

revisions to the information collection requirements that were previously approved by OMB under control number 0560-0155.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

- 10.406—Farm Operating Loans
- 10.407—Farm Ownership Loans

List of Subjects in 7 CFR Part 762

Agriculture, Loan programs—Agriculture.

■ Accordingly, 7 CFR chapter VII is amended as follows:

PART 762—GUARANTEED FARM LOANS

■ 1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989.

§ 762.102 [Amended]

■ 2. In § 762.102 remove the definitions of “Financially viable operation”, “Participation” and “Sale of guaranteed portion.”

■ 3. Amend § 762.106 by removing paragraph (b)(8) and revising paragraph (c)(8) to read as follows:

§ 762.106 Preferred and certified lender programs.

* * * * *

(c) * * *

(8) Designate a person or persons, either by name, title, or position within the organization, to process and service PLP loans for the Agency.

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■ 4. In § 762.126, remove paragraph (e)(1), redesignate paragraphs (e)(2), (e)(3), and (e)(4) as (e)(1), (e)(2), and (e)(3), respectively, and revise newly designated (e)(2) to read as follows:

§ 762.126 Security requirements.

(e) * * *

(2) Junior lien positions are acceptable only if the total amount of debt with liens on the security, including the debt in junior lien position, is less than or equal to 85 percent of the value of the security. Junior liens on crops or livestock products will not be relied upon for security unless the lender is involved in multiple guaranteed loans to the same borrower and also has the first lien on the collateral.

* * * * *

■ 5. Revise § 762.145 (b)(6)(i) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(6) * * *

(i) As a result of the capitalization of interest, a rescheduled promissory note may increase the amount of principal the borrower is required to pay. However, in no case will such principal amount exceed the statutory loan limits contained in § 761.8 of this chapter.

* * * * *

■ 6. Add § 762.159 to read as follows:

§ 762.159 Pledging of guarantee.

A lender may pledge all or part of the guaranteed or unguaranteed portion of the loan as security to a Federal Home Loan Bank, a Federal Reserve Bank, a Farm Credit System Bank, or any other funding source determined acceptable by the Agency.

■ 7. Revise § 762.160 to read as follows:

§ 762.160 Assignment of guarantee.

(a) The following general requirements apply to assigning guaranteed loans:

(1) Subject to Agency concurrence, the lender may assign all or part of the guaranteed portion of the loan to one or more holders at or after loan closing, if the loan is not in default. However, a line of credit cannot be assigned. The lender must always retain the unguaranteed portion in their portfolio, regardless of how the loan is funded.

(2) The Agency may refuse to execute the Assignment of Guarantee and prohibit the assignment in case of the following:

(i) The Agency purchased and is holder of a loan that was assigned by the lender that is requesting the assignment.

(ii) The lender has not complied with the reimbursement requirements of § 762.144(c)(7), except when the 180 day reimbursement or liquidation requirement has been waived by the Agency.

(3) The lender will provide the Agency with copies of all appropriate forms used in the assignment.

(4) The guaranteed portion of the loan may not be assigned by the lender until the loan has been fully disbursed to the borrower.

(5) The lender is not permitted to assign any amount of the guaranteed or unguaranteed portion of the loan to the loan applicant or borrower, or members of their immediate families, their officers, directors, stockholders, other owners, or any parent, subsidiary, or affiliate.

(6) Upon the lender’s assignment of the guaranteed portion of the loan, the lender will remain bound to all obligations indicated in the Guarantee, Lender’s Agreement, the Agency

program regulations, and to future program regulations not inconsistent with the provisions of the Lenders Agreement. The lender retains all rights under the security instruments for the protection of the lender and the United States.

(b) The following will occur upon the lender’s assignment of the guaranteed portion of the loan:

(1) The holder will succeed to all rights of the Guarantee pertaining to the portion of the loan assigned.

(2) The lender will send the holder the borrower’s executed note attached to the Guarantee.

(3) The holder, upon written notice to the lender and the Agency, may assign the unpaid guaranteed portion of the loan. The holder must assign the guaranteed portion back to the original lender if requested for servicing or liquidation of the account.

(4) The Guarantee or Assignment of Guarantee in the holder’s possession does not cover:

(i) Interest accruing 90 days after the holder has demanded repurchase by the lender, except as provided in the Assignment of Guarantee and § 762.144(c)(3)(iii).

(ii) Interest accruing 90 days after the lender or the Agency has requested the holder to surrender evidence of debt repurchase, if the holder has not previously demanded repurchase.

(c) Negotiations concerning premiums, fees, and additional payments for loans are to take place between the holder and the lender. The Agency will participate in such negotiations only as a provider of information.

Signed in Washington, DC, on September 1, 2005.

James R. Little,
Administrator, Farm Service Agency.
[FR Doc. 05-19126 Filed 9-23-05; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV05-916-3 FR]

Nectarines and Peaches Grown in California; Increased Assessment Rates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases 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. Assessments upon nectarine and peach handlers are used by the committees to fund reasonable and necessary expenses of the programs. The fiscal period runs from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 27, 2005.

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 issued herein will 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 increases 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 also increases 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 should 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 should 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 should 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 should 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 assessment rates established in this rule will 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 will be in effect for an indefinite period, the committees will 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 will evaluate the committees' recommendations and other available information to determine whether modification of the assessment rate for each committee is needed. Further rulemaking will 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.

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 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 increases 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 assessment rate of \$0.20 is \$0.005 higher than the 2004–05 rate. The PCC recommended 2005–06 fiscal period expenditures of \$5,095,709 for peaches and an assessment rate of \$0.20 per 25-pound container or container equivalent of peaches. The assessment rate of \$0.20 is \$0.01 higher than the 2004–05 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, should 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 should 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 increases 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 are 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, both large and small, were able to express views on this issue.

This rule 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.

A proposed rule concerning this action was published in the **Federal Register** on August 22, 2005 (70 FR 48900). Copies of the proposed rule were also mailed or sent via facsimile to all nectarine and peach handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 10-day comment period ending September 1, 2005, was provided for interested persons to respond to the proposal. Two comments supporting the proposal were received. Both cited reduced crop yields and the need to fund pre-harvest expenses next year as justification for the assessment rate increases. An additional response was received, but it was not relevant to the proposed assessment increase.

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 NAC and PCC 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005–06 fiscal period began on March 1, 2005, and the marketing orders require that the assessment rates for each fiscal period apply to all 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. Also, a 10-day comment period was provided for in the proposed rule and the comments received have been considered in reaching a final decision 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 amended as follows:

■ 1. The authority citation for 7 CFR parts 916 and 917 continue 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: September 20, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–19085 Filed 9–23–05; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–166–A39; DA–05–01–A]

Milk in the Mideast Marketing Area; Interim Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This order amends certain features of the pooling standards of the Mideast milk marketing order on an interim basis. More than the required number of producers in the Mideast marketing area have approved the issuance of the interim order as amended.

DATES: Effective October 1, 2005.

FOR FURTHER INFORMATION CONTACT:

Gino M. Tosi, Associate Deputy Administrator, Stop 0231, Room 2971, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail address: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION:

Specifically, this decision adopts provisions that will: (1) Prohibit the ability to simultaneously pool the same milk on the Mideast Federal milk order and on a marketwide equalization pool administered by another government entity; (2) Lower the diversion limit standards; and (3) Increase the performance standards for supply plants.

This administrative rule is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a 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 Agricultural Marketing Agreement Act of 1937 (the Act), as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing with the Department of Agriculture (Department) 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a “small business” if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a “small business” if it has fewer than 500 employees.

For the purposes of determining which dairy farms are “small businesses,” the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most “small” dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During March 2005, the month during which the hearing occurred, there were 9,767 dairy producers pooled on, and 36 handlers regulated by, the Mideast order. Approximately 9,212 producers,