date to 5 years from the date of this final rule. As conveyed in the discussion at the NOSB meeting, the exemption for tetracycline has remained divisive and the NOSB did not want to extend the listing for another 5 years. Peracetic acid and copper fungicides were specifically mentioned as alternative substances for fire blight control, although these were noted as only partially or marginally effective. This is consistent with a comment to the proposed rule which acknowledged that Bordeaux mix (copper sulfate and lime) and other copper formulations sprayed at green-tip stage provide some protection, but can cause fruit scarring and are phytotoxic to some cultivars. It was noted anecdotally at the NOSB meeting that there are apple and pear varieties with limited resistance to fire blight and that some producers are growing pears without the use of tetracycline for the organic market in the European Union, where the use of antibiotics for organic crop production is not permitted.

Based on all public comment and documentation received, the NOP believes that issues regarding the availability and viability of alternatives to tetracycline for fire blight control remain outstanding. At the same time, we note the NOSB's recommendation to only allow the continued use of tetracycline for fire blight control until October 21, 2012. Though some commenters have requested the removal of the expiration date from use of tetracycline, the NOP recommends that such interested parties petition the NOSB, using the petition process outlined in 72 FR 2167 (January 18, 2007), to have the expiration date removed from the authorized use of the substance.

Classification of Tetracycline as a Bactericide

One comment asserted that oxytetracycline calcium complex was naturally produced in the soil by bacterial fermentation and therefore it is not an antibiotic, but a bactericide. This comment argued for the approval of the use of "natural" oxytetracycline to be extended indefinitely for organic production so that the organic apple and pear industry would not be lost to fire blight. The comment did not provide evidence to affirm that the entire production of oxytetracycline to its commercial form would qualify as nonsynthetic (natural) in accordance with the NOP regulations. Tetracycline, in technical literature and common use, is universally identified as an antibiotic. While tetracycline is derived from bacteria and has bactericidal properties, we believe that "antibiotic" is the proper and accurate classification.

On-Site Rather Than On-Farm Generation of Sulfurous Acid

One of the comments expressed support for the addition of sulfurous acid, but requested that the annotation to refer to on-*site* generation instead of on-*farm,* because "farm" is not defined in the NOP regulation or in the Organic Food Production Act (OFPA), and use of that word could cause confusion in the organic industry. We recognize that there was considerable discussion over the precise wording to use in the annotation to capture the intent that it be produced at the location where the sulfurous acid would be used to prevent the use of sulfurous acid in forms that would be synthetically stabilized or preserved for shipping. Both terms, "farm" and "site", appear in the NOP regulations. However, we believe these are distinct, as farm refers specifically to land area in crop production, while "site" can refer to production or handling areas. We believe that "farm" is readily understood by the organic industry and is the more appropriate, specific term in this annotation.

F. Effective Date

This final rule reflects recommendations submitted to the Secretary by the NOSB. The revisions being made in the listing of one exempted substance and the substance being added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these revisions and the exemption have been subject to extensive discussion and comments and are considered vital to the most efficient organic crop production, NOP believes that producers should be able to use them in their operations as soon as possible. In crop production, the effective period for use of any practice or crop input may be limited by the progress of the growing season, and the utility of an exempted substance for organic production in any one year is dependent upon that substance being available when it is needed for use, as its use may be quite ineffective at any other time in the growing season. Accordingly, AMS finds that good cause exists under 5 U.S.C. 553 (d)(3) for not postponing the effective date of this rule until 30 days after publication in the **Federal Register.**

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

■ For the reasons set forth in the preamble, 7 CFR part 205 is amended as follows:

PART 205–NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. § 205.601 is amended by:
■ A. Revising paragraph (i)(11).
■ B. Adding new paragraph (j)(9).

The addition and revision read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(i) * * *

(11) Tetracycline, for fire blight control only and for use only until October 21, 2012.

(j) * * *

(9) Sulfurous acid (CAS # 7782–99–2) for on-farm generation of substance utilizing 99% purity elemental sulfur per paragraph (j)(2) of this section.

* * * * *

Dated: June 29, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–16335 Filed 7–2–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Doc. No. AMS–FV–09–0090; FV10–916/917–1 FIR]

Nectarines and Peaches Grown in California; Changes in Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that changed the handling requirements applicable to well matured fruit covered under the nectarine and peach marketing orders (orders). The interim rule updated the lists of commercially significant varieties

subject to size regulations under the orders. The interim rule was necessary to revise the regulations for the current marketing season, which began in April.

DATES: Effective July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Jerry.Simmons@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide;* or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order Nos. 916 and 917, both as amended (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 (USDA) is issuing this rule in conformance with Executive Order 12866.

The shipping of "well-matured" nectarines and peaches grown in California is regulated by 7 CFR parts 916 and 917, respectively. Among other things, certain varieties of fruit are subject to variety-specific size restrictions. The lists of commercially-significant varieties so regulated are updated regularly as the volume of new varieties increases and as older varieties become obsolete. The sizes of varieties not subject to variety-specific regulations are regulated under generic regulations contained in the orders.

In an interim rule published in the **Federal Register** on April 5, 2010, and effective on April 6, 2010, (75 FR 17027, Doc. No AMS–FV–09–0090, FV10–916/917–1 IFR), §§ 916.356 and 917.459 were amended by adding ten nectarine varieties and eight peach varieties to the lists of commercially-significant varieties that are subject to variety-specific size regulations under the orders. Additionally, twelve nectarine varieties and eleven peach varieties were removed from the variety-specific size regulations.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

Industry Information

There are approximately 101 California nectarine and peach handlers subject to regulation under the orders, and approximately 475 producers of these fruits in California. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

For the 2009 season, the committees' staff estimated that the average handler price received was $11.50 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 608,696 containers to have annual receipts of $7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2009 season, the committees' staff estimates that small handlers represent approximately 50 percent of all the handlers within the industry.

For the 2009 season, the committees' staff estimated the average producer price received was $6.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 115,385 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2009 season, the committees' staff estimates that more than 80 percent of the producers within the industry would be considered small producers.

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis.

Sections 916.356 and 917.459 of the orders' rules and regulations establish minimum sizes for various varieties of nectarines and peaches. This rule continues in effect the action that adjusted the minimum fruit sizes authorized for certain varieties of each commodity for the 2010 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre and, coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the committees based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry and are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all meetings are distributed to committee members and others who have requested them, and are also available on the committees' Web site, thereby increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine or peach handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as stated in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industry and all interested parties were invited to attend the meetings and participate in Committee deliberations. The committees have appointed a number of joint subcommittees to review certain issues and make recommendations to the committees. The Compliance Subcommittee met on November 3, 2009, and discussed this issue in detail. Their recommendations were presented at the meetings of both committees on December 10, 2009. Like all committee meetings, the November 3, 2009 and December 10, 2009, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before June 4, 2010. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480acfc3e.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (75 FR 17027, April 5, 2010) 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.

PARTS 916 AND 917—[AMENDED]

■ Accordingly, the interim rule that amended 7 CFR parts 916 and 917 and that was published at 75 FR 17027 on April 5, 2010, is adopted as a final rule, without change.

Dated: June 29, 2010.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2010–16342 Filed 7–2–10; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Doc. No. AMS–FV–08–0115; FV09–948–2 FIR]

Irish Potatoes Grown in Colorado; Relaxation of Handling Regulation for Area No. 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that relaxed the size requirement prescribed under the Colorado potato marketing order. The interim rule provided for the handling of all varieties of potatoes with a minimum diameter of ¾ inch, if the potatoes otherwise meet U.S. No. 1 grade. This change is intended to provide potato handlers with greater marketing flexibility, producers with increased returns, and consumers with a greater supply of potatoes.

DATES: Effective July 7, 2010.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order and agreement regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide;* or by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of Irish potatoes grown in Colorado, 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

The handling of Irish potatoes grown in Colorado is regulated by 7 CFR part 948. Prior to this change, the regulations for Colorado Area No. 3 potatoes provided that U.S. No. 2 grade potatoes, 1⅞ inches minimum diameter or 4 ounces minimum weight, and Size B potatoes (1½ to 2¼ inches in diameter), if U.S. No. 1 grade or better, may be handled.

The Committee believes that in recent years consumer demand has been increasing for smaller potatoes which often command premium prices. The market for these smaller potatoes was primarily supplied by potato production areas outside Colorado Area No. 3. Having the ability to handle smaller potatoes enables Colorado Area No. 3 potato handlers to market a larger portion of their crop while satisfying consumer demand for smaller potatoes. Therefore, this rule continues in effect the rule that relaxed the size requirement for all varieties of Colorado Area No. 3 potatoes by allowing the handling of potatoes with a minimum diameter of ¾ inch, if the potatoes otherwise meet U.S. No. 1 Grade.

In an interim rule published in the **Federal Register** on April 5, 2010, and effective on April 6, 2010, (75 FR 17034, Doc. No. AMS–FV–08–0115, FV09–948–2 IFR), § 948.387, paragraph (a) was revised.