Rules and Regulations

Federal Register Vol. 60, No. 193 Thursday, October 5, 1995

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. FV95-916-3FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as final, without change, the provisions of the interim final rule which authorized expenses and established an assessment rate for the Nectarines Administration Committee and the Peach Commodity Committee (Committees) under Marketing Order 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 the program are derived from assessments on handlers.

EFFECTIVE DATE: March 1, 1995, through February 29, 1996.

FOR FURTHER INFORMATION CONTACT: Karen T. Chaney, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone: 202–720– 5127; or J. Terry Vawter, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721, telephone: 209–487– 5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 916 (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 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, nectarines and peaches grown in California are subject to assessments. It is intended that the assessment rates specifies 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 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 688c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, or 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 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 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 300 handlers of nectarines and peaches regulated under the marketing order 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 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 cost 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 rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of nectarines and peaches. Because these rates are applied to actual shipments, they must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Nectarines 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 \$3,844,635 expenses amount that was recommended for the 1994–95 fiscal year.

The Committee also unanimously recommended an assessment rate of