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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 916

[Docket No. FV01-916-2 FR]

#### Nectarines Grown in California; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Nectarine Administrative Committee (committee) for the 2001-02 and subsequent fiscal periods from \$0.1850 to \$0.20 per 25-pound container or container equivalent of nectarines handled. The committee locally administers the marketing order which regulates the handling of nectarines grown in California. Authorization to assess nectarine handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period runs from March 1 through the last day of February. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** October 16, 2001.

**FOR FURTHER INFORMATION CONTACT:** Toni Sasselli, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 124 and order No. 916, both as amended (7 CFR part 916), regulating the handling of nectarines grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "At."

The Department of Agriculture (Department) 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, California nectarine 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 nectarines beginning on March 1, 2001, 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 the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the committee for the 2001-02 and subsequent fiscal

periods from \$0.1850 to \$0.20 per 25-pound container or container equivalent of nectarines.

The nectarine marketing order provides authority for the committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers of California nectarines. 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 in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 fiscal period, the committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the committee or other information available to the Secretary.

The committee met on May 3, 2001, and unanimously recommended 2001-02 expenditures of \$4,338,744 and an assessment rate of \$0.20 per 25-pound container or container equivalent of nectarines. In comparison, last year's budgeted expenditures were \$399,0878. The assessment rate of \$0.20 is \$0.015 higher than the rate currently in effect.

The increase is needed as a result of a crop reduction due to spring hailstorms, and to keep the committee's reserve at an adequate level. The quantity of assessable nectarines before the hailstorms was estimated to be 24 million containers or container equivalents of nectarines. After the hailstorms, the estimate of assessable nectarines was reduced to 19,351,000 containers or container equivalents of nectarines.

The major expenditures recommended by the committee for the 2001-02 year include \$423,176 for salaries and benefits, \$157,821 for general expenses, \$1,000,000 for inspection, \$169,393 for research, and \$2,429,000 for domestic and international promotion. A total of \$159,354 is included for miscellaneous expenses.

Budgeted expenses for these items in 2001–01 were \$401,007 for salaries and benefits, \$165,948 for general expenses, \$1,100,000 for inspection, \$139,025 for research, \$2,424,000 for domestic and international promotion. A total of \$269,107 was included for miscellaneous expenses.

To reach agreement on the applicable 2001–02 assessment rate, the committee considered the total expenses of \$4,338,744; the assessable nectarines estimated at 19,351,000 25-pound containers or container equivalents; the estimated income from other sources such as interest income; and additional funds required from the committee's financial reserve at varying assessment rates.

Cognizant of the fact that the committee was in agreement regarding the total expenses estimated, as well as the estimated assessable containers or container equivalents, several assessment rates were discussed and their effects on the budget calculated. At varying assessment rates, the committee would require using more or less funds from the financial reserve to meet budgeted expenses. For example, at the current assessment rate of \$0.1850 per container or container equivalent, assessments received would be \$3,579,935 and would result in a financial reserve of \$20,628 at the end of the fiscal period. In the proposed rule, the example was incorrectly calculated using an assessment rate of \$0.19 per container or container equivalent. At the recommended assessment of \$0.20 per container or container equivalent, assessments received would be \$3,870,200 and would result in a financial reserve of \$214,138, more consistent with committee financial needs. The committee recognizes that a minimum financial reserve is necessary to meet its obligations in the early part of each fiscal year, before handler assessments are billed and received. According to the committee, the \$0.20 assessment rate will result in an adequate financial reserve.

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

Although this assessment rate will be in effect 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate 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 2001–02 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 300 California nectarine handlers subject to regulation under the order covering nectarines grown in California, and about 1,800 producers of nectarines grown in California. Small agricultural service firms, which includes handlers, are defined by the Small Business Administration (SBA; 13 CFR 121.201) as those whose annual receipts are less than \$5,000,000. Small agricultural producers are defined by the Small Business Administration as those having annual receipts of less than \$750,000. A majority of these handlers and producers may be classified as small entities, excluding receipts from other sources.

In the 2000 season, the average handler price received was \$9.00 per container or container equivalent of nectarines. A handler would have to ship at least 555,556 containers or container equivalents of nectarines to have annual receipts of \$5,000,000. Given data on shipments maintained by the committee's staff and the average handler price received during the 2000 season, the committee's staff estimates that small handlers of nectarines represent approximately 94 percent of the handlers within the industry.

When the proposed rule was published, the SBA standard for

determining small producers was \$500,000. The standard is now \$750,000. In the 2000 season, the average producer price received was \$5.50 per container or container equivalent of nectarines. A producer would have to produce at least 136,363 containers or container equivalents of nectarines to have annual receipts of \$750,000. Given data maintained by the committee's staff and the average producer price received during the 2000 season, the committee's staff estimates that small producers represent more than 80 percent of the nectarine producers within the industry.

This rule increases the assessment rate established for the committee and collected from handlers for the 2001–02 and subsequent fiscal periods from \$0.1850 to \$0.20 per 25-pound container or container equivalent of nectarines. The committee unanimously recommended 2001–02 expenditures of \$4,338,774 and an assessment rate of \$0.20 per 25-pound container or container equivalent of nectarines. The assessment rate of \$0.20 is \$0.015 higher than the current rate. The quantity of assessable nectarines for the 2001–02 fiscal year is estimated at 19,351,000 25-pound container or container equivalents. Thus, the \$0.20 rate should provide \$3,870,200 in assessment income. Income derived from handler assessments, along with other income and funds from the committee's authorized reserve would be adequate to cover budgeted expenses.

The major expenditures recommended by the committee for the 2001–02 year include \$423,176 for salaries and benefits, \$157,821 for general expenses, \$1,000,000 for inspection, \$169,393 for research, and \$2,429,000 for domestic and international promotion. A total of \$159,354 is included for miscellaneous expenses.

Budgeted expenses for these items in 2000–01 were \$401,007 for salaries and benefits, \$165,948 for general expenses, \$1,100,000 for inspection, \$139,025 for research, \$2,424,000 for domestic and international promotion. A total of \$269,107 was included for miscellaneous expenses.

The increase is needed as a result of a crop reduction due to spring hailstorms, and to keep the committee's reserve at an adequate level. The assessable nectarine estimate before the hailstorms was 24 million containers or container equivalents of nectarines. After the hailstorms, the estimate was reduced to 19,351,000 containers or container equivalents of nectarines. The committee reviewed and unanimously recommended 2001–02 expenditures of

\$4,338,774. Prior to arriving at this budget, the committee considered information and recommendations from various sources, including, but not limited to: The Management Services Committee, the Research Subcommittee, the International Programs Subcommittee, the Grade and Size Subcommittee, the Domestic Promotion Subcommittee, and the Grower Relations Subcommittee. Some of these subcommittees discussed alternatives to increasing the assessment rate, such as permitting the rate to remain the same or increasing the rate to \$0.19 or \$0.195 per 25-pound container or container equivalent. The assessment rate of \$0.20 per 25-pound container or container equivalent, is expected to result in an operating reserve of \$214,138, more in line with committee financial needs. The \$0.20 rate was subsequently recommended to the committee by the Management Services Committee.

As noted earlier, the committee then considered the total estimated expenses, the total estimated assessable 25-pound containers or container equivalents, the estimated income from other sources such as interest income, and additional funds required from the committee's financial reserve at varying assessment rates, as the subcommittees had done, prior to recommending a final assessment rate. Depending on the assessment rate established, the committee would require more or less funds from the financial reserve, which the committee uses to meet its obligations prior to billing and receiving handler assessments the following year. Based on those deliberations, an assessment rate of \$0.20 per 25-pound container or container equivalent was agreed upon and recommended to the Department. Such an assessment rate would result in an adequate financial reserve.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2001–02 seasons could range between \$5.50 and \$6.00 per 25-pound container or container equivalent of nectarines. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 3.35 and 3.65 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was

widely publicized throughout the California nectarine industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the May 3, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule 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.

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

A proposed rule concerning this action was published in the **Federal Register** on August 1, 2001 (66 FR 39690) copies of the proposed rule were also mailed or sent via facsimile to all nectarine handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 31, 2001, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specially 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 also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are receiving, packing and shipping 2001 crop nectarines, and the fiscal period began on March 1, 2001, and the assessment rate applies to all nectarines received during the 2001–02 and subsequent seasons. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and comments were received.

#### List of Subjects in 7 CFR Part 916

Nectarines, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 916 is amended as follows:

#### PART 916—NECTARINES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 916 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 916.234 is revised to read as follows:

##### **§ 916.234 Assessment rate.**

On and after March 1, 2001, an assessment rate of \$0.20 per 25-pound container or container equivalent of nectarines is established for California nectarines.

Dated: October 5, 2001.

**Kenneth C. Clayton,**

*Agricultural Marketing Service.*

[FR Doc. 01–25783 Filed 10–12–01; 8:45 am]

**BILLING CODE 3410–02–M**

#### DEPARTMENT OF AGRICULTURE

##### **Agricultural Marketing Service**

##### **7 CFR Part 948**

[Docket No. FV01–948–3 FR]

##### **Irish Potatoes Grown in Colorado; Increased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the Colorado Potato Administrative Committee, Area II (Committee), for the 2001–02 and subsequent fiscal periods from \$0.0015 to \$0.0035 per hundredweight of potatoes handled. The Committee locally administers the marketing order, which regulates the handling of potatoes grown in Colorado. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** October 16, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dennis L. West, Northwest Marketing Field Office, Marketing Order