Rules and Regulations

Federal Register
Vol. 72, No. 153
Thursday, August 9, 2007

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–07–0053; FV07–916/917–5 FR]

Nectarines and Peaches Grown in California; Decreased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2007–08 and subsequent fiscal periods from $0.21 to $0.06 per 25-pound container or container equivalent of nectarines and peaches handled. The committees locally administer the marketing orders that 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 period runs from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 10, 2007.

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.Garcia3@usda.gov* or *Kurt.Kimmel@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@usda.gov.*

SUPPLEMENTARY INFORMATION: This final 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 final 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 will be applicable to all assessable nectarines and peaches beginning on March 1, 2007, 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 Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC) for the 2007–08 and subsequent fiscal periods from $0.21 to $0.06 per 25-pound container or container equivalent of nectarines and peaches handled.

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 2006–07 fiscal period, the NAC recommended, and USDA approved, an assessment rate of $0.21 per 25-pound container or container equivalent of nectarines that will 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 May 1, 2007, and unanimously recommended 2007–08 expenditures of $1,446,654 and an assessment rate of $0.06 per 25-pound container or container equivalent of nectarines. In comparison, the budgeted expenditures for the 2006–07 fiscal period were $4,473,764. The assessment rate of $0.06 per 25-pound container or container equivalent of nectarines is $0.15 lower than the rate currently in effect. Combining expected assessment revenue of $1,140,000 with the $322,051 carryover available from the 2006–07 fiscal period and other income, such as interest and research grants, should be adequate to meet committee needs. The assessment rate is also likely to provide a $127,133 reserve, which may be used to cover administrative expenses prior to the beginning of the 2008–09 shipping season as provided in the order (§ 916.42). Funds in the reserve will be kept within the maximum permitted by the order, approximately one year's expenses.

The NAC recommended a substantially reduced 2007–08 fiscal period budget and assessment rate because promotional activities, as well as portions of the committee's administrative and inspection programs, have been discontinued. A new California State marketing program that will conduct such activities has been implemented. An interim final rule discussing the implementation of this marketing program was published on April 16, 2007, in the **Federal Register** at 72 FR 18847.

Expenditures recommended by the NAC for the 2007–08 fiscal period include $262,444 for administration, $37,476 for inspection and compliance, $196,147 for production research, and $950,587 for consumer and category research. Budgeted expenses for these items in 2006–07 were $567,856 for administration; $1,070,832 for inspection; $201,702 for production research; and $2,633,374 for promotions, which included consumer and category research.

The NAC 2007–08 fiscal period assessment rate was derived after considering anticipated fiscal year expenses; estimated assessable nectarines of 19,000,000 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 2008–09 fiscal period. Therefore, the NAC recommended an assessment rate of $0.06 per 25-pound container or container equivalent.

PCC Assessment and Expenses

For the 2006–07 fiscal period, the PCC recommended, and USDA approved, an assessment rate of $0.21 per 25-pound container or container equivalent of peaches that will 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 May 1, 2007, and recommended 2007–08 expenditures of $1,486,971 and an assessment rate of $0.06 per 25-pound container or container equivalent of peaches. In comparison, budgeted expenditures for the 2006–07 fiscal period were $4,988,914. The assessment rate of $0.06 per 25-pound container or container equivalent of peaches is $0.15 lower than the rate currently in effect. Combining expected assessment revenues of $1,200,000 with the $420,386 carryover available from the 2006–07 fiscal period and other income such as interest and research grants should be adequate to meet committee needs. The assessment rate is also likely to provide a $188,222 reserve, which may be used to cover administrative expenses prior to the beginning of the 2008–09 shipping season as provided in the order (§ 917.38). Funds in the reserve will be kept within the maximum permitted by the order, approximately one year's expenses.

The PCC recommended a substantially reduced 2007–08 fiscal period budget and assessment rate because promotional activities, as well as portions of the committee's administrative and inspection programs, have been discontinued. A new California State marketing program that will conduct such activities has been implemented. An interim final rule discussing the implementation of this marketing program was published on April 16, 2007, in the **Federal Register** at 72 FR 18847.

Expenditures recommended by the PCC for the 2007–08 fiscal period include $267,025 for administration, $87,693 for inspection and compliance, $196,149 for production research, and $936,104 for consumer and category research. Budgeted expenses for these items in 2006–07 were $936,104 for administration; $1,299,211 for inspection; $210,718 for production research; and $2,849,961 for promotions, which included consumer and category research.

The PCC 2007–08 fiscal period assessment rate was derived after considering anticipated fiscal year expenses; estimated assessable peaches 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 PCC into the 2008–09 fiscal period. Therefore, the PCC recommended an assessment rate of $0.06 per 25-pound container or container equivalent.

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 will be 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' 2007–08 fiscal period budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

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.

There are approximately 676 producers of nectarines and peaches in the production area and approximately 175 handlers subject to regulation under the orders. 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 $6,500,000.

According to the committees' staff, approximately 85 percent of all the handlers within the industry may be classified as small entities. For the 2006 marketing season, 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 722,223 containers to have annual receipts of $6,500,000.

Also, the committees' staff has estimated that more than 90 percent of all the producers in the industry may be classified as small entities. For the 2006 marketing season, staff estimated the average producer price received was $4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 containers of nectarines and peaches to have annual receipts of $750,000.

With an average producer price of $4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 36,388,996 containers, the value of the 2006 packout is estimated to be $163,750,482. Dividing this total estimated grower revenue figure by the estimated number of producers (676) yields an estimate of average revenue per producer of about $242,234 from the sales of peaches and nectarines.

This rule decreases the assessment rates established for NAC and PCC for the 2007–08 and subsequent fiscal periods from $0.21 to $0.06 per 25-pound container or container equivalent of nectarines or peaches.

The NAC recommended 2007–08 fiscal period expenditures of $1,446,654 for nectarines and an assessment rate of $0.06 per 25-pound container or container equivalent of nectarines. The PCC recommended 2007–08 fiscal period expenditures of $1,486,971 for peaches and an assessment rate of $0.06 per 25-pound container or container equivalent of peaches. The assessment rates of $0.06 are $0.15 lower than the rates currently in effect.

Analysis of NAC Budget

The quantity of assessable nectarines for the 2007–08 fiscal period is estimated at 19,000,000 25-pound containers or container equivalents. Thus, the $0.06 rate should provide $1,140,000 in assessment income.

The major expenditures recommended by the NAC for the 2007–08 year include $262,444 for administration; $37,476 for inspection and compliance; $196,147 for production research; and $950,587 for consumer and category research, which were previously included in the promotions budget. Budgeted expenses for these items in 2006–07 were $567,856, $1,070,832, $201,702, and $2,633,374, respectively.

The NAC recommended a decrease in the assessment rate to meet anticipated 2007–08 expenses and provide a financial reserve of $127,133, which is needed to fund expenses for the following year until assessments for that year are received.

Analysis of PCC Budget

The quantity of assessable peaches for the 2007–08 fiscal year is estimated at 20,000,000 25-pound containers or container equivalents. Thus, the $0.06 rate should provide $1,200,000 in assessment income.

The major expenditures recommended by PCC for the 2007–08 year include $267,025 for administration; $87,693 for inspection and compliance; $196,149 for production research; and $936,104 for consumer and category research, which were previously included in the promotions budget. Budgeted expenses for these items in 2006–07 were $629,024, $1,299,211, $210,718, and $2,849,961, respectively.

The PCC recommended a decrease in the assessment rate to meet anticipated 2007–08 fiscal period expenses and provide a financial reserve of $188,222, which is needed to fund expenses for the following year until assessments for that year are received.

Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the committees considered information and recommendations from various sources, including, but not limited to: their Executive Committee, their Research Subcommittee, their International Programs Subcommittee, their Domestic Promotion Subcommittee, and the Nectarine and Peach Estimating Committees. Because fewer programs will be conducted under the Federal orders during this fiscal year compared to previous years, the committees decided the assessment rates should be reduced to prevent the accumulation of reserves beyond the levels allowed under the orders. Therefore, they recommended decreasing the assessment rates to $0.06 per 25-pound container or container equivalent. This will allow them to meet their 2007–08 fiscal period expenses and carry over necessary reserves to finance operations before 2008–09 fiscal period assessments are collected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower 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 grower revenue could range between .75 and 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 will 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 were encouraged to participate in the committees' deliberations on all issues. Like all committee meetings, the May 1, 2007, meetings were public meetings and entities of all sizes 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 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 proposed rule concerning this action was published in the **Federal Register** on June 20, 2007 (72 FR 33919). Copies of the proposed rule were distributed via the committees' Web site. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period which ended July 2, 2007, was provided for interested persons to respond to the proposal. One comment supporting the proposal was received.

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 committees 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 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 2007–08 fiscal period began on March 1, 2007, 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) this rule decreases the assessment rates for assessable nectarines and peaches beginning with the 2007–08 fiscal period; and (3) handlers are aware of this action, which was discussed by the committees at public meetings and recommended at their meetings on May 1, 2007, and is similar to other assessment rate actions issued in past years. Also, a 10-day comment period was provided for in the proposed 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, 2007, an assessment rate of $0.06 per 25-pound container or container equivalent of nectarines is established for California nectarines.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

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

§ 917.258 Assessment rate.

On and after March 1, 2007, an assessment rate of $0.06 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: August 2, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–15393 Filed 8–8–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28015; Directorate Identifier 2006–NM–210–AD; Amendment 39–15147; AD 2007–16–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. That AD currently requires repetitive inspections for cracking of the station 800 frame assembly, and repair if necessary. This new AD revises certain applicabilities and compliance times in the existing AD. This AD results from several reports of cracks of the station 800 frame assembly on airplanes that had accumulated fewer total flight cycles than the initial inspection threshold in the original AD. We are issuing this AD to detect and correct fatigue cracks that could extend and fully sever the frame, which could result in development of skin cracks that could lead to rapid depressurization of the airplane.

DATES: This AD becomes effective September 13, 2007.

On July 17, 2006 (71 FR 33595, June 12, 2006), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2451, Revision 1, dated November 10, 2005.

On August 30, 2001 (66 FR 38891, July 26, 2001), the Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin 747–53A2451, including Appendix A, dated October 5, 2000.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–12–12, amendment 39–14638 (71 FR 33595, June 12, 2006). The existing AD applies to all Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–300, 747–400, 747–400D, and 747SR series airplanes. That NPRM was published in the **Federal Register** on April 26, 2007 (72 FR 20782). That NPRM proposed to continue to require repetitive inspections for cracking of the station 800 frame assembly, and repair if necessary. That NPRM also proposed to revise certain applicabilities and compliance times in the existing AD.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the single comment that has been received on the NPRM. The commenter, Boeing, supports the NPRM.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

We have carefully reviewed the available data, including the comment that has been received, and determined that air safety and the public interest require adopting the AD with the change described previously. We have determined that this change will neither increase the economic burden on any