Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV01–928–2 PR]

Papayas Grown in Hawaii: Reapportionment of Grower Membership on the Papaya Administrative Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would reapportion grower membership on the Papaya Administrative Committee (committee) due to shifts in papaya production. The committee locally administers the Hawaii papaya marketing order (order) which regulates the handling of papayas grown in Hawaii. The committee is comprised of 13 members of which 9 are growers, 3 are handlers, and 1 is a public member. Since 1994, District 1 has been represented by seven grower members, and Districts 2 and 3 have been represented by one grower member each. This rule would reapportion grower membership by decreasing the number of grower members representing District 1 to six members and increasing the number of grower members representing District 3 to two members.

DATES: Comments must be received by October 29, 2001.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All 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, or can be viewed at: http://www.ams.usda.gov/fv/moab.html.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 155 and Order No. 928, both as amended (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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This proposal 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 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.

This proposal invites comments on the reapportionment of grower membership on the committee. This rule would increase the number of grower members from District 3 (the island and county of Oahu) by one member and reduce the number of grower members from District 1 (the island and county of Hawaii) by one member. Increased papaya production in District 3 and decreased production in District 1 have necessitated this proposed grower member reapportionment. While production in District 2 (the county of Kauai which consists of the islands of Kauai and Niihau; the county of Maui which consists of the islands of Maui, Molokai, Lanai, and Kahoolawe; and Kalawao County) also increased in recent years, the increase is not significant enough to qualify the district for increased grower membership.

Section 928.20 of the order provides for the establishment of the committee to locally administer the terms and provisions of the order. The committee is comprised of 13 members, each with an alternate. Of the 12 industry members, 9 are growers and 3 are handlers. This section also specifies how the grower membership on the committee is apportioned.

Section 928.31, paragraph (o), provides that the duties of the committee, with the approval of the Secretary, are to redefine the districts into which the production area is divided, to reapportion the grower member representation on the committee among the districts, to increase or decrease the number of grower and handler members and alternates on the committee, and to change the composition of the committee by changing the ratio between grower members and handler members, including their alternates. Paragraph (o) of § 928.31 further provides that any such changes shall reflect, insofar as practicable, structural

changes within the papaya industry and shifts in papaya production among the districts within the production area.

Based on this authority, § 932.120 of the order's administrative rules and regulations currently provides that seven grower members represent District 1, and one grower member each represents Districts 2 and 3. This apportionment became effective in 1994, when production in District 1 accounted for 52,525,000 pounds of fresh papayas, or 93 percent of the total annual production of fresh papayas of 56,200,000. At that time, production in District 2 accounted for 2,735,000 pounds or 5 percent of fresh papaya production. Fresh papaya production in District 3 accounted for 940,000 pounds or 2 percent of fresh papaya production in 1994.

However, papaya production in District 1 has been declining, in part due to the entrenchment of the Papaya Ringspot Virus (PRSV), a virulent and debilitating disease which reduces papaya production and eventually kills the papaya tree. Although papaya varieties which are immune to the virus have been developed and distributed to growers, the fresh production in recent years in District 1 has not reached the levels previously noted. In fact, production of fresh papayas in District 1 has decreased recently from the 1994 high. In the 1999 crop year, fresh papaya production in District 1 fell to 25,455,000 pounds, or 65 percent of the total fresh papaya production of 39,400,000 pounds. In the 2000 crop year, production of fresh papayas in District 1 increased somewhat to 33,950,000 pounds, but was still only 68 percent of the 2000 crop year total production of 50,250,000.

Production in District 2 where PRSV is not present, and District 3, where PRSV is present but carefully managed, increased significantly in 1999 and 2000. In the 1999 crop year, production of fresh papayas in District 2 increased to 5,680,000 pounds, or 14 percent of the 1999 total production of 39,400,000 pounds. This compares with only 5 percent of total production in 1994. Fresh papaya production in District 3 in 1999 increased to 21 percent of the 1999 total production, or 8,265,000 pounds.

Data from the 2000 season indicates that District 2 experienced a slight decrease in production while District 3 continued to experience increased fresh papaya production. During the 2000 crop year, fresh papaya production in District 2 declined to 4,785,000 pounds, or 9 percent of the total 2000 fresh papaya production of 50,250,000 pounds. At the same time, fresh papaya production in District 3 increased to 11,515,000 pounds, or 23 percent of the total 2000 crop year fresh papaya production of 50,250,000 pounds.

Table 1, below, identifies the shifts in fresh papaya production in recent years since 1994, and is based upon data provided by the National Agricultural Statistics Service (NASS).

TABLE 1.—HISTORY OF FRESH PRODUCTION: 1994, 1999, AND 2000 (PER NASS)

	1994	Percent	1999	Percent	2000	Percent
District 1	52,525,000	93	25,455,000	65	33,950,000	68
District 2	2,735,000	5	5,680,000	14	4,785,000	9
District 3	940,000	2	8,265,000	21	11,515,000	23
Total	56,200,000	.....	39,400,000	.....	50,250,000	.....

When reapportionment was recommended to the Secretary in 1994, the committee noted that the papaya industry has historically maintained equitable representation among handlers and growers. The committee has a duty to reapportion membership on the committee based upon shifts in production, as specified in § 928.31(o).

The current proposal, approved by a mail vote of the committee by an 8 to 5 vote, reflects the committee's prior history in recommending reapportionment of grower membership based upon shifts in fresh papaya production within the districts in recent years.

The recommended number of representatives per district is based upon the amount of fresh papaya production each district represents, as a percentage of total fresh papaya production (in million pounds). For example: In the 1999 crop year, District 1 represented 65 percent of the total fresh papaya production for that year. By multiplying 65 percent times the total of nine grower members, District 1 would be entitled to six (5.85 rounded to the nearest whole person) grower representatives. By the same method, District 2, with 14 percent of total fresh papaya production in 1999, multiplied by nine grower members, would be entitled to 1 (1.26 rounded to the nearest whole person) grower representatives. District 3, which had 21 percent of total fresh papaya production that year, multiplied by nine grower members, would be entitled to 2 (1.89 rounded to the nearest whole person) grower representatives.

In the 2000 crop year, District 1 with 68 percent of total fresh papaya production, multiplied by nine grower members, would be entitled to 6 (6.12 rounded to the nearest whole person) grower representatives; District 2, with 9 percent of total fresh papaya production, multiplied by nine grower members, would be entitled to 1 (.81 rounded to the nearest whole person) grower representatives; and District 3, with 23 percent of total fresh papaya production, multiplied by nine grower members, would be entitled to 2 (2.07 rounded to the nearest whole person) grower representatives.

Table 2, below, reflects the recommended reapportionment based upon percentages of total volume represented by each grower member for the 1999 and 2000 crop years.

TABLE 2.—REPRESENTATION BY DISTRICT BASED ON 1999 AND 2000 CROP YEAR STATISTICS

	Percentage of Fresh Production	X	Total Grower Members	=	Number of Grower Members/ District
1999 Crop Year:					
District 1	65%	.....	9	.....	5.85 (6)
District 2	14%	.....	9	.....	1.26 (1)

TABLE 2.—REPRESENTATION BY DISTRICT BASED ON 1999 AND 2000 CROP YEAR STATISTICS—Continued

	Percentage of Fresh Production	X	Total Grower Members	=	Number of Grower Members/ District
District 3	21%	.....	9	.....	1.89 (2)
2000 Crop Year:					
District 1	68%	.....	9	.....	6.12 (6)
District 2	9%	.....	9	.....	.81 (1)
District 3	23%	.....	9	.....	2.07 (2)

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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 60 handlers of papayas in the production area and approximately 400 producers subject to regulation under the marketing order. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000.

Based on a reported current average f.o.b. price of $.65 per pound of papayas, a handler would have to ship in excess of 7.69 million pounds of papayas to have annual receipts of $5,000,000. Based on a reported current average grower price of $0.25 per pound and average annual industry shipments of 40 million pounds since 1996, total grower revenues would be $10 million. Average annual grower revenue would, therefore, be $25,000. Thus, the majority of handlers and producers of papayas may be classified as small entities, excluding receipts from other sources.

This rule would reapportion grower membership on committee by decreasing the number of grower members who represent District 1 by one, and increasing the number of grower members who represent District 3 by one. Such reapportionment is authorized in § 928.31, paragraph (o) of the order. Section 928.120 of the order's administrative rules and regulations provides the current apportionment of grower and handler representation on the committee, as amended in 1994.

Shifts in production within the three districts have occurred in recent years, prompting a review by the committee, which culminated in this proposal recommended by the committee on a mail vote of 8 in favor and 5 opposed. The five members who opposed the recommendation represent District 1, but not all of the District 1 members opposed the recommendation. Two District 1 members joined the majority and voted in favor of the reapportionment.

As evidenced by the table presented earlier, fresh papaya production in District 1 has decreased since 1994 from 93 percent of total fresh papaya production to 68 percent of total fresh papaya production in 2000; and fresh papaya production in District 3 has increased since 1994 from 2 percent of fresh papaya production to 23 percent of total fresh papaya production in 2000. As a result of this shift in fresh papaya production, the committee recommended that grower membership on the committee be reduced by one grower member in District 1 and increased by one grower member in District 3.

This proposed rule is expected to provide more equitable representation on the committee that is more reflective of current production levels in the various production districts.

An alternative to this recommendation would be to make no changes in grower member representation. Such an alternative would be counterproductive in this instance, however, since the committee has the authority and duty to ensure equitable representation of growers and handlers based upon shifts in papaya production. The recommended reapportionment is supported by the NASS data on recent trends in fresh papaya production.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large entities. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

While the committee did not meet to discuss this issue in public, it is the Department's view that such reapportionment would be appropriate since NASS statistics provide adequate, third-party documentation of shifts in fresh papaya production. A mail vote was deemed acceptable in this matter since only one issue was brought to the committee for consideration. Had any of the committee members voting by mail requested an assembled meeting in which to vote on this issue, the committee would have convened such a meeting. In addition, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because current representation on the committee is not reflective of fresh papaya production in each district, and District 3 would be permitted another grower member position under this proposal. To ensure equitable grower member representation, this proposal should be in effect as soon as possible. It is important that the committee operate at full strength with the appropriate grower member representation. Any written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be 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. Section 928.120 is revised to read as follows:

§ 928.120 Committee reapportionment.

The Papaya Administrative Committee shall consist of 13 members and alternate members. Nine of the members shall represent growers, and three shall represent handlers. Six grower members and their alternates shall represent District 1, one grower member and alternate shall represent District 2, and two grower members and alternates shall represent District 3. No grower organization shall have more than two members on the committee. The three handler members shall be nominated from the production area at large. No handler organization is permitted to have more than one handler member on the committee. One voting public member and alternate shall also be included on the committee. The eligibility requirements and nomination procedures for the public member and alternate are specified in § 928.122.

Dated: September 21, 2001.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01–24316 Filed 9–27–01; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1033

[Docket No. AO–166–A68; DA–01–04]

Milk in the Mideast Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals that would amend certain pooling and related provisions of the Mideast order. Proposals include increasing the minimum route disposition requirements for distributing plants; amending the automatic pool plant qualification provision; decreasing the amount of producer milk that can be diverted to nonpool plants for varying months of the year; and increasing the minimum amount of milk that a producer needs to deliver to pool plants in order to qualify as a producer and to be eligible to be pooled on the order.

Additionally, other proposals which call for eliminating a provision that currently permits a pool plant to have both a pool and a nonpool portion; establishing a ''net shipment'provision for milk received at pool plants for determining pooling eligibility; and establishing the criteria for requiring a waiting period for a supply plant to regain pool status if it fails to meet the pooling requirements, will also be considered. A proposal that would change the rate of partial payments to producers will also be heard.

DATES: The hearing will convene at 8:30 a.m. on Tuesday, October 23, 2001.

ADDRESSES: The hearing will be held at the Holiday Inn Express Hotel and Suites/Galaxy Banquet Center, 231 Park Centre Dr., Wadsworth, OH 44281, (330) 334–7666.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366, e-mail address Gino.Tosi@usda.gov.

Persons requiring a sign language interpreter or other special accommodations should contact David Z. Walker at 440–826–3220; email David.Walker@usda.gov before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Holiday Inn Express Hotel and Suites/Galaxy Banquet Center, 231 Park Centre Drive, Wadsworth, OH 44281, (330) 334–7666, beginning at 8:30 a.m., on Tuesday, October 23, 2001, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Mideast marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the