Rules and Regulations

Federal Register

Vol. 61, No. 2

Wednesday, January 3, 1996

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV95–928–1–FR; Amendment 1]

Papayas Grown in Hawaii; Reduction of Expenses and Assessment Rate for the 1995–96 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule reduces the expenses and rate of assessment previously established under Marketing Order No. 928 for the 1995–96 fiscal year. This rule reduces the budget of expenses and assessment rate which papaya handlers will be assessed for funding expenses by the Papaya Administrative Committee (Committee) that are reasonable and necessary to administer the program.

EFFECTIVE DATE: July 1, 1995 through June 30, 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, or Fax # (209) 487–5906; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–5127, or Fax # (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 928 (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the ‘‘order.’’ 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 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 as issued herein will be applicable to all assessable papayas handled during the 1995–96 fiscal year, which began July 1, 1995, and ends June 30, 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. 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 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 producers of papayas in Hawaii, and approximately 60 handlers regulated under this marketing order. 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 producers and handlers may be classified as small entities.

The papaya 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 was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of papayas. 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. In recommending an assessment rate, the Committee also considered funds available in a monetary reserve that could be used to pay 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 was 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 was the same as was recommended for the 1994–95 fiscal year.

An interim final rule was published in the Federal Register (60 FR 43351, August 21, 1995). A final rule was published in the Federal Register on September 28, 1995 (60 FR 50078).

The Committee met again on September 28, 1995, and recommended revising the budget to reduce expenses to $435,800, and the assessment rate to $.0059 per pound for the 1995–96 fiscal year, which is $.0030 less than was recommended for the 1994–95 fiscal year. The Committee recommended reducing their expenses for research and development by $30,000, and reducing the reserve carryover for the following year to $26,597. There was some concern expressed at the meeting as to whether the Committee would have enough income to meet expenses. Ultimately, by a vote of eight to three with one abstention, the Committee recommended the reduced expenses of $435,800 and an assessment rate of $.0059.

The assessment rate, when applied to anticipated shipments of 33 million pounds, yields $194,700 in assessment income. Other sources of program income include $40,000 from the Hawaii Department of Agriculture, $57,000 from the Department's Foreign Agricultural Service, $7,800 from the Japanese Inspection program, $3,000 in interest income, and $4,766 from the County of Hawaii. Thus, total income is expected to be $307,266. The Committee plans to use money from its reserve account to meet its estimated expenses for the year.

Major expense categories for the 1995–96 fiscal year include $165,500 for the market expansion program, $115,000 for research and development, and $67,000 for salaries. Funds in the reserve at the end of the 1995–96 fiscal year, estimated at $26,597, will be within the maximum permitted by the order of one fiscal year's expenses.

A proposed rule was published in the Federal Register on November 6, 1995 (60 FR 56003). That rule provided a 30-day comment period. No comments were received.

This action will reduce the assessment obligation imposed on handlers. The assessments will be uniform for all handlers. The assessment costs are expected to 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. 533, 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) This action reduces the expenses and rate of assessment previously established under the marketing order for the 1995–96 fiscal year; (2) the 1995 crop year began on July 1, 1995, and the marketing order requires that the rate of assessment apply to all assessable papayas during the crop year; and (3) handlers are aware of this rule which was recommended by the Committee at a public meeting and published in the Federal Register as a proposed rule. The proposed rule provided a 30-day comment period; no comments were received.

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.

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

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

§ 928.225 Expenses and assessment rate.

Expenses of $435,800 by the Papaya Administrative Committee are authorized and an assessment rate of $.0059 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: December 26, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96–23 Filed 1–2–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 989

[FV95–989–5IFR]

Raisins Produced From Grapes Grown in California; Reduction in the Production Cap for the 1996 Raisin Diversion Program for Natural (Sun-dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule invites comments on a reduction of the production cap for the 1996 Raisin Diversion Program (RDP) for Natural (sun-dried) Seedless raisins. The production cap, which limits the amount of raisin tonnage per acre for which an RDP participant can receive credit, is reduced from 2.75 tons per acre to 2.2 tons per acre for this program. This reduction is intended to bring the production cap for 1996 in line with 1995 production per acre, which was approximately 20 percent smaller than the 1994 crop yield per acre. This rule was unanimously recommended by the Raisin Administrative Committee (Committee), the body which locally administers the marketing order.

DATES: This interim final rule becomes effective January 3, 1996. Comments which are received by January 18, 1996 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, or faxed to 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 made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: 209–487–5901 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–205–2830.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under