

Dated: August 10, 1995.

Ellen Haas,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 95-20591 Filed 8-18-95; 8:45 am]

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Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV95-916-31FR]

Nectarines and Fresh Peaches Grown in California; Expenses and Assessment Rates for the 1995-96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenses and establishes assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) under M.O. Nos. 916 and 917 for the 1995-96 fiscal year. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: Effective beginning March 1, 1995, through February 29, 1996. Comments received by September 20, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, Fax # (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456, telephone: (202) 720-5127; or J. Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102 B, Fresno, California 93721, telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 916 [7 CFR Part 916] regulating the handling of nectarines grown in California and Marketing Agreement and Order No. 917 [7 CFR Part 917] regulating the handling of fresh peaches grown in California. The 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable nectarines and peaches handled during the 1995-96 fiscal year, which began March 1, 1995, through February 29, 1996. This interim 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 the Secretary 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 requesting 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 300 handlers of nectarines and peaches regulated under the marketing orders each season and approximately 1,800 producers of these fruits in California. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these handlers and producers may be classified as small entities.

The nectarine and peach marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable nectarines and peaches handled from the beginning of such year. Annual budgets of expenses are prepared by the Committees, the agencies responsible for local administration of their respective marketing order, and submitted to the Department for approval. The members of the Committees are nectarine and peach handlers and producers. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The Committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing the anticipated expenses by expected shipments of nectarines and peaches. Because these rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the Committees' expected expenses.

The Nectarine Administrative Committee met on May 4, 1995, and unanimously recommended total expenses of \$3,683,031 for the 1995-96 fiscal year. In comparison, this is \$161,604 less than the \$3,844,635 expense amount that was recommended for the 1994-95 fiscal year.

The Committee also unanimously recommended an assessment rate of \$0.1850 per 25-pound container or equivalent for the 1995-96 fiscal year, which is \$0.5 cent higher than the assessment rate that was approved for the 1994-95 fiscal year. The assessment rate, when applied to anticipated shipments of 16,860,000 25-pound

containers or equivalent of nectarines would yield \$3,119,100 in assessment income. Adequate funds exist in the Committee's reserve to cover additional expenses.

Major expense categories for the 1995-96 nectarine budget include \$340,025 for salaries and benefits, \$1,534,593 for domestic market development, \$99,117 for production and cultural research, and \$855,000 for inspection. Funds in the reserve at the end of the 1995-96 fiscal year, estimated at \$66,072, will be within the maximum permitted by the order of one fiscal year's expenses.

The Peach Commodity Committee also met May 4, 1995, and unanimously recommended total expenses of \$3,736,531, for the 1995-96 fiscal year. In comparison, this is \$230,804 less than the \$3,967,335 expense amount that was recommended for the 1994-95 fiscal year.

The Committee also unanimously recommended an assessment rate of \$0.19 per 25-pound container or equivalent for the 1995-96 fiscal year, which is the same assessment rate that was approved for the previous fiscal year. The assessment rate, when applied to anticipated shipments of 16,982,000 25-pound containers or equivalent of peaches, would yield \$3,226,580 in assessment income. Adequate funds exist in the Committee's reserve fund to cover additional expenses.

Major expense categories for the 1995-96 fiscal period are \$340,025 in salaries and benefits, \$1,534,593 for domestic market development, \$99,117 for research, and \$900,000 for inspection. Funds in the reserve at the end of the 1995-96 fiscal year, estimated at \$335,864, will be within the maximum permitted by the order of one fiscal year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committees' recommendations, and other available information, it is found that this interim final 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 upon good cause that it is impracticable, unnecessary,

and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1995-96 fiscal year began on March 1, 1995, and the marketing orders require that the rates of assessment for the fiscal year apply to all assessable nectarines and peaches handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committees at public meetings; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Pears, Peaches, 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 both 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601-674.

Note: These sections will not appear in the Code of Federal Regulations.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. A new §916.233 is added to read as follows:

§916.233 Expenses and Assessment rate.

Expenses of \$3,683,031 by the Nectarine Administrative Committee are authorized, and an assessment rate of \$0.1850 per 25-pound container or equivalent on assessable nectarines is established for the 1995-96 fiscal year ending on February 29, 1996. Unexpended funds may be carried over as a reserve.

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

3. A new §917.257 is added to read as follows:

§917.257 Expenses and Assessment rate.

Expenses of \$3,736,531, by the Peach Commodity Committee are authorized, and an assessment rate of \$0.19 per 25-

pound container or equivalent of assessable peaches is established for the 1995-96 fiscal year ending on February 29, 1996. Unexpended funds may be carried over as a reserve.

Dated: August 15, 1995

Terry C. Long,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95-20589 Filed 8-18-95; 8:45 am]

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7 CFR Part 928

[Docket No. FV95-928-11FR]

Papayas Grown in Hawaii; Expenses and Assessment Rate for 1995-96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the Papaya Administrative Committee (Committee) under M.O. No. 928 for the 1995-96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer this program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1995, through June 30, 1996. Comments received by September 20, 1995, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; Fax # (202) 720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456, telephone: (202) 720-5127; or Martin Engler, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, California 93721, telephone: (209) 487-5901.