

# Rules and Regulations

Federal Register

Vol. 74, No. 144

Wednesday, July 29, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Doc. No. AMS-FV-08-0108; FV09-916/917-1 FIR]

#### Nectarines and Peaches Grown in California; Changes in Handling Requirements for Fresh Nectarines and Peaches

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

**ACTION:** Affirmation of interim final rule as final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that changed the handling requirements applicable to well-matured fruit covered under the nectarine and peach marketing orders (orders). The interim final rule updated the lists of commercially significant varieties subject to size regulations under the orders. The interim final rule was necessary to revise the regulations for the current marketing season, which began in April.

**DATES:** *Effective Date:* Effective July 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Robinson, Marketing Specialist, or Kurt J. 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: [Jen.Robinson@ams.usda.gov](mailto:Jen.Robinson@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.usda.gov).

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: <http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=Marketing>

*OrdersSmallBusinessGuide*; or 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@ams.usda.gov](mailto:Jay.Guerber@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This 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.

The shipping of "well-matured" nectarines and peaches grown in California is regulated by 7 CFR parts 916 and 917, respectively. Among other things, certain varieties of fruit are subject to variety-specific size restrictions. The lists of commercially-significant varieties so regulated are updated regularly as the volume of new varieties increases and as older varieties become obsolete. The sizes of varieties not subject to variety-specific regulations are regulated under generic regulations contained in the orders.

In an interim final rule published in the **Federal Register** on February 20, 2009, and effective on February 21, 2009 (74 FR 7778, Doc. No AMS-FV-08-0108, FV09-916/917-1 IFR), §§ 916.356 and 917.459 were amended by adding ten nectarine varieties and seven peach varieties to the lists of commercially-significant varieties that are subject to variety-specific size regulations under the orders. Additionally, four nectarine varieties and five peach varieties were removed from the variety-specific size regulations. Finally, a reference to the regulation of other than "well-matured" peaches was removed from § 917.459(a)(6)(iii) to conform with previous changes to the order.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has

considered the economic impact of this action 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

#### Industry Information

There are approximately 120 California nectarine and peach handlers subject to regulation under the orders, and approximately 550 producers of these fruits in the production area. Small agricultural service firms, which include handlers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than \$7,000,000. Small agricultural producers are defined as those having annual receipts of less than \$750,000. A majority of these handlers and producers may be classified as small entities.

For the 2008 season, the committees' 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 777,778 containers to have annual receipts of \$7,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2008 season, the committees' staff estimates that approximately 78 percent of all the handlers within the industry would be considered small handlers.

For the 2008 season, the committees estimated the average producer price received was \$4.25 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 176,471 containers of nectarines and peaches to have annual receipts of \$750,000. Given data maintained by the committees' staff and the average producer price received during the 2008 season, the committees' staff estimates that more than 88 percent of the producers within the industry would be considered small producers.

With an average producer price of \$4.25 per container or container equivalent, and a combined packout of

nectarines and peaches of 45,543,561 containers, the value of the 2008 packout is estimated to be \$193,560,134. Dividing this total estimated grower revenue figure by the estimated number of producers (550) yields an estimated average revenue per producer of about \$351,928 from the sales of peaches and nectarines.

Under authority provided in §§ 916.52 and 917.41 of the orders, grade, size, maturity, pack, and container marking requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis.

Sections 916.356 and 917.459 of the orders' rules and regulations establish minimum sizes for various varieties of nectarines and peaches. This rule continues in effect the action that adjusted the minimum fruit sizes authorized for certain varieties of each commodity for the 2009 season. Minimum size regulations are put in place to encourage producers to leave fruit on the trees for a longer period of time, increasing both maturity and fruit size. Increased fruit size increases the number of packed containers per acre and, coupled with heightened maturity levels, also provides greater consumer satisfaction, which in turn fosters repeat purchases that benefit producers and handlers alike.

Annual adjustments to minimum sizes of nectarines and peaches, such as these, are recommended by the committees based upon historical data, producer and handler information regarding sizes attained by different varieties, and trends in consumer purchases.

An alternative to such action would include not establishing minimum size regulations for these new varieties. Such an action, however, would be a significant departure from the committees' past practices and represent a significant change in the regulations as they currently exist. For these reasons, this alternative was not recommended.

The committees make recommendations regarding the revisions in handling requirements after considering all available information, including comments received by committee staff. At the meetings, the impact of and alternatives to these recommendations are deliberated. The committees consist of individual producers and handlers with many years of experience in the industry who are familiar with industry practices and trends. All committee meetings are open to the public and comments are widely solicited. In addition, minutes of all meetings are distributed to committee

members and others who have requested them, and are also available on the committees' Web site, thereby increasing the availability of this critical information within the industry.

Regarding the impact of this action on the affected entities, both large and small entities are expected to benefit from the changes, and the costs of compliance are not expected to be significantly different between large and small entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large nectarine and peach 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.

In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the committees' meetings were widely publicized throughout the nectarine and peach industry and all interested parties were invited to attend the meetings and participate in committee deliberations. Like all committee meetings, the November 25, 2008, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. Also, the committees have a number of appointed subcommittees to review certain issues and make recommendations to the committees. The committees' Tree Fruit Quality Subcommittee met on October 29, 2008, and discussed this issue in detail. That meeting was also a public meeting and both large and small entities were able to participate and express their views.

Comments on the interim final rule were required to be received on or before April 21, 2009. One comment, supporting the interim final rule, was received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule and the comment received, go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0108>.

This action also affirms information contained in the interim final rule concerning Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without

change, as published in the **Federal Register** (74 FR 7778, February 20, 2009) will tend to effectuate the declared policy of the Act.

#### 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.

#### PARTS 916 AND 917—[AMENDED]

■ Accordingly, the interim final rule that amended 7 CFR parts 916 and 917 and that was published at 74 FR 7778 on February 20, 2009, is adopted as final rule, without change.

Dated: July 24, 2009.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. E9-18099 Filed 7-28-09; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 922

[Doc. No. AMS-FV-09-0038; FV09-922-1 IFR]

#### Apricots Grown in Designated Counties in Washington; 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 Washington Apricot Marketing Committee (Committee) for the 2009-2010 and subsequent fiscal periods from \$2.00 to \$1.00 per ton of apricots handled. The Committee locally administers the marketing order, which regulates the handling of apricots grown in designated counties in Washington. Assessments upon apricot handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective July 30, 2009.

Comments received by September 28,