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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 916

[Docket No. FV02–916–2 FIR]

Nectarines Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased 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 will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 17, 2002.

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.''

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 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, 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 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 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 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 continues in effect the decreased assessment rate established for the committee for the 2002–03 and subsequent fiscal periods. The rate was decreased 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 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 USDA 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 previous rate.

The decrease was recommended because the crop is expected to be larger than originally estimated. 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 the $0.19 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 approximately one fiscal period's expenses. Funds from the committee's operating reserve will be kept within the maximum permitted.

The 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.

Although this assessment rate is effective for an indefinite period, the committee will continue to meet annually to recommend a budget of expenses and 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 will 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. 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 continues in effect the decreased assessment rate established for the committee and collected from handlers for the 2002–03 and subsequent fiscal periods. The assessment rate was decreased 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 previous 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 will 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 originally estimated. 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 continues in effect the decreased 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. 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.

An interim final rule concerning this action was published in the **Federal Register** on June 25, 2002 (67 FR 42707). Copies of that rule were made available to all nectarine growers. Finally, the interim final rule was made available through the Internet by the Office of the Federal Register and USDA. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on August 26, 2002, and no comments were 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 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.

List of Subjects in 7 CFR Part 916

Nectarines, Marketing agreements, Reporting and recordkeeping requirements.

PART 916—NECTARINES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 916 which was published at 67 FR 42707 on June 25, 2002, is adopted as a final rule without change.

Dated: September 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–23550 Filed 9–16–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV02–955–1 FIR]

Vidalia Onions Grown in Georgia; Revision of Reporting and Assessment Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule revising the reporting and assessment requirements prescribed under the marketing order for Vidalia onions grown in Georgia (order). The order regulates the handling of Vidalia onions grown in Georgia, and is administered locally by the Vidalia Onion Committee (Committee). This rule continues in effect the change from monthly shipment reporting to weekly reporting. It also continues in effect changes in when assessments are due and how delinquent assessments are handled. This rule provides the industry with more accurate and timely shipment and supply information and facilitates the collection of assessments.

EFFECTIVE DATE: October 17, 2002.

FOR FURTHER INFORMATION CONTACT: William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; 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 and Order No. 955, (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, 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.’’

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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. A 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 continues in effect changes to the reporting and assessment requirements prescribed under the order. This rule continues in effect the change from monthly shipment reporting to weekly reporting. It also continues in effect changes in when assessments are due and how delinquent assessments are handled. This rule provides the industry with more accurate and timely shipment and supply information and facilitates assessment collection. The Committee unanimously recommended these changes at a meeting held on December 6, 2001.

Section 955.60 of the order provides authority for the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform its duties. Section 955.101 of the regulations provides the requisite reporting requirements. Previously, handlers were required to file monthly reports including the name and address of the handler, the period covered in the report, the total Vidalia onions received by the handler, and the handler's total fresh market shipments.

Section 955.42 provides the authority for the formulation of an annual budget of expenses and the collection of assessments from handlers to administer