

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 grower revenue figure by the estimated number of producers (550) yields an estimated average revenue per producer of about \$351,928 from the sales of peaches and nectarines.

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 2009 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 who 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 and 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 noted 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. Like all committee meetings, the November 25, 2008, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. Also, the committees have a number of appointed subcommittees to review certain issues and make recommendations to the committees. The committees' Tree Fruit Quality Subcommittee met on October 29, 2008, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

Comments on the interim final rule were required to be received on or before April 21, 2009. One comment, supporting the interim final rule, was received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule and the comment received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0108>.

This action also affirms information contained in the interim final 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 final rule, without

change, as published in the **Federal Register** (74 FR 7778, February 20, 2009) 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 final rule that amended 7 CFR parts 916 and 917 and that was published at 74 FR 7778 on February 20, 2009, is adopted as final rule, without change.

Dated: July 24, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-18099 Filed 7-28-09; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 922

[Doc. No. AMS-FV-09-0038; FV09-922-1 IFR]

#### Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

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

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

**SUMMARY:** This rule decreases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2009-2010 and subsequent fiscal periods from \$2.00 to \$1.00 per ton of apricots handled. The Committee locally administers the marketing order, which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective July 30, 2009.

Comments received by September 28,

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 docket 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:**

Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, Suite 385, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or e-mail: [Robert.Curry@ams.usda.gov](mailto:Robert.Curry@ams.usda.gov) or [GaryD.Olson@ams.usda.gov](mailto:GaryD.Olson@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 Ave., SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491; Fax: (202) 720-8938; or e-mail: [Jay.Guerber@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 922 (7 CFR 922), regulating the handling of apricots grown in designated counties in Washington, 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.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington apricot handlers are subject to assessments. Funds to administer the order are derived from

such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable apricots beginning April 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 rate established for the Committee for the 2009-2010 and subsequent fiscal periods from \$2.00 to \$1.00 per ton of apricots handled.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers in designated counties in Washington. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate was formulated and discussed at a public meeting, thus all directly affected persons had an opportunity to participate and provide input.

For the 2008-2009 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$2.00 per ton of fresh apricots handled. This assessment rate continues 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 Committee met on May 21, 2009, and unanimously recommended 2009-2010 expenditures of \$7,843 and a

decreased assessment rate of \$1.00 per ton. In comparison, last year's budgeted expenditures were \$7,093. The recommended assessment rate is \$1.00 less than the \$2.00 rate in effect since the 2008-2009 fiscal period. The Committee recommended the assessment rate decrease to help offset the increase in income that would have accompanied the much larger apricot crop projected for this summer. This assessment rate reduction will also have the effect of maintaining the Committee's monetary reserve at a level commensurate with program objectives and requirements.

The major expenditures recommended by the Committee for the 2009-2010 fiscal period are \$4,800 for the management fee and \$3,043 for operational expenses, which include travel expenses, financial audit, compliance, insurance and bonds, equipment maintenance and miscellaneous expenses. In comparison, budgeted expenses for the 2008-2009 seasons were \$4,800 and \$2,293, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington apricots.

Applying the \$1.00 per ton assessment rate to the Committee's 7,600 ton crop estimate should provide \$7,600 in assessment income. The assessment income, in addition to approximately \$243 from the Committee's reserve would be adequate to cover the recommended \$7,843 budget for the 2009-2010 fiscal period. Funds in the reserve (\$8,609 as of March 31, 2009), would be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (\$922.42.)

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

Although the assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the Committee recommendations and other available information to determine whether modification of the assessment rate is

needed. Further rulemaking will be undertaken as necessary. The Committee's 2009–2010 budget 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.

There are approximately 300 producers of fresh apricots in the regulated production area and approximately 22 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000.

Based on information compiled by National Agricultural Statistics Service, the value of Washington's total apricot production in 2008 was \$6,601,000. Since the Committee reports that there are 300 producers, the average annual farm-gate revenue from the sale of apricots last year was approximately \$22,000 per producer. In addition, based on Committee records and 2008 f.o.b. prices ranging from \$20.00 to \$26.00 per 24-pound loose-pack carton as reported by AMS Market News Service, the average annual revenue per handler in 2008 was \$357,197. In view of the foregoing, the majority of Washington apricot producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2009–2010 and subsequent fiscal periods from \$2.00 to \$1.00 per ton. The Committee unanimously recommended 2009–2010 expenditures of \$7,843 and the decreased assessment rate at the May 21, 2009, meeting. The recommended assessment rate is \$1.00 less than the rate in effect since the 2008–2009 fiscal period. With an estimated 2009–2010

apricot crop of 7,600 tons, assessment income combined with funds from the Committee's monetary reserve should be adequate to cover budgeted expenses. The Committee recommended decreasing the assessment rate by 50 percent due to the near doubling of the crop estimate this year compared to the crop actually harvested last year. With current crop and expense estimates, the Committee estimates that its reserve fund at the end of the 2009–2010 fiscal period will be about \$8,300. This is approximately one fiscal period's operational expenses as authorized by the order (§ 922.42).

The major expenditures recommended by the Committee for the 2009–2010 fiscal period include \$4,800 for the management fee and \$3,043 for operational expenses. In comparison, budgeted expenses for the 2008–2009 seasons were \$4,800 and \$2,293, respectively.

The Committee discussed alternatives to this rule. With the potential for a much larger crop this season, assessment rates over \$1.00 per ton were not seriously considered because of the potential of generating too much income and thus increasing the reserve fund to an amount higher than program requirements allow.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2009–2010 season could average about \$1,000 per ton. Therefore, the estimated assessment revenue for the 2009–2010 fiscal period as a percentage of total producer revenue could approximate 0.1 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 reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 21, 2009, meeting was a public meeting and all entities, both large and small, 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 Washington apricot 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. Furthermore, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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.

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/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide>. 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 2009–2010 fiscal period began on April 1, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Washington apricots handled during such fiscal period; (2) this action decreases the assessment rate for assessable apricots beginning with the 2009–2010 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; 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 in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 922 is amended as follows:

## PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 1. The authority citation for 7 CFR part 922 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 922.235 is revised to read as follows:

### § 922.235 Assessment rate.

On or after April 1, 2009, an assessment rate of \$1.00 per ton is established for the Washington Apricot Marketing Committee.

Dated: July 24, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–18108 Filed 7–28–09; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

#### 7 CFR Part 1470

RIN 0578–AA43

#### Conservation Stewardship Program

**AGENCY:** Commodity Credit Corporation, Natural Resources Conservation Service, United States Department of Agriculture.

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

**SUMMARY:** Section 2301 of the Food, Conservation, and Energy Act of 2008 (the 2008 Act) amended the Food Security Act of 1985 to establish the Conservation Stewardship Program. The purpose of the Conservation Stewardship Program is to encourage producers to address resource concerns in a comprehensive manner by undertaking additional conservation activities, and improving, maintaining and managing existing conservation activities. This interim final rule, with request for comment, sets forth the policies, procedures, and requirements necessary to implement the Conservation Stewardship Program as authorized by the 2008 Act amendments.

**DATES:** *Effective Date:* This interim final rule is effective July 29, 2009.

*Comment Date:* Submit comments on or before September 28, 2009.

**ADDRESSES:** You may send comments (identified by Docket Number NRCS–IFR–09004) using any of the following methods:

- *Government-wide rulemaking Web site:* Go to <http://regulations.gov> and

follow the instructions for sending comments electronically;

- *E-mail directly to NRCS:*

[CSP2008@wdc.usda.gov](mailto:CSP2008@wdc.usda.gov);

- *Mail:* Gregory Johnson, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237–S, Washington, DC 20250–2890;

- *Fax:* (202) 720–4265;

- *Hand Delivery Room:* USDA South Building, 1400 Independence Avenue, SW., Room 5237–S, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–4527 in order to be escorted into the building;

- This interim final rule may be accessed via the Internet. Users can access the NRCS homepage at <http://www.nrcs.usda.gov>; select the Farm Bill link from the menu; select the Interim final link from beneath the Final and Interim Final Rules Index title. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

#### FOR FURTHER INFORMATION CONTACT:

Gregory Johnson, Director, Financial Assistance Programs Division, U.S. Department of Agriculture, Natural Resources Conservation Service, 1400 Independence Avenue, SW., Room 5237–S, Washington, DC 20250; Phone: (202) 720–1845; Fax: (202) 720–4265; or e-mail [CSP2008@wdc.usda.gov](mailto:CSP2008@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Certifications

###### Executive Order 12866

Pursuant to Executive Order 12866 (FR Doc. 93–24523, September 30, 1993), this interim final rule with request for comment is an economically significant regulatory action since it results in an annual effect on the economy of \$100 million or more. The administrative record is available for public inspection in Room 5831 of the South Building, USDA, 1400 Independence Avenue, SW., Washington, DC. Pursuant to Executive Order 12866, NRCS conducted an economic analysis of the potential impacts associated with this program. A summary of the economic analysis can be found at the end of this preamble and a copy of the analysis is available upon request from Gregory Johnson, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, Room 5237–S, Washington, DC 20250–2890 or electronically at: <http://>

[www.nrcs.usda.gov/programs/csp/](http://www.nrcs.usda.gov/programs/csp/) under the *CSP Rules and Notices with Supporting Documents* title.

##### Regulatory Flexibility Act

NRCS has determined that the Regulatory Flexibility Act is not applicable to this interim final rule because NRCS is not required by 5 U.S.C. 553, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

##### Environmental Analysis

Availability of the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI). A programmatic environmental assessment has been prepared in association with this rulemaking. The analysis has determined that there will not be a significant impact to the human environment and as a result an Environmental Impact Statement is not required to be prepared (40 CFR part 1508.13). The EA and FONSI are available for review and comment for 30 days from the date of publication of this interim final rule in the **Federal Register**. A copy of the EA and FONSI may be obtained from the following Web site: [http://www.nrcs.usda.gov/programs/Env\\_Assess/](http://www.nrcs.usda.gov/programs/Env_Assess/). A hard copy may also be requested from the following address and contact: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, NRCS, 1400 Independence Ave., SW., Washington, DC 20250. Comments from the public should be specific and reference that comments provided are on the EA and FONSI. Public comment may be submitted by any of the following means: (1) E-mail comments to [NEPA2008@wdc.usda.gov](mailto:NEPA2008@wdc.usda.gov); (2) e-mail to e-gov Web site at <http://www.regulations.gov>; or (3) written comments to: Matt Harrington, National Environmental Coordinator, Ecological Sciences Division, NRCS, 1400 Independence Ave., SW., Washington, DC 20250.

##### Civil Rights Impact Analysis

NRCS has determined through a Civil Rights Impact Analysis that the interim final rule discloses no disproportionately adverse impacts for minorities, women, or persons with disabilities. The data presented indicates producers who are members of the protected groups have participated in NRCS conservation programs at parity with other producers. Extrapolating from historical participation data, it is reasonable to conclude that NRCS programs, including CSP, will continue to be