

TABLE 1—MAXIMUM MONTHLY ALLOWANCES OF SUPPLEMENTAL FOODS FOR INFANTS IN FOOD PACKAGES I, II AND III—Continued

Foods <sup>1</sup>	Fully formula fed (FF)		Partially breastfed (BF/FF)		Fully breastfed (BF)	
	Food packages I-FF & III-FF A: 0 through 3 months B: 4 through 5 months	Food packages II-FF & III-FF 6 through 11 months	Food packages I-BF/FF & III BF/FF A: 0 to 1 month <sup>2</sup> B: 1 through 3 months <sup>2</sup> C: 4 through 5 months	Food packages II-BF/FF & III BF/FF 6 through 11 months	Food package I-BF 0 through 5 months	Food package II-BF 6 through 11 months
Infant food meat <sup>8 10</sup>	.....	.....	.....	.....	.....	77.5 oz.

**Table 1 Footnotes:** (Abbreviations in order of appearance in table): FF = fully formula fed; BF/FF = partially breastfed (*i.e.*, the infant is breastfed but also receives formula from the WIC Program); BF = fully breastfed (*i.e.*, the infant receives no formula through the WIC program).

- <sup>1</sup> Table 4 describes the minimum requirements and specifications for the supplemental foods.
- <sup>2</sup> The powder form is the form recommended for partially breastfed infants ages 0 through 3 months in Food Package I.
- <sup>3</sup> Liquid concentrate and ready-to-feed (RTF) may be substituted at rates that provide comparable nutritive value.
- <sup>4</sup> WIC formula means infant formula, exempt infant formula, or WIC-eligible medical food. Only infant formula may be issued for infants in Food Packages I and II. Exempt infant formula may only be issued for infants in Food Package III.
- <sup>5</sup> The maximum monthly allowance is specified in reconstituted fluid ounces for liquid concentrate, RTF liquid, and powder forms of infant formula and exempt infant formula. Reconstituted fluid ounce is the form prepared for consumption as directed on the container.
- <sup>6</sup> If powder infant formula is provided, State agencies must provide at least the number of reconstituted fluid ounces as the maximum allowance for the liquid concentrate form of the same product in the same Food Package up to the maximum monthly allowance for powder. State agencies must issue whole containers that are all the same size.
- <sup>7</sup> State agencies may round up and disperse whole containers of infant formula over the food package timeframe to allow participants to receive the full authorized nutritional benefit (FNB). State agencies must use the methodology described in accordance with paragraph (h)(1) of this section.
- <sup>8</sup> State agencies may round up and disperse whole containers of infant foods (infant cereal, fruits and vegetables, and meat) over the Food Package timeframe. State agencies must use the methodology described in accordance with paragraph (h)(2) of this section.
- <sup>9</sup> Fresh banana may replace up to 16 ounces of infant food fruit at a rate of 1 pound of bananas per 8 ounces of infant food fruit.
- <sup>10</sup> In lieu of infant foods (cereal, fruit and vegetables, and meat), infants greater than 6 months of age in Food Package III may receive exempt infant formula or WIC-eligible medical foods at the same maximum monthly allowance as infants ages 4 through 5 months of age of the same feeding option.

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Dated: August 25, 2009.  
**Julia Paradis,**  
*Administrator, Food and Nutrition Service.*  
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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:** Affirmation of interim final rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased 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 for nectarines and peaches grown in California (order). The interim final rule was necessary to align the Committees' expected revenue with decreases in its proposed budget for the 2009-10 fiscal period, which began March 1, 2009.

**DATES:** *Effective Date:* Effective September 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Robinson, 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: [Jen.Robinson@ams.usda.gov](mailto:Jen.Robinson@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto: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 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](mailto: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."

USDA is issuing this rule in conformance with Executive Order 12866.

Under the orders, California nectarine and peach handlers are subject to assessments, which provide funds to administer the orders. Assessment rates issued under the orders are intended to be the applicable to all assessable nectarines and peaches for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on March 1, and ends on the last day of February.

In an interim final rule published in the **Federal Register** on June 18, 2009, and effective on June 19, 2009 (74 FR 28869, Doc. No. AMS-FV-09-0013; FV09-916/917-2 IFR), §§ 916.234 and

917.258 were amended by decreasing 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. Decreases in the per-container assessment rates were possible due to significant decreases in budgeted administrative and promotional expenses for 2009.

### 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 rule 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 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.

This rule continues in effect the action that decreased 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.

This rule continues in effect the action that decreased 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.

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.

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.

Comments on the interim final rule were required to be received on or before August 17, 2009. One comment was received in support of the decreased assessment rates. 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 comment, go to: <http://www.regulations.gov/search/Regs/home.html#docketDetail?R=AMS-FV-09-0013>.

This action also affirms information contained in the interim final rule concerning the 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 this interim final rule, without change, as published in the **Federal Register** (74 FR 28869, June 18, 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 amending 7 CFR parts 916 and 917, which was published at 74 FR 28869 on June 18, 2009, is adopted as a final rule, without change.

Dated: September 21, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-23152 Filed 9-24-09; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 924

[Doc. No. AMS-FV-09-0040; FV09-924-1 FR]

#### **Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Increased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) for the 2009-10 and subsequent fiscal periods from \$1.00 to \$2.00 per ton for fresh prunes. The Committee is responsible for local administration of the marketing order regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. Assessments upon handlers of fresh prunes are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period for the marketing order began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended or terminated.

**DATES:** *Effective Date:* September 26, 2009.

**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, 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 final rule is issued under Marketing Agreement and Order No. 924 (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington-Oregon prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable Washington-Oregon prunes beginning April 1, 2009, and continue until amended, suspended, or terminated.

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 final rule increases the assessment rate established by the Committee for the 2009-10 and subsequent fiscal periods from \$1.00 to \$2.00 per ton for Washington-Oregon prunes handled under the order.

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 of prunes in designated counties in Washington and in Umatilla County, Oregon. 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 is formulated and discussed at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007-08 and subsequent fiscal periods, the Committee recommended, and the USDA approved, an assessment rate of \$1.00 per ton of prunes handled. This 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 June 2, 2009, and unanimously recommended 2009-10 expenditures of \$8,893. The major expenditures recommended by the Committee for the 2009-10 fiscal period include \$4,800 for the management fee, \$800 for Committee travel, \$100 for compliance, \$2,000 for the financial audit, and \$1,193 for equipment maintenance, insurance, bonds, and miscellaneous expenses. In comparison, the \$6,893 budget approved for the 2008-09 fiscal period included \$4,800 for the management fee, \$800 for travel expenses, \$100 for compliance, and \$1,150 for audits, equipment maintenance, insurance, bonds, and miscellaneous expenses. The major increase in expenses this year is in the audit category.

The assessment rate recommended by the Committee was derived by dividing the anticipated expenses of \$8,893 by the projected 2009 4,400-ton prune production. Applying the \$2.00 per ton assessment rate to this crop estimate should provide \$8,800 in assessment income, which, in addition to a small draw of approximately \$93.00 from the Committee's monetary reserve, should adequately cover the budgeted expenditures. The reserve balance at the end of the 2008-09 fiscal period was \$5,160. The estimated 2009-10 year-end reserve is \$5,067, which is within the order's limit of approximately one fiscal period's operational expenses. The Committee recommended the higher assessment rate in order that the budgeted expenditures—\$2,000 higher than the 2008-09 approved budget—are adequately covered and that the current reserve balance is maintained.

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