not more than 10 percent, by count, of the peaches in any container may be below the requirements prescribed by this subparagraph. Not more than one-half of this tolerance shall be allowed for any one cause. Individual containers in any lot may contain not more than 1 1/2 times the tolerances specified if the percentage of defects of the entire lot averages within the tolerances.

\* \* \* \* \*

Dated: April 25, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-10758 Filed 4-30-96; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Office of the Secretary****14 CFR Parts 205 and 323**

[Docket No. OST-96-1269]

RIN 2105-AC46

**Aircraft Accident Liability Insurance; Terminations, Suspensions, and Reductions of Service**

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** The Department is amending its regulations on aircraft accident liability insurance and on terminations, suspensions, and reductions of essential air service, to remove or update obsolete provisions and organizational and statutory references.

**EFFECTIVE DATE:** The rule shall become effective on May 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Woods, Air Carrier Fitness Division, X-56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

**SUPPLEMENTARY INFORMATION:** In his Regulatory Reinvention Initiative