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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Doc. No. AMS–FV–09–0013; FV09–916/917–2 IFR]

Nectarines and Peaches Grown in California; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) for the 2009–10 and subsequent fiscal periods. The Nectarine Administrative Committee (NAC) program decreased its assessment rate from $0.06 to $0.0175 per 25-pound container or container equivalent of nectarines handled. The Peach Commodity Committee (PCC) program decreased its assessment rate from $0.06 to $0.0025 per 25-pound container or container equivalent of peaches handled. The Committees locally administer the marketing orders which regulate the handling of nectarines and peaches grown in California. Assessments upon nectarine and peach handlers are used by the Committees to fund reasonable and necessary expenses of the programs. The fiscal periods run from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 19, 2009. Comments received by August 17, 2009, 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 to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, Marketing Specialist, or Kurt 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: *Jennifer.Garcia@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: *Jay.Guerber@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.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable nectarines and peaches beginning on March 1, 2009, and continue until amended, suspended, or terminated. 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 USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rates established for the NAC program for the 2009–10 and subsequent fiscal periods from $0.06 to $0.0175 per 25-pound container or container equivalent of nectarines and for the PCC program for the 2009–10 and subsequent fiscal periods from $0.06 to $0.0025 per 25-pound container or container equivalent of peaches.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of USDA, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of NAC and PCC are producers of California nectarines and peaches, respectively. They are familiar with the Committees' needs, and with the costs for goods and services in their local area and are, therefore, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

NAC Assessment and Expenses

For the 2009–10 and subsequent fiscal periods, the NAC recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The NAC met on February 19, 2009, and unanimously recommended 2009–10 expenditures of $1,797,290.20 and an assessment rate of $0.0175 per 25-pound container or container equivalent of nectarines. In comparison, the budgeted expenditures for the 2008–09 fiscal period were $1,660,543. The assessment rate of $0.0175 per 25-pound container or container equivalent of nectarines is $0.0425 lower than the rate currently in effect. The NAC recommended a lower assessment rate to reduce the current reserve. The NAC also recommended a decrease in promotional activities for 2009.

The major expenditures recommended by the NAC for the 2009–10 fiscal period include $319,965.32 for administration, $349,447.55 for production research, and $1,127,877.33 for domestic and international programs (promotional activities). In comparison, budgeted expenses for these items in 2008–09 were $330,025 for administration, $225,678 for production research, $1,071,574 for domestic and international programs and $33,266 for inspection and compliance activities.

The NAC 2009–10 fiscal period assessment rate was derived after considering anticipated fiscal period expenses; estimated assessable nectarines of 20,000,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the NAC into the 2010–11 fiscal period. Therefore, the NAC recommended an assessment rate of $0.0175 per 25-pound container or container equivalent.

Combining expected assessment revenue of $350,000.00 with the $1,071,398.90 carryover available from the 2008–09 fiscal period and other income of $930,911, which includes interest and grants, should be adequate to meet Committee needs. The assessment rate is expected to decrease the reserve to $205,019.70, which may be used to cover administrative expenses prior to the beginning of the 2010–11 shipping season as provided in the order (§ 916.42).

PCC Assessment and Expenses

For the 2009–10 and subsequent fiscal periods, the PCC recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The PCC met on February 19, 2009, and recommended 2009–10 expenditures of $1,885,250 and an assessment rate of $0.0025 per 25-pound container or container equivalent of peaches. In comparison, budgeted expenditures for the 2008–09 fiscal period were $1,672,090. The assessment rate of $0.0025 per 25-pound container or container equivalent of peaches is $0.0575 lower than the rate currently in effect. The PCC recommended a lower assessment rate to reduce the current reserve. The PCC also recommended a decrease in promotional activities for 2009.

The major expenditures recommended by the PCC for the 2009–10 fiscal period include $334,058 for administration, $366,920 for production research, and $1,184,272 for domestic and international programs. In comparison, budgeted expenses for these items in 2008–09 were $348,078 for administration, $4,029 for inspection, $225,678 for production research, $1,057,078 for domestic and international programs (promotional activities), and $37,227 for inspection and compliance activities.

The PCC 2009–10 fiscal period assessment rate was derived after considering anticipated fiscal period expenses; estimated assessable peaches of 21,000,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate financial reserve to carry the PCC into the 2010–11 fiscal period. Therefore, the PCC recommended an assessment rate of $0.0025 per 25-pound container or container equivalent.

Combining expected assessment revenues of $52,500 with the $1,597,291 carryover available from the 2008–09 fiscal period and other income of $614,276, which includes interest and grants, should be adequate to meet Committee needs. The assessment rate is expected to decrease the reserve to $326,317, which may be used to cover administrative expenses prior to the beginning of the 2010–11 shipping season as provided in the order (§ 917.38).

Continuing Assessment Rates

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are in effect for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees' Web site at *http://www.eatcaliforniafruit.com* or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rate for each Committee is needed. Further rulemaking will be undertaken as necessary. The Committees' 2009–10 fiscal period budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial 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 rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the 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 120 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 550 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. Small agricultural producers are defined by the SBA as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The Committees' staff has estimated that there are fewer than 30 handlers in the industry who would not be considered small entities. For the 2008 season, the Committees' staff estimated that the average handler price received was $9.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 777,778 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 2008 season, the Committees' staff estimates that small handlers represent approximately 78 percent of all the handlers within the industry.

The Committees' staff has also estimated that fewer than 60 producers in the industry would not be considered small entities. For the 2008 season, the Committees estimated the average producer price received was $4.25 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 176,471 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 2008 season, the Committees' staff estimates that small producers represent more than 88 percent of the producers within the industry.

With an average producer price of $4.25 per container or container equivalent, and a combined packout of nectarines and peaches of 45,543,561 containers, the value of the 2008 packout is estimated to be $193,560,134. Dividing this total estimated producer revenue figure by the estimated number of producers (550) yields an estimate of average revenue per producer of about $351,928 from the sales of peaches and nectarines.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively.

This rule decreases the assessment rates established for the NAC for the 2009–10 and subsequent fiscal periods from $0.06 to $0.0175 per 25-pound container or container equivalent of nectarines and for the PCC for the 2009–10 and subsequent fiscal periods from $0.06 to $0.0025 per 25-pound container or container equivalent of peaches.

The NAC recommended 2009–10 fiscal period expenditures of $1,797,290.20 for nectarines and an assessment rate of $0.0175 per 25-pound container or container equivalent of nectarines. The assessment rate of $0.0175 is $0.0425 lower than the rate currently in effect. The PCC recommended 2009–10 fiscal period expenditures of $1,885,250 for peaches and an assessment rate of $0.0025 per 25-pound container or container equivalent of peaches. The assessment rate of $0.0025 is $0.0575 lower than the rate currently in effect.

Analysis of NAC Budget

The quantity of assessable nectarines for the 2009–10 fiscal period is estimated at 20,000,000 25-pound containers or container equivalents. Thus, the $0.0175 rate should provide $350,000.00 in assessment income. Income derived from handler assessments, along with income from other sources and funds from the NAC's reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the NAC for the 2009–10 fiscal period include $319,965.32 for administration, $349,447.55 for production research, and $1,127,877.33 for domestic and international programs. Budgeted expenses in 2008–09 were $330,025 for administration, $225,678 for production research, $1,071,574 for domestic and international programs (promotional activities), and $33,266 for inspection and compliance activities.

The NAC recommended a lower assessment rate to reduce the current reserve. The NAC also recommended a decrease in promotional activities for 2009. Income generated from the lower assessment rate combined with reserve funds should be adequate to cover anticipated 2009 expenses.

Analysis of PCC Budget

The quantity of assessable peaches for the 2009–10 fiscal period is estimated at 21,000,000 25-pound containers or container equivalents. Thus, the $0.0025 rate should provide $52,500 in assessment income.

The major expenditures recommended by PCC for the 2009–10 fiscal period include $334,058 for administration, $366,920 for production research, and $1,184,272 for domestic and international programs. Budgeted expenses in 2008–09 were $348,078 for administration, $4,029 for inspection, $225,678 for production research, $1,057,078 for domestic and international programs (promotional activities), and $37,227 for inspection and compliance activities.

The PCC recommended a lower assessment rate to reduce the current reserve. The PCC also recommended a decrease in promotional activities for 2009. Income generated from the lower assessment rate combined with reserve funds should be adequate to cover anticipated 2009 expenses.

Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the Committees considered alternative expenditure and assessment rate levels, but ultimately decided that the recommended levels were reasonable to properly administer the orders.

Each of the Committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income, prior to recommending a final assessment rate. The NAC decided that an assessment rate of $0.0175 per 25-pound container or container equivalent will allow it to meet its 2009–10 fiscal period expenses and carryover an operating reserve of about $205,019.70 which is in line with the Committee's financial needs. The PCC decided that an assessment rate of $0.0025 per 25-pound container or container equivalent will allow it to meet its 2009–10 fiscal period expenses and carryover an operating reserve of $326,317. These assessment rates will allow them to meet their 2009–10 fiscal period expenses and carryover necessary reserves to finance operations before 2010–11 fiscal period assessments are collected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for nectarines and peaches for the 2007–08 season could range between $6.00 and $8.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total producer revenue could range between 0.04 and 0.22 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers. In addition, the Committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and encouraged to participate in the Committees' deliberations on all issues. Like all Committee meetings, the February 19, 2009, meetings were public meetings and entities of all sizes were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large 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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee 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.

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 2009–10 fiscal period began March 1, 2009, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (2) the Committees need to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was recommended by the Committees at public meetings and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this 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 916.234 is revised to read as follows:

§ 916.234 Assessment rate.

On and after March 1, 2009, an assessment rate of $0.0175 per 25-pound container or container equivalent of nectarines is established for California nectarines.

PART 917—PEACHES GROWN IN CALIFORNIA

■ 3. Section 917.258 is revised to read as follows:

§ 917.258 Assessment rate.

On and after March 1, 2009 an assessment rate of $0.0025 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: June 12, 2009.

Craig Morris,

Acting Associate Administrator.

[FR Doc. E9–14280 Filed 6–17–09; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS–FV–08–0045; FV08–981–2 IFR]

Almonds Grown in California; Revision of Outgoing Quality Control Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the outgoing quality control regulations issued under the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). This rule revises the term ''validation'' under the *Salmonella* bacteria (*Salmonella*) treatment program by specifying that validation data must be both submitted to and accepted by the Board's Technical Expert Review Panel (TERP) for all treatment equipment prior to its use under this program. This will help ensure that all treatment equipment meets a 4-log reduction of *Salmonella* in almonds.

DATES: Effective June 19, 2009; comments must be received by August 17, 2009.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938, or *Internet: http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Senior 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: Terry.Vawter@ams.usda.gov,* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: Jay.Guerber@ams.usda.gov.*