

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 handlers and producers 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 Hawaii 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 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 contained 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 1995 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.

An interim final rule was published in the Federal Register [60 FR 43352, August 21, 1995] and provided a 30-day comment period for interested persons. No comments were received.

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.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses 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 action until 30 days after publication in the Federal Register [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 fiscal year for the program began July 1, 1995. The marketing order requires that the rate of assessment apply to all assessable papayas handled during the fiscal year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the Federal Register as an interim final rule. No comments were received concerning the interim final rule that is adopted in this action as a final rule without change.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

PART 928—PAPAYAS GROWN IN HAWAII

Accordingly, the interim final rule amending 7 CFR part 928 which was

published at 60 FR 43351 on August 21, 1995, is adopted as a final rule without change.

Dated: September 22, 1995.
Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
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7 CFR Part 929

[Docket No. FV95-929-2FIR]

Expenses and Assessment Rate for the 1995-96 Fiscal Year for the Marketing Order Covering Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Cranberry Marketing Committee (Committee) under Marketing Order No. 929 for the 1995-96 fiscal year. Authorization of this budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning September 1, 1995, through August 31, 1996.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kathleen M. Finn, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5127.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 929 (7 CFR Part 929), as amended, regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order". The order is 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 is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, cranberries grown in 10 states are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable cranberries during the 1995-96 fiscal year beginning September 1, 1995, through August 31, 1996. 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 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 request a modification of the order or to be exempted therefrom. A 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 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 30 handlers of cranberries who are subject to regulation under the cranberry marketing order and approximately 1,050 producers of cranberries in the regulated area. 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

cranberry producers and handlers may be classified as small entities.

The cranberry marketing order, administered by the Department, requires that the assessment rate for a particular fiscal year apply to all assessable cranberries handled from the beginning of such year. The budget of expenses for the 1995-96 fiscal year was 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 producers of cranberries. 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 an appropriate budget.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee conducted a mail vote and unanimously recommended 1995-96 marketing order expenses of \$201,336 and an assessment rate of \$0.03 per 100-pound barrel of cranberries. In comparison, 1994-95 budgeted expenses were \$164,690. The 1995-96 marketing year budgeted expenditures of \$210,336 are \$36,646 more than the previous fiscal year. The increase is due to the funding of two new research projects for the 1995-96 season. The assessment rate will remain unchanged from the previous fiscal year.

Assessment income for 1995-96 is estimated to total \$136,320 based on anticipated fresh domestic shipments of \$4,544,000 barrels of cranberries. The assessment income, plus \$4,375 in interest income and a withdrawal of \$60,641 from the Committee's authorized reserve fund will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1994-95 fiscal year are estimated to be

\$150,000. The reserve fund will be within the maximum permitted by the order of one fiscal year's expenses.

Major expense categories for the 1995-96 fiscal year include \$71,345 for operating expenses, \$41,000 for travel

expenses, and \$35,788 for research projects.

An interim final rule regarding this action was published in the August 10, 1995, Federal Register (60 FR 40745), with a 30-day comment period ending September 11, 1995. No comments were received.

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 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.

It is found that the specified expenses for the marketing order covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is further found 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 1995-96 fiscal year for the program began September 1, 1995, and the marketing order requires that the rate of assessment apply to all assessable cranberries handled during the fiscal year; and (3) an interim final rule was published on this action and provided for a 30-day comment period; no comments were received.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

Accordingly, the interim final rule amending 7 CFR Part 929 which was published at 60 FR 40745 on August 10, 1995, is adopted as a final rule without change.

Dated: September 22, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
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