DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. AMS–FV–07–0012; FV07–916/917–3 PR]

Late Payment and Interest Charges on Past Due Assessments Under the Nectarine and Peach Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments concerning the collection of assessments owed under the nectarine and peach marketing orders. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative Committee and the Peach Commodity Committee (committees). This rule would implement authorities contained in the marketing order to allow the committees to apply late payment and interest charges on past due assessments owed the committees by handlers.

DATES: Comments must be received by April 13, 2007.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. 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 Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Jennifer Garcia, 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: *Jennifer.Garcia3@usda.gov* or *Kurt.Kimmel@usda.gov*.

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 proposal 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 marketing 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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal 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 proposal invites comments on establishing regulations that would allow the committees to apply late payment and interest charges on past due assessments owed the committees by handlers. This proposal was unanimously recommended by the committees at meetings on November 30, 2006.

Sections 916.41 and 917.37 of the orders provide authority for the committees to assess handlers of California nectarines and peaches, respectively, to fund authorized activities such as research and promotion programs. Paragraph (b) of these sections was amended on July 21, 2006 (71 FR 41345), to authorize the committees, with the approval of the Secretary, to apply late payment charges, interest charges, or both on past due assessments.

At meetings on November 30, 2006, the committees recommended establishing rules and regulations to implement these authorities regarding late payment and interest charges. Although the majority of handlers remit their assessments in a timely manner, there are some handlers who do not. Implementing late payment and interest charges would provide an incentive for handlers to pay assessments in a timely manner and would remove any financial advantage for those who do not pay on time.

Specifically, the committees recommended that a late payment charge be applied to any assessment that has not been received in the committees' office, or the envelope containing the payment legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The committees recommended a late payment charge of 10 percent of the unpaid balance. In addition, interest would be applied to the unpaid balance and late payment charge for the number of days the payment is delinquent beyond 60 days. The committees recommended that interest be applied at the current commercial prime rate charged by the committees' bank plus 2 percent beginning on the day the assessment becomes delinquent. However, USDA determined that a set interest rate of 1.5 percent per month is typical of comparable marketing order programs, and the proposal has been revised. Accordingly, new §§ 916.141 and 917.137 specifying implementation of the 10 percent late charge and 1.5 percent per month interest rate would be added to the rules and regulations of the nectarine and peach orders, respectively.

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 action 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 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 175 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 676 producers of these fruits in California. 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 $6,500,000. Small agricultural producers are defined by the SBA 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 2006 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 722,223 containers to have annual receipts of $6,500,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2006 season, the committees' staff estimates that small handlers represent approximately 85 percent of all the handlers within the industry.

The committees' staff has also estimated that fewer than 68 producers in the industry could be defined as other than small entities. For the 2006 season, the committees' staff estimated the average producer price received was $4.50 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 166,667 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 2006 season, the committees' staff estimates that small producers represent more than 90 percent of the producers within the industry.

With an average producer price of $4.50 per container or container equivalent, and a combined packout of nectarines and peaches of 36,388,996 containers, the value of the 2006 packout is estimated to be $163,750,482. Dividing this total estimated grower revenue figure by the estimated number of producers (676) yields an estimate of average revenue per producer of about $242,234 from the sales of peaches and nectarines.

This proposed rule would add new §§ 916.141 and 917.137 to the orders' rules and regulations, whereby late payment and interest charges on delinquent assessment payments would be implemented under the orders. Specifically, handlers not remitting their assessment payments within 60 days of the invoice date would be subject to a 10 percent late payment penalty and interest charges accruing at a rate of 1.5 percent per month. The late payment and interest charges would serve as an incentive for handlers to remit assessment payments when due to avoid paying an increased amount to the committees. This action is expected to facilitate program operations. Authority for this action is provided in paragraph (b) of §§ 916.41 and 917.37 of the orders.

This action would apply late payment and interest charges to assessments not paid within 60 days of the invoice date. Only handlers who are late in paying their assessments owed the committees would be impacted. For example, a delinquent invoice with late payment and interest charges applied would be calculated in the following manner: If a handler failed to pay an invoice for $5,000 within 60 days of the July 1, 2007, invoice date, a 10 percent late payment charge ($500) would be applied to the unpaid balance. In addition, interest charges at a rate of 1.5 percent per month would be added to the assessments owed and the accrued late payment charge. The 1.5 percent per month rate computes to an annual rate of 18 percent. This must be divided by 365 days to obtain the daily rate. This same July 1, 2007, invoice would be 62 days delinquent as of September 1, 2007, bringing the interest charges to $168.16 ($5,500 × .18 ÷ 365 × 62). Thus, the total assessment due, including late payment and interest charges, would be $5,668.16 as of September 1, 2007.

The committees discussed alternatives to this change, including not implementing late payment and interest charges at all. While only a small number of handlers fail to make assessments payments when due, the committees believe that a lack of action only compounds the problem. The committees considered applying late payment and interest charges at a lower rate but believe that a higher rate would be more likely to encourage compliance with the orders' assessment requirements. The joint executive committee discussed the issue and recommended the 10 percent late payment and prime plus 2 percent interest charges that the committee members unanimously approved and recommended to USDA.

However, as previously mentioned, USDA has determined that a set interest rate of 1.5 percent per month is typical of comparable marketing order programs, and the proposal has been revised.

This proposed rule would 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.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the subcommittee and 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 November 30, 2006, meetings were public meetings and all entities of all sizes were invited 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.

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 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible, since the season begins on April 1. All written comments timely received will be considered before a final determination is made on this matter.

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. Add § 916.141 to read as follows:

§ 916.141 Delinquent assessments.

(a) The Nectarine Administrative Committee shall impose a late payment charge on any assessment that has not been received in the Nectarine Administrative Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be 10 percent of the unpaid balance.

(b) In addition to that specified in paragraph (a) of this section, the Nectarine Administrative Committee shall impose an interest charge on any assessment payment that has not been received in the committee's office, or legibly postmarked by the U.S. Postal Service, within 60-days of the invoice date. The interest charge shall be 1.5 percent per month and shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 60-day payment period.

PART 917—PEACHES GROWN IN CALIFORNIA

3. Add § 917.137 to read as follows:

§ 917.137 Delinquent assessments.

(a) The Peach Commodity Committee shall impose a late payment charge on any assessment that has not been received in the Peach Commodity Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be 10 percent of the unpaid balance.

(b) In addition to that specified in paragraph (a) of this section, the Peach Commodity Committee shall impose an interest charge on any assessment payment that has not been received in the Peach Commodity Committee's office, or legibly postmarked by the U.S. Postal Service, within 60 days of the invoice date. The interest charge shall be 1.5 percent per month and shall be applied to the unpaid balance and late payment charge for the number of days all or any part of the assessment specified in the handler's assessment statement is delinquent beyond the 60-day payment period.

Dated: March 23, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. E7–5789 Filed 3–28–07; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4290

RIN 0570–AA35

Rural Business Investment Program

AGENCY: Rural Business-Cooperative Service and the Rural Utilities Service, U.S. Department of Agriculture.

ACTION: Advanced notice of proposed rulemaking; comments requested.

SUMMARY: The Rural Business-Cooperative Service and the Rural Utilities Service seek public input regarding the possibility of operating the Rural Business Investment Program, in light of the loss of funding starting in the 2007 Fiscal Year, to provide for non-leveraged Rural Business Investment Companies.

DATES: Written or e-mail comments on this advance notice of proposed rulemaking must be received on or before 30 days from the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments to this rule by any of the following methods:

- *Agency Web Site: http://www.rurdev.usda.gov/regs.* Follow instructions for submitting comments on the Web Site.
- *E-Mail: comments@wdc.usda.gov.* Include the RIN No. 0570—in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Branch Chief, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., 7th Floor, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael Foore, Program Advisor, Rural Development, Business and Cooperative Programs, 1400 Independence Ave., SW., Stop 3201, Washington, DC 20250–3201, Telephone: (202) 690–4730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This advance notice has been reviewed under Executive Order 12866 by the Office of Management and Budget and has been determined to be significant for the purposes of Executive Order 12866.

Background

The Rural Development Mission Area of the Department of Agriculture (Rural Development) is responsible for assisting rural communities in improving the quality of life for their residents and in increasing their economic opportunities. Most of the programs and activities of Rural Development provide assistance in the form of loans, loan guarantees, and grants. However, Rural Development estimates that at least $1.45 trillion of equity in rural America is idle and could be used to assist the development of rural America.

In an attempt to tap this equity in rural America and provide for investment capital opportunities which are not widely available, Congress created the Rural Business Investment Program in section 6029 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171; 116 Stat. 134). The Rural Business Investment Program authorized the Secretary of Agriculture to encourage, with financial and technical assistance, the creation of investment companies, called Rural Business Investment Companies, which would provide equity investments to rural small businesses. These investment companies would leverage capital raised from private investors, including rural residents into investments in rural small businesses. The legislation strongly encouraged that the Secretary of Agriculture operate this Program with the assistance of the Small Business Administration (SBA) because it was modeled after the SBA Small Business Investment Program. The legislation even provided funding to cover SBA's costs of providing such assistance. On June 8, 2004, Rural Development promulgated an interim rule to implement the Rural Business Investment Program [7 CFR part 4290; 69 FR 32200].