

and grapefruit grown in the Lower Rio Grande Valley in Texas.

Dated: July 15, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

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BILLING CODE 3410-02-P

## 7 CFR Parts 916 and 917

[Docket No. FV96-916-1 IFR]

### Nectarines and Fresh Peaches Grown in California; Assessment Rate

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

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

**SUMMARY:** This interim final rule establishes an assessment rate for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) under Marketing Order Nos. 916 and 917 for the 1996-97 and subsequent fiscal periods. The Committees are responsible for local administration of the marketing orders which regulate the handling of nectarines and fresh peaches grown in California. Authorization to assess nectarine and fresh peach handlers enable the Committees to incur expenses that are reasonable and necessary to administer the programs.

**DATES:** Effective on March 1, 1996. Comments received by August 21, 1996, 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, FAX (202) 720-5698. 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.

**FOR FURTHER INFORMATION CONTACT:** Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, (209) 487-5901, FAX (209) 487-5906, or Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-5127, FAX (202) 720-5698. Small businesses may request information on compliance with this

regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 916 and Order No. 916, both as amended (7 CFR part 916), regulating the handling of nectarines grown in California, and Marketing Agreement No. 917 and Order No. 917, both as amended (7 CFR part 917), regulating the handling of fresh peaches grown in California, hereinafter referred to as the "orders." The marketing agreements and 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing orders now in effect, California nectarine and fresh peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable nectarines and peaches beginning March 1, 1996, and continuing 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.

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.

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 1,800 producers of nectarines and peaches in the production area and approximately 300 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of nectarine and fresh peach producers and handlers may be classified as small entities.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of the Department, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers of California nectarines and fresh peaches. They are familiar with the Committees' needs and with the costs for goods and services in their local area and are thus 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.

The Nectarine Administrative Committee met on May 2, 1996, and unanimously recommended 1996-97 expenditures of \$3,682,728 and an assessment rate of \$0.1850 per 25-pound container or equivalent of nectarines. In comparison, last year's budgeted expenditures were \$3,683,031. The assessment rate of \$0.1850 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996-97 year include \$1,326,376 for domestic market development, \$972,300 for inspection, \$342,250 in salaries and benefits, and \$120,870 for research.

The Peach Commodity Committee met on May 1, 1996, and unanimously recommended 1996-97 expenditures of \$3,722,757 and an assessment rate of

\$0.1900 per 25-pound container or equivalent of fresh peaches. In comparison, last year's budgeted expenditures were \$3,736,531. The assessment rate of \$0.1900 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996-97 year include \$1,326,376 for domestic market development, \$991,500 for inspection, \$342,250 in salaries and benefits, and \$120,870 for research.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of California nectarines and fresh peaches. Nectarine shipments for the year are estimated at 17,266,000 25-pound containers or equivalent which should provide \$3,194,210 in assessment income, and fresh peach shipments for the year are estimated at 17,250,000 25-pound containers or equivalent which should provide \$3,277,500 in assessment income. Income derived from handler assessments, the Plum Commodity Committee, and the Pear Field Service, along with interest income and funds from the Committees' authorized reserves, will be adequate to cover budgeted expenses. Funds in the reserves will be kept within the maximum permitted by the orders.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

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

Although these assessment rates are effective 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 their assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate the Committees' recommendations and other available information to determine

whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Committees' 1996-97 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 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 Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal period began on March 1, 1996, 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; (3) handlers are aware of this action which was unanimously recommended by the Committees at public meetings and are similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

#### **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. A new subpart—Assessment Rates and a new §916.234 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

#### **Subpart—Assessment Rates**

##### **§ 916.234 Assessment rate.**

On and after March 1, 1996, an assessment rate of \$0.1850 per 25-pound container or equivalent of nectarines is established for California nectarines.

#### **PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA**

1. The authority citation for 7 CFR part 917 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. A new subpart—Assessment Rates and a new §917.258 are added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

#### **Subpart—Assessment Rates**

##### **§ 917.258 Assessment rate.**

On and after March 1, 1996, an assessment rate of \$0.1900 per 25-pound container or equivalent of fresh peaches is established for California fresh peaches.

Dated: July 15, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

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#### **Rural Utilities Service**

##### **7 CFR Part 1703**

##### **RIN 0572-AB22**

#### **Distance Learning and Telemedicine Grant Program; Correction**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Correction to final regulation.

**SUMMARY:** This document contains corrections to the final regulation on the distance learning and telemedicine grant program which was published Thursday, June 27, 1996, (61 FR 33622). Due to inadvertent errors in the final rule that may prove to be misleading, the Rural Utilities Service (RUS) is publishing this correction.

**EFFECTIVE DATE:** June 27, 1996.

**FOR FURTHER INFORMATION CONTACT:** Barbara L. Eddy, Deputy Assistant Administrator, Telecommunications Program, (202) 720-9549.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

RUS published a final rule in the Federal Register on Thursday, June 27,