

# Rules and Regulations

Federal Register

Vol. 72, No. 88

Tuesday, May 8, 2007

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

[Docket No. AMS-FV-07-0012; FV07-916/917-3 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule revises requirements 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 implements authorities contained in the marketing orders to allow the committees to apply late payment and interest charges on past due assessments owed the committees by handlers.

**DATES:** Effective Date: May 9, 2007.

**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](mailto:Jennifer.Garcia3@usda.gov) or [Kurt.Kimmel@usda.gov](mailto: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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final 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.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This final 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 final rule establishes regulations that will allow the committees to apply late payment and interest charges on past due assessments owed the committees by handlers. This rule 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 provides an incentive for handlers to pay assessments in a timely manner and removes 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 recommendation was revised. Accordingly, new §§ 916.141 and 917.137 specifying implementation of the 10 percent late charge and 1.5 percent per month interest rate will be added to the rules and regulations of the nectarine and peach orders, respectively.

#### 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 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. 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 rule adds new §§ 916.141 and 917.137 to the orders' rules and regulations, whereby late payment and interest charges on delinquent assessment payments will be implemented under the orders. Specifically, handlers not remitting their assessment payments within 60 days of the invoice date will 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 should 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 will 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 will be impacted. For example, a delinquent invoice with late payment and interest charges applied will 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 ( $\$5,500 \times .18 \div 365 \times 62$ ). 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 assessment 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 recommendation was revised.

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.

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.

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 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.

A proposed rule concerning this action was published in the **Federal Register** on March 29, 2007 (72 FR 14710). The committees posted the rule on their Web site. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending April 13, 2007, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter, representing the NAC and PCC, supported implementing authorities to allow the committees to apply late payment and interest charges on past due assessments.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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/foab.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 matter presented, including the information and recommendation submitted by the committees 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.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the season began on April 1. Further, handlers are aware of this rule, which was recommended at public meetings. Also a 15-day comment period was provided for in the proposed rule.

#### 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 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 § 916.235 to read as follows:

##### **§ 916.235 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 § 917.259 to read as follows:

##### **§ 917.259 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: May 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–8630 Filed 5–7–07; 8:45 am]

BILLING CODE 3410–02–P

#### **DEPARTMENT OF AGRICULTURE**

#### **Grain Inspection, Packers and Stockyards Administration**

##### **9 CFR Part 205**

RIN 0580–AA93

#### **Clear Title; Technical Changes**

**AGENCY:** Grain Inspection, Packers and Stockyards Administration, USDA.

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

**SUMMARY:** We are adopting as a final rule, with change, an interim rule that amended Clear Title regulations to

allow States to use an approved unique identifier as an alternative to a social security number or taxpayer identification number in their systems providing clear title information. The change to the interim rule meets the express statutory requirement that an approved unique identifier be numerically organized on master lists. We are making additional changes to the clear title regulations as required by the amendments made by the 2002 Farm Bill. The primary effect of these changes will be to protect the identity of the producers of farm products. Secondary effects of the technical changes will be to improve the operation of the program and provide the States with more flexibility.

**DATES:** Effective May 8, 2007, we are confirming as final with change, the interim rule published on September 27, 2006 (71 FR 56338). That rule became effective on September 27, 2006.

**FOR FURTHER INFORMATION CONTACT:** Gary McBryde, GIPSA, USDA, 1400 Independence Avenue, Room 2430, Washington, DC 20250–3604; (202) 720–5552.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In an interim rule effective September 27, 2006, and published in the **Federal Register** on September 27, 2006 (71 FR 56338), we amended the regulations in “Subpart—Clear Title-Protection for Purchases of Farm Products” (9 CFR 205.1–205.210) for the privacy protection of certain sellers of farm products to allow States to use “other approved unique identifier” as an alternative to a social security number or taxpayer identification number in their systems providing clear title information. The amendment clarified that an “approved unique identifier” means “a number, combination of numbers and letters, or other identifier selected by the Secretary of State using a selection system or method approved by the Secretary of Agriculture.”

We solicited comments concerning the interim rule. We received two comments as a result of publishing the interim final rule. The comments indicated that not only were Social Security Numbers unwarranted and unneeded, but also that unique identifiers were not needed. We consider the comments to be directed towards the current Act, not the regulations providing guidance on implementation of the amended Act.

However, we are making one change to the interim rule to further clarify and better reflect the statutory text. The interim rule definition of “approved