

**COLORADO****Arapahoe-Denver***Survey Area*

Colorado:  
Arapahoe  
Denver

*Area of Application. Survey area plus:*

Colorado:  
Mesa

\* \* \* \* \*

[FR Doc. 05-16593 Filed 8-19-05; 8:45 am]

**BILLING CODE 6325-39-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 916 and 917**

[Docket No. FV05-916-3 PR]

**Nectarines and Peaches Grown in California; Increased Assessment Rates**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2005-06 and subsequent fiscal periods from \$0.195 and \$0.19, respectively, to \$0.20 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. Authorization to assess nectarine and peach handlers enables the committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period runs from March 1 through the last day of February. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by September 1, 2005.

**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:**

Laurel May, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (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 Nos. 85 and 124 and 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 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 (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 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 as proposed herein would be applicable to all assessable nectarines and peaches beginning on March 1, 2005, 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 would increase the assessment rate established for the Nectarine Administrative Committee (NAC) for the 2005-06 and subsequent fiscal periods from \$0.195 to \$0.20 per 25-pound container or container equivalent of nectarines. This rule would also increase the assessment rate established for the Peach Commodity Committee (PCC) for the 2005-06 and subsequent fiscal periods from \$0.19 to \$0.20 per 25-pound container or container equivalent of peaches.

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 the 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**

The NAC recommended, for the 2004-05 fiscal period, and USDA approved, an assessment rate of \$0.195 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 NAC met on April 28, 2005, and discussed and unanimously recommended 2005-06 expenditures and an assessment rate of \$0.20 per 25-pound container or container equivalent of nectarines. Subsequently, the NAC revised its budget recommendation because it anticipated higher administrative overhead expenses than it had forecast earlier. In a mail vote completed on June 28, 2005, the NAC

unanimously recommended 2005–06 expenditures of \$4,919,049. In comparison, the budgeted expenditures for 2004–05 were \$5,162,866. The assessment rate of \$0.20 is \$0.005 higher than the rate currently in effect.

The rate increase was recommended to ensure that the NAC could meet its 2005–06 anticipated expenses and carry over a financial reserve that would provide adequate funds for promotional and other activities at the beginning of the 2006 season before assessment collections begin. Increasing the assessment rate from \$0.195 to \$0.20 per 25-pound container is expected to provide about \$103,410 in additional assessment revenue, and would allow the NAC to start the 2006 season with about \$342,347.

Expenditures recommended by the NAC for the 2005–06 fiscal period include \$899,288 for administration, \$1,167,381 for inspection, \$203,230 for research, and \$2,649,149 for domestic and international promotion. Budgeted expenses for these items in 2004–05 were \$538,770 for administration, \$1,153,676 for inspection, \$308,568 for research, and \$3,161,852 for domestic and international promotion.

The 2004–05 and 2005–06 budgeted expenses differ significantly because some individual line items have been moved to different expense categories for 2005–2006. However, NAC expenses are generally expected to be lower during the 2005–06 fiscal year compared to the 2004–05 fiscal year.

The 2005–06 NAC assessment rate was derived after considering anticipated fiscal year expenses; the estimated assessable nectarines of 22,004,000 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 2006 season. The committee desires to maintain a financial reserve of approximately \$340,000 to meet its obligations in the early part of each season, before handler assessments are billed and received. To meet these goals, the NAC recommended an assessment rate of \$0.20 per 25-pound containers or container equivalent. According to the committee, that assessment rate would result in an adequate financial reserve, yet one well within the maximum of approximately one year's expenses permitted by the order (§ 916.42).

#### **PCC Assessment and Expenses**

The PCC recommended, for the 2004–05 fiscal period, and USDA approved, an assessment rate of \$0.19 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 PCC met on April 28, 2005, and discussed and unanimously recommended 2005–06 expenditures and an assessment rate of \$0.20 per 25-pound container or container equivalent of peaches. Subsequently, the PCC revised its budget recommendation because it anticipated higher administrative overhead expenses than it had forecast earlier. In a mail vote completed on June 28, 2005, the PCC unanimously recommended 2005–06 expenditures of \$5,095,709. In comparison, last year's budgeted expenditures were \$5,178,003. The assessment rate of \$0.20 is \$0.01 higher than the rate currently in effect.

The rate increase was recommended to ensure that the PCC could meet its 2005–06 anticipated expenses and carry over a financial reserve that would provide adequate funds for promotional and other activities at the beginning of the 2006 season before assessment collections begin. Increasing the assessment rate from \$0.19 to \$0.20 per 25-pound container is expected to provide about \$211,800 in additional assessment revenue, and would allow the PCC to start the 2006 season with about \$418,201.

Expenditures recommended by the PCC for the 2005–06 fiscal period include \$918,736 for administration, \$1,260,160 for inspection, \$204,833 for research, and \$2,711,980 for domestic and international promotion. Budgeted expenses for these items in 2004–05 were \$540,456 for administration, \$1,240,520 for inspection, \$208,570 for research, and \$3,188,457 for domestic and international promotion.

The 2004–05 and 2005–06 budgeted expenses differ because some individual line items have been moved to different expense categories for 2005–2006. However, the PCC expenses are generally expected to be lower during the 2005–06 fiscal year compared to the 2004–05 fiscal year.

The 2005–06 PCC assessment rate was derived after considering anticipated PCC expenses; the estimated assessable peaches of 21,180,000 25-pound containers or container equivalents; the estimated income from other sources, such as interest; and the need for an adequate reserve to carry the PCC into the 2006 season. The committee desires to maintain a financial reserve of approximately \$420,000 to meet its obligations in the early part of each season, before handler assessments are billed and received. To meet these goals, the PCC recommended an assessment

rate of \$0.20 per 25-pound container or container equivalent. According to the committee, that assessment rate would result in an adequate financial reserve, yet one well within the maximum of approximately one year's expenses permitted by the order (§ 917.38).

#### **Continuance of Assessment Rates**

The proposed assessment rates would 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 would be in effect for an indefinite period, the committees would continue to meet prior to or during each fiscal period to recommend a budget 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 or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate the committees' recommendations and other available information to determine whether modification of the assessment rate for each committee is needed. Further rulemaking would be undertaken as necessary. The committee's 2005–06 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

#### **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 210 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,500 producers of these fruits 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 \$6,000,000. 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.

The committees' staff has estimated that there are fewer than 26 handlers in the industry who could be defined as other than small entities. For the 2004 season, the committees' staff estimated that the average handler price received was \$8.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 750,000 containers to have annual receipts of \$6,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2004 season, the committees' staff estimates that small handlers represent approximately 87 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 20 percent of the producers in the industry could be defined as other than small entities. For the 2004 season, the committees' staff estimated the average producer price received was \$5.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 150,500 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 2004 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

With an average producer price of \$5.00 per container or container equivalent, and a combined packout of nectarines and peaches of 40,438,536 containers, the value of the 2004 packout is estimated to be \$202,192,680. Dividing this total estimated grower revenue figure by the estimated number of producers (1,500) yields an estimate of average revenue per producer of about \$134,795 from the sales of peaches and nectarines.

This rule would increase the assessment rates established for the NAC for the 2005–06 and subsequent fiscal periods from \$0.195 to \$0.20 per 25-pound container or container equivalent of nectarines and for the PCC for the 2005–06 and subsequent fiscal periods from \$0.19 to \$0.20 per 25-pound container or container equivalent of peaches.

The NAC recommended 2005–06 fiscal period expenditures of \$4,919,049

for nectarines and an assessment rate of \$0.20 per 25-pound container or container equivalent of nectarines. The proposed assessment rate of \$0.20 is \$0.005 higher than the current rate. The PCC recommended 2005–06 fiscal period expenditures of \$5,095,709 for peaches and an assessments rate of \$0.20 per 25-pound container or container equivalent of peaches. The proposed assessment rate of \$0.20 is \$0.01 higher than the current rate.

#### Analysis of NAC Budget

The quantity of assessable nectarines for the 2005–06 fiscal period is estimated at 20,682,000 25-pound container or container equivalents. Thus, the \$0.20 rate should provide \$4,136,400 in assessment income. Income derived from handler assessments, along with interest income, research grants, and funds from the committee's reserve, would be adequate to cover budgeted expenses and maintain their desired reserve.

The major expenditures recommended by the NAC for the 2005–06 year include 899,288 for administration, \$1,167,381 for inspection, \$203,230 for research, and \$2,649,149 for domestic and international promotion. Budgeted expenses for these items in 2004–05 were \$538,770, \$1,050,000, \$138,018, and \$2,574,160, respectively.

The NAC recommended an increase in the assessment rate to meet anticipated 2005–06 expenses and preserve an acceptable financial reserve. A reserve of approximately \$340,000 is needed to fund expenses for the following year until assessments for that year are received. The NAC reviewed and recommended 2005–06 expenditures of \$4,919,049 and the increased assessment rate.

#### Analysis of PCC Budget

The quantity of assessable peaches for the 2005–06 fiscal year is estimated at 21,180,000 25-pound container or container equivalents. Thus, the \$0.20 rate should provide \$4,236,000 in assessment income. Income derived from handler assessments, along with interest income, research grants, and funds from the committee's reserves would be adequate to cover budgeted expenses and maintain their desired reserve.

The major expenditures recommended by the PCC for the 2005–06 year include \$918,736 for administration, \$1,260,160 for inspection, \$204,833 for research, and \$2,711,980 for domestic and international promotion. Budgeted expenses for these items in 2004–05

were \$540,456, \$1,240,520, \$208,570, and \$3,188,457, respectively.

The PCC recommended an increase in the assessment rate to meet anticipated 2005–06 expenses and preserve an acceptable financial reserve. A reserve of approximately \$420,000 is needed to fund expenses for the following year until assessments for that year are received. The PCC reviewed and recommended 2005–06 expenditures of \$5,095,709 and the increased assessment rate.

#### 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: the Executive Committee, the Research Subcommittee, the International Programs Subcommittee, the Grade and Size Subcommittee, and the Domestic Promotion Subcommittee.

Each of the committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income and research grants, prior to recommending a final assessment rate. The NAC decided that an assessment rate of \$0.20 per 25-pound container or container equivalent would allow it to meet its 2005–06 expenses and carry over an operating reserve of approximately \$342,000, which is in line with the committee's financial needs. The PCC decided that an assessment rate of \$0.20 per 25-pound container or container equivalent would allow it to meet its 2003–04 expenses and carry over an operating reserve of approximately \$420,000, which is in line with the committee's financial needs. The committees then unanimously recommended these rates to USDA.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for nectarines and peaches for the 2005–06 season could range between \$4.00 and \$6.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2005–06 fiscal period as a percentage of total grower revenue could range between 3.33 and 5.0 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation

of the marketing orders. 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 participate in the committees' deliberations on all issues. Like all committee meetings, the April 28, 2004, meetings were public meetings and all entities of all sizes 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 proposed rule would impose 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.

A 10-day comment period is provided to allow interested persons to respond to this proposal. Ten days is deemed appropriate because: (1) The 2005–06 fiscal period began on March 1, 2005, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (2) the committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was discussed by the committees at public meetings and unanimously recommended by a mail vote, and is similar to other assessment rate actions issued in past years.

#### 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 proposed to be 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, 2005, an assessment rate of \$0.20 per 25-pound container or container equivalent of nectarines is established for California nectarines.

#### PART 917—PEACHES GROWN IN CALIFORNIA

3. Section 917.258 is revised to read as follows:

##### § 917.258 Assessment rate.

On and after March 1, 2005, an assessment rate of \$0.20 per 25-pound container or container equivalent of peaches is established for California peaches.

Dated: August 17, 2005.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 05–16572 Filed 8–19–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 948

[Docket No. FV05–948–1 PR]

#### Irish Potatoes Grown in Colorado; Reopening of Comment Period on Relaxation of Handling Regulation for Area No. 2 and Certain Imported Potatoes

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

**ACTION:** Reopening of comment period.

**SUMMARY:** Notice is hereby given that the comment period on the proposed relaxation of minimum grade requirements for Colorado Area No. 2 potatoes under Marketing Order No. 948 (order), and for imported red-skinned round type potatoes under the potato import regulation is reopened until September 12, 2005.

**DATES:** Comments must be received by September 12, 2005.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments

should 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, E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov), or Internet: <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue and the May 6, 2005, 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:

Teresa Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** A proposed rule was issued on May 3, 2005, and published in the **Federal Register** on May 6, 2005 (70 FR 23942). The proposed rule would relax the minimum grade requirements from U.S. No. 1 to U.S. Commercial for all Colorado Area No. 2 potato varieties measuring from 1½-inch minimum diameter to 2¼-inch maximum diameter (size B), and from 1-inch minimum diameter to 1¾-inch maximum diameter. Under the potato import regulation, the grade changes would only apply to all red-skinned round type imported potatoes of the same size categories during the months of October through June.

Reopening of the comment period was requested on behalf of domestic potato growers by a potato shipper in Pennsylvania. This shipper expressed concern that the relaxation of minimum grade requirements for potatoes imported from Canada could negatively impact potato producers in the United States.

After reviewing the request, USDA is reopening the comment period for 20