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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

[Docket No. FV02–916–2 IFR]

Nectarines Grown in California; 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 Nectarine Administrative Committee (committee) for the 2002–03 and subsequent fiscal periods from $0.20 to $0.19 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.

DATES: June 26, 2002. Comments received by August 26, 2002, 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 e-mail: *moab.docketclerk@usda.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.ams.usda.gov/fv/moab.html.*

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, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; 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, 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 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 ''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, California nectarine handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable nectarines beginning on March 1, 2002, 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 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 the 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 2002–03 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of nectarines.

The nectarine marketing order provides authority for the committee, with the approval of the USDA, 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 2001–02 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 USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on May 1, 2002, and unanimously recommended 2002–03 expenditures of $4,671,342 and an assessment rate of $0.19 per 25-pound container or container equivalent of nectarines. In comparison, last year's budgeted expenditures were $4,338,744. The recommended rate is $0.01 lower than the rate currently in effect.

The decrease was recommended because the crop is expected to be larger than estimated earlier this year. In early spring, the crop was estimated to be 22 million containers or container equivalents of nectarines. The crop is now estimated to be more than 23 million containers or container equivalents. Assessment income and funds from the committee's operating reserve will be adequate to cover approved committee expenses in 2002–03.

The major expenditures recommended by the committee for 2002–03 include $505,000 for salaries and benefits, $309,039 for general expenses, $1,050,000 for inspection, $138,018 for research, and $2,574,160 for domestic and international promotion.

Budgeted expenses for these items in 2001–02 were $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.

To determine the applicable 2002–03 assessment rate, the committee considered the total expenses of $4,671,342, and the assessable nectarines estimated at 23,248,000 25-pound containers or container equivalents. At that rate, assessment income for 2002–03 will be $4,417,120. The committee began 2002–03 with $684,368 in operating reserves and expects to end the fiscal period with $350,000. Section 916.42 authorizes a reserve equal to about one fiscal period's expenses. Funds from the committee's operating reserve will be kept within the maximum permitted.

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

Although this assessment rate would be in effect for an indefinite period, the committee will continue to meet prior to each fiscal period to recommend a budget of expenses and meet during each fiscal period to 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 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 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

Initial 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 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. 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 include handlers, are defined by the Small Business Administration (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.

In the 2001 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. Based on shipment data maintained by the committee's staff, it is estimated that small handlers of nectarines represent approximately 94 percent of the handlers within the industry.

In the 2001 season, the average producer price received was $5.50 per container or container equivalent of nectarines. A producer would have to produce at least 136,364 containers or container equivalents of nectarines to have annual receipts of $750,000. Based on data maintained by the committee's staff, it is estimated that small producers represent approximately 78 percent of the nectarine producers within the industry.

This rule decreases the assessment rate established for the committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of nectarines. The committee unanimously recommended 2002–03 expenditures of $4,671,342 and an assessment rate of $0.19 per 25-pound container or container equivalent of nectarines. The recommended assessment rate is $0.01 lower than the current rate. The quantity of assessable nectarines for the 2002–03 fiscal year is estimated at 23,248,000 25-pound containers or container equivalents. Thus, the $0.19 rate should provide $4,417,120 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 2002–03 year include $505,000 for salaries and benefits, $309,039 for general expenses, $1,050,000 for inspection, $138,018 for research, and $2,574,160 for domestic and international promotion.

Budgeted expenses for these items in 2001–02 were $423,176 for salaries and benefits, $157,821 for general expenses, $1,000,00 for inspection, $169,393 for research, $2,429,000 for domestic and international promotion.

The decrease was recommended because the crop is expected to be larger than estimated earlier in the year. The crop estimate in early spring was 22 million containers or container equivalents of nectarines. The crop is now estimated to be more than 23 million containers or container equivalents. The committee reviewed and unanimously recommended 2002–03 expenditures of $4,671,342.

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. The assessment rate of $0.19 per 25-pound container or container equivalent is expected to result in an operating reserve of $350,000, which is less than the committee generally recommends, but considered adequate to meet the committee's financial needs in the early part of the 2003 season.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 season could range between $5.50 and $6.00 per 25-pound container or container equivalent of nectarines. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could range between 3.17 and 3.45 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 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 1, 2002, 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 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. 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 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) This assessment rate is lower than the assessment rate currently in effect; (2) the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) the 2002–03 fiscal period began on March 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable nectarines handled during such fiscal period; (4) handlers are aware of this action which was unanimously recommended by the committee at public meetings and is similar to other assessment rate actions issued in past years; and (5) 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 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, 2002, an assessment rate of $0.19 per 25-pound container or container equivalent of nectarines is established for California nectarines.

Dated: June 20, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–15962 Filed 6–24–02; 8:45 am]

BILLING CODE 3410–02–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB60

Profile Documents for Commodity Pools; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations that were published in the **Federal Register** of October 2, 2000 (65 FR 58648). The regulations related to accommodating National Futures Association's (''NFA'') Rule 2–35(d) regarding profile documents for commodity pools and establishing procedures for the use, amendment and filing of profile documents that are parallel to those applicable to disclosure documents.

DATES: Effective July 25, 2002.

FOR FURTHER INFORMATION CONTACT: Eileen R. Chotiner, Futures Trading Specialist, (202) 418–5467, electronic mail: ''echotiner@cftc.gov,'' Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Commission regulation 4.26(b), which was adopted in 1995,[1] required a commodity pool operator (''CPO'') to attach the most current account statement and annual report for the pool to the disclosure document used to solicit prospective participants. As an alternative to attaching the account statement, the COP was permitted to provide information concerning the performance of the pool that was current within 60 days of the date the disclosure document was distributed.

In July 2000, the Commission proposed changes to its rules to permit CPOs to use a summary or ''profile'' comment prior to delivery of the pool's disclosure document, in accordance with rules proposed by NFA.[2] The sole change the Commission proposed to Rule 4.26 was to extend to profile documents the provision requiring correction of a materially inaccurate or incomplete disclosure document. The Commission received only one comment letter on the proposed changes, which supported the amendments. The comment letter did not address the proposed change to Rule 4.26.

The commission adopted final rules that were essentially the same as those proposed.[3] Subsequent to publication of these rules, it has come to the Commission's attention that the revised text was inadvertently substituted for section 4.26(b) rather than 4.26(c). Today's amendment restores the text of 4.26(b), which requires that the most recent account statement and annual report be attached to commodity pool disclosure documents, and deletes the text of 4.26(c) that was intended to be replaced.

Section 553(b) of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b), generally requires that notice of proposed rulemaking be published in the Federal Register and that an opportunity for public comment be

[1] 46 FR 38146 at 38189 (July 25, 1995).

[2] 65 FR 46122 (July 27, 2000).

[3] 65 FR 58648 (October 2, 2000).