

and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

An interim final rule regarding this action was published in the July 22, 1996, issue of the Federal Register (61 FR 37810). That rule provided for a 30-day comment period. No comments were received.

While this rule 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 by the operation of the marketing order. Therefore, the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee 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 rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. The Committee's 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendation 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 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal period began on August 1, 1996, and the

marketing order requires that the rate of assessment for each fiscal period apply to all assessable oranges and grapefruit handled during such fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action, providing a 30-day comment period, and no comments were received.

#### List of Subjects in 7 CFR Part 906

Marketing agreements, Grapefruit, Oranges, Reporting and recordkeeping requirements.

#### **PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS**

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 61 FR 37810 on July 22, 1996, is adopted as a final rule without change.

Dated: September 17, 1996.  
Robert C. Keeney,  
*Director, Fruit and Vegetable Division.*  
[FR Doc. 96-24240 Filed 9-20-96; 8:45 am]  
BILLING CODE 3410-02-P

#### **7 CFR Parts 916 and 917**

[Docket No. FV96-916-1 FIR]

#### **Nectarines and Fresh Peaches Grown in California; Assessment Rates**

**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 an interim final rule establishing assessment rates for the Nectarine Administrative Committee and the Peach Commodity Committee (Committees) under Marketing Order Nos. 916 and 917 for the 1996-97 and subsequent fiscal periods. The Committees are responsible for local administration of the marketing orders which regulate the handling of nectarines and fresh peaches grown in California. Authorization to assess nectarine and fresh peach handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs.

**EFFECTIVE DATE:** March 1, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B,

Fresno, California 93721, (209) 487-5901, FAX (209) 487-5906, or Kenneth G. Johnson, Marketing Specialist, 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, FAX (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456; telephone: (202) 720-2491, FAX (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 916 and Order No. 916, both as amended (7 CFR part 916), regulating the handling of nectarines grown in California, and Marketing Agreement No. 917 and Order No. 917, both as amended (7 CFR part 917), regulating the handling of fresh peaches grown in California, 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 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 fresh 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 March 1, 1996, and continuing 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 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. 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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.

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 1,800 producers of nectarines and peaches in the production area and approximately 300 handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts 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 nectarine and fresh peach producers and handlers may be classified as small entities.

The nectarine and peach marketing orders provide authority for the Committees, with the approval of the Department, to formulate annual budgets of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers of California nectarines and fresh peaches. They are familiar with the Committees' needs and with the costs for goods and services in their local area and are thus 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.

The Nectarine Administrative Committee met on May 2, 1996, and unanimously recommended 1996-97 expenditures of \$3,682,728 and an assessment rate of \$0.1850 per 25-pound container or equivalent of nectarines. In comparison, last year's budgeted expenditures were \$3,683,031. The assessment rate of \$0.1850 is the same as last year's established rate. Major

expenditures recommended by the Committee for the 1996-97 year include \$1,326,376 for domestic market development, \$972,300 for inspection, \$342,250 in salaries and benefits, and \$120,870 for research. Budgeted expenses for these items in 1995-96 were \$1,534,593, \$855,000, \$340,025, and \$99,117 respectively.

The Peach Commodity Committee met on May 1, 1996, and unanimously recommended 1996-97 expenditures of \$3,722,757 and an assessment rate of \$0.1900 per 25-pound container or equivalent of fresh peaches. In comparison, last year's budgeted expenditures were \$3,736,531. The assessment rate of \$0.1900 is the same as last year's established rate. Major expenditures recommended by the Committee for the 1996-97 year include \$1,326,376 for domestic market development, \$991,500 for inspection, \$342,250 in salaries and benefits, and \$120,870 for research. Budgeted expenses for these items in 1995-96 were \$1,534,593, \$900,000, \$340,025, and \$99,117 respectively.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of California nectarines and fresh peaches. Nectarine shipments for the year are estimated at 17,266,000 25-pound containers or equivalent which should provide \$3,194,210 in assessment income, and fresh peach shipments for the year are estimated at 17,250,000 25-pound containers or equivalent which should provide \$3,277,500 in assessment income. Income derived from handler assessments, the Plum Commodity Committee, and the Pear Field Service, along with interest income and funds from the Committees' authorized reserves, will be adequate to cover budgeted expenses. Funds in the reserves will be kept within the maximum permitted by the orders.

An interim final rule regarding this action was published in the July 22, 1996, issue of the Federal Register (61 FR 37812). That rule provided for a 30-day comment period. Two comments were received, both in support of the assessment rates as published.

While this rule 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 by the operation of the marketing orders.

Therefore, the AMS has determined that this rule will not have a significant

economic impact on a substantial number of small entities.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend budgets of expenses and consider recommendations for modification of their assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rates are needed. The Committees' 1996-97 budgets and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committees 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 Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1996-97 fiscal periods began on March 1, 1996, and the marketing orders require that the rates of assessment for each fiscal period apply to all assessable nectarines and peaches handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committees at public meetings and is similar to other assessment rate actions issued in past years; and (4) an interim final rule was published on this action and provided for a 30-day comment period. Two comments were received, both in support of the assessment rates as published.

## List of Subjects

## 7 CFR Part 916

Nectarines, Marketing agreements, Reporting and recordkeeping requirements.

## 7 CFR Part 917

Peaches, Pears, Marketing agreements, Reporting and recordkeeping requirements.

**PART 916—NECTARINES GROWN IN CALIFORNIA****PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA**

Accordingly, the interim final rule amending 7 CFR parts 916 and 917 which was published at 61 FR 37812 on July 22, 1996, is adopted as a final rule.

Dated: September 16, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 96-24239 Filed 9-20-96; 8:45 am]

BILLING CODE 3410-02-P

**7 CFR Part 920**

[Docket No. FV96-920-1 FIR]

**Kiwifruit Grown in California; Assessment Rate**

**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 an interim final rule establishing an assessment rate for the Kiwifruit Administrative Committee (Committee) under Marketing Order No. 920 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of kiwifruit grown in California. Authorization to assess kiwifruit handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

**EFFECTIVE DATE:** August 1, 1996.

**FOR FURTHER INFORMATION CONTACT:**

Mary Kate Nelson, Marketing Assistant, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, telephone (209) 487-5901, FAX# (209) 487-5906, or Charles L. Rush, Marketing Specialist, 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, FAX# (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone (202) 720-2491, FAX# (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 920, as amended (7 CFR part 920), regulating the handling of kiwifruit grown in California, hereinafter referred to as the "order." The marketing 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California kiwifruit handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit beginning August 1, 1996, and continuing 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 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. 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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.

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 500 producers of kiwifruit in the production area and approximately 65 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts 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 kiwifruit producers and handlers may be classified as small entities.

The kiwifruit marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of California kiwifruit and one non-industry member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 12, 1996, and unanimously recommended 1996-97 expenditures of \$178,598 and an assessment rate of \$0.0175 per tray or tray equivalent of kiwifruit. In comparison, last year's budgeted expenditures were \$172,683. The assessment rate of \$0.0175 per tray or tray equivalent is \$0.0025 higher than last year's established rate. Major expenditures recommended by the Committee for the 1996-97 year include \$108,500 for administrative staff and field salaries, \$20,398 for travel, food and lodging and \$13,000 for accident and health insurance. Budgeted expenses for these items in 1995-96 were \$102,850, \$19,798 and \$13,050, respectively.

In the interim final rule, an expense of \$650 for management/staff food & lodging, was inadvertently omitted. This would modify the total amount for travel, food and lodging to be \$20,398.

The assessment rate recommended by the Committee was derived by dividing