

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]

BILLING CODE 3410-02-P

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.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 928 (7 CFR part 928), regulating the handling of papayas grown in Hawaii. The marketing agreement and order 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, papayas grown in Hawaii are subject to assessments. It is intended that the assessment rate specified herein will be applicable to all assessable papayas handled during the 1995-96 fiscal year, beginning July 1, 1995, through June 30, 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 120 handlers of papayas regulated under the marketing order each season and approximately 400 papaya producers in Hawaii. 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. A majority of these producers and handlers may be classified as small entities.

The marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable papayas handled from the beginning of such year. Annual budgets of expenses are prepared by the Committee, the agency responsible for local administration of this marketing order, and submitted to the Department for approval. The members of the Committee are handlers and producers of Hawaiian papayas. They are familiar with the Committee's 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 Committee's budget is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing the anticipated expenses by expected shipments of papayas. Because that rate is applied to actual shipments, it must be established at a rate which will provide sufficient income to pay the Committee's expected expenses.

The Papaya Administrative Committee met on April 28, 1995, and unanimously recommended expenses totaling \$562,044 for its 1995-96 budget. The Committee met again on July 20, 1995, and unanimously recommended a new budget because the original budget contained inaccuracies. The revised recommendation contains expenses totaling \$465,800 for the 1995-96 budget. This is a \$123,400 reduction in expenses compared to the 1994-95 budget of \$589,200.

The Committee also unanimously recommended an assessment rate of \$.0089 per pound for the 1995-96 fiscal year, which is the same as was recommended for the 1994-95 fiscal year.

The assessment rate, when applied to anticipated shipments of 33 million pounds, would yield \$293,700 in assessment income. Other sources of

program income include \$40,000 from the Hawaii Department of Agriculture, \$57,000 from the USDA's Foreign Agricultural Service, \$7,800 from the Japanese Inspection program, \$3,000 in interest income, and \$4,766 from the County of Hawaii. Income from all sources will be adequate to cover estimated expenses.

Major expense categories for the 1994 fiscal year include \$165,500 for the market expansion program, \$145,000 for research and development, and \$67,600 for salaries. Funds in the reserve at the end of the 1995-96 fiscal year, estimated at \$112,279, 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 should be offset by the benefits derived from the operation of the marketing order. 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 matter presented, including the information and recommendations submitted by the Committee 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 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee began July 1, 1995, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable papayas handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committee at a public meeting; 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 in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Note: This section will not appear in the annual Code of Federal Regulations.

2. A new § 928.225 is added to read as follows:

§ 928.225 Expenses and assessment rate.

Expenses of \$465,800 by the Papaya Administrative Committee are authorized and an assessment rate of \$.0089 per pound of assessable papayas is established for the fiscal year ending June 30, 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. 95–20590 Filed 8–18–95; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 997

[Docket No. FV95–997–11FR]

Assessment Obligation for 1995–96 Crop Year Peanuts Under 7 CFR Part 997; Peanuts Not Subject to Peanut Marketing Agreement No. 146

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This document implements an administrative assessment on farmers stock peanuts received or acquired by handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement). The assessment rate for 1995–96 crop year peanuts shall be \$.70 per net ton. In addition, this rule clarifies which categories of farmers stock peanuts are assessable. This rule also establishes that non-signatory handlers shall submit their pro rata assessment to the Secretary of Agriculture. The assessment rate is the same as the administrative assessment established by the Department on handlers who are signers of the Agreement (signatory handlers).

DATES: Effective July 1, 1995, through June 30, 1996. Comments which are received by September 20, 1995 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this 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, D.C. 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:

Richard Lower, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–2020, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This interim final rule is issued pursuant to the requirements of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), and as further amended December 12, 1989; Public Law 101–220, section 4 (1), (2), 103 Stat. 1878, December 12, 1989; and Public Law 103–66, section 8b(b)(1), 107 Stat. 312, August 10, 1993.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Department is establishing a 1995–96 crop year assessment rate applicable to non-signatory handlers effective July 1, 1995–June 30, 1996. Farmers stock peanuts received or acquired by non-signatory handlers during that crop year will be subject to the assessment. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this interim final rule.

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

There are approximately 45 handlers of peanuts who have not signed the Agreement and, thus, will be subject to the regulations specified herein. There are also approximately 47,000 producers of peanuts, who potentially might do

business with these handlers. The Small Business Administration now defines small agricultural service firms (13 CFR 121.601) as those having annual receipts of less than \$5,000,000 and small agricultural producers as those whose annual receipts are less than \$500,000. A majority of non-signatory handlers and peanut producers may be classified as small entities.

The Agreement was established in 1965 and plays a very important role in maintaining the industry's quality control efforts. The Peanut Administrative Committee (Committee) was established by the Agreement and works with the Department in administering the marketing agreement program. Approximately 95 percent of the domestically produced peanut crop is marketed by handlers who are signatory to the Agreement.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Agreement requirements provide that farmers stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts destined for edible channels must be officially sampled and chemically tested for aflatoxin by Department laboratories or laboratories approved by the Committee.

Public Law 101–220 amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

Regulations to implement Pub. L. 101–220 were issued and made effective on December 4, 1990 (55 FR 49980). The regulations, which have been amended several times, are published in 7 CFR Part 997—Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement. Under these provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the edible quality requirements of the Agreement. All amendments were made to ensure that the non-signer handling requirements remain the same as, or are equal to, the handling requirements applied to signatory handlers under the Agreement.

Public Law 103–66 (107 Stat. 312) provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Under this