

(a) Beurre D'Anjou variety of pears shall have a certification by the Federal-State Inspection Service, issued prior to shipment, showing that (1) the core/pulp temperature of such pears has been lowered to 35 degrees Fahrenheit or less and (2) any such pears have an average pressure test of 14 pounds or less. The handler shall submit, or cause to be submitted, a copy of the certificate issued on the shipment to the Control Committee.

(b) Each handler may ship on any one conveyance 8,800 pounds or less of Beurre D'Anjou variety of pears without regard to the quality and inspection requirements in paragraph (a) of this section.

[65 FR 48139, Aug. 7, 2000; 65 FR 53531, Sept. 5, 2000]

## PART 928—PAPAYAS GROWN IN HAWAII

### Subpart—Order Regulating Handling

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AUTHORITY: 7 U.S.C. 601-674.

SOURCE: 36 FR 8925, May 15, 1971, unless otherwise noted.

### Subpart—Order Regulating Handling

#### DEFINITIONS

#### § 928.1 Secretary.

*Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may thereafter be delegated, to act in his stead.

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### § 928.2 Act.

*Act* means public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (46 Stat. 31, as amended; 7 U.S.C. 601-674).

### § 928.3 Person.

*Person* means an individual, partnership, corporation, association, or any other business unit.

### § 928.4 Papayas.

*Papayas* means any and all varieties of papayas grown in the production area.

### § 928.5 Production area.

*Production area* means the State of Hawaii.

### § 928.6 Fiscal year.

*Fiscal year* means the 12-month period beginning January 1 of each year, or such other period that may be approved by the Secretary pursuant to a recommendation by the committee: *Provided*, That the initial fiscal year shall begin on the effective date of this part.

### § 928.7 Committee.

*Committee* means the Papaya Administrative Committee established pursuant to § 928.20.

### § 928.8 Grower.

*Grower* is synonymous with *producer* and means any person who produces papayas for market, and who has a proprietary interest therein.

### § 928.9 Handler.

*Handler* is synonymous with *shipper* and means any person (except a common or contract carrier transporting papayas owned by another person) who handles papayas in fresh form or causes papayas to be handled.

### § 928.10 Handle.

*Handle* or *ship* are synonymous and mean to sell, consign, deliver, or transport papayas or cause papayas to be sold, consigned, delivered, or transported within the production area or between the production area and any

point outside thereof: *Provided*, That such term shall not include:

- (a) The sale of papayas on the tree;
- (b) The transportation of papayas from the location where grown to a packinghouse within the production area for the purpose or having such papayas prepared for market; or
- (c) The sale of papayas at retail by a person in his capacity as a retailer.

### § 928.11 District.

*District* means the applicable one of the following described subdivisions of the production area, or such other subdivisions as may be prescribed pursuant to § 928.31(o):

- (a) *District 1* shall include the island of Hawaii.
- (b) *District 2* shall include 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.

(c) *District 3* shall include the county of Honolulu which includes all of the island of Oahu.

[53 FR 864, Jan. 14, 1988]

### § 928.12 Export.

*Export* means to ship papayas to any point outside the State of Hawaii.

### ADMINISTRATIVE BODY

### § 928.20 Establishment and membership.

There is hereby established a Papaya Administrative Committee consisting of 13 members, each of whom shall have an alternate who shall have the same qualifications as the member. Ten of the members and their alternates shall be growers and are referred to as "grower" members of the committee. Seven of the grower members and their alternates shall be producers of papayas in District 1, two grower members and their alternates shall be producers of papayas in District 2, and one grower member and alternate shall be producers of papayas in District 3. No grower organization shall be permitted to have more than three members on the committee. Three of the members and their alternates shall be representatives of handlers and are referred to

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as “handler” members of the committee. The three handler members and their alternates shall be selected from the production area at large. No handler organization shall be permitted to have more than one handler member on the committee. The number of grower and handler members and alternates on the committee, and the composition of the committee between growers and handlers may be changed as provided in §928.31(o). The committee also may be increased by one public member and one alternate public member nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe the qualifications of, and the nominating procedure for, the public member and alternate.

[53 FR 864, Jan. 14, 1988]

**§ 928.21 Term of office.**

The term of office of each member and alternate member of the committee shall be for two years beginning July 1 and ending on the second succeeding June 30, or such other dates recommended by the committee and established by the Secretary. The consecutive terms of office of a member shall be limited to three 2-year terms. Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified and until their respective successors are selected and have qualified.

[53 FR 864, Jan. 14, 1988]

**§ 928.22 Nomination.**

(a) *Successor members.* (1) The committee shall hold or cause to be held, not later than 45 days before the beginning of the term of office of committee members, separate meetings of growers in each district and a meeting of handlers for the purpose of designating nominees for successor members and alternate members of the committee, which shall be publicized and open to all growers and handlers. At each grower meeting, a chairman and a secretary shall be selected by growers eligible to participate therein. The chairman shall announce at the meeting the number of votes cast for each person nominated for member or alternate member and

shall submit promptly to the committee a complete report concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary. At each handler meeting, a chairman and a secretary may be selected by the handlers eligible to participate therein. If a chairman is elected he shall announce the number of votes cast for each person nominated for member or alternate member and shall submit promptly to the committee a report concerning such meeting. If a chairman is not elected some person shall be designated to file a report with the committee concerning such meeting. The committee shall, in turn, promptly submit a copy of each such report to the Secretary.

(2) Only growers, including duly authorized officers or employees of growers, who are present at such nomination meetings may participate in the nomination and election of nominees for grower members and their alternates. Each grower shall be entitled to cast only one vote for each nominee to be elected in the district in which he produces papayas. No grower shall participate in the election of nominees in more than one district in any one fiscal year. If a person is both a grower and a handler of papayas, such person may vote either as a grower or as a handler but not as both.

(3) Only handlers, including duly authorized officers or employees of handlers, who are present at such nomination meetings may participate in the nomination and election of nominees for handler members and their alternates. Each handler shall be entitled to cast only one vote, which vote shall be weighted by the volume of papayas handled by such handler during the then current fiscal year. If a person is both a grower and a handler of papayas, such person may vote either as a grower, or as a handler but not as both.

(b) In the event that nominees for all available positions are not provided by the aforesaid procedure, then such unfilled positions shall be treated as vacancies and the provisions of §928.26 shall apply.

[53 FR 864, Jan. 14, 1988]

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### § 928.23 Selection.

The Secretary shall select the grower, handler, and public members, and an alternate for each, from nominations made under §§ 928.20, 928.22 and 928.26, or from other qualified persons.

[53 FR 864, Jan. 14, 1988]

### § 928.24 Failure to nominate.

If nominations are not made in the time and manner prescribed in §§ 928.20, 928.22 and 928.26, the Secretary may without regard to nominations select the members and alternate members of the committee.

[53 FR 864, Jan. 14, 1988]

### § 928.25 Acceptance.

Any person selected by the Secretary as a member or as an alternate member of the committee shall qualify by filing a written acceptance with the Secretary promptly after being notified of such selection.

### § 928.26 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate member of the committee to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the committee, a successor for the unexpired term of such member or alternate member of the committee shall be nominated and selected in the manner specified in §§ 928.20, 928.22, and 928.23: *Provided*, That the committee may in its discretion submit its recommendation to the Secretary of a nominee eligible to serve in accordance with the requirements specified in § 928.20. To the extent practicable, the committee's recommended nominee for a grower member or alternate grower member position to represent a particular district shall be a grower recommended to the committee by the incumbent grower representatives of the committee from a particular district, or such nominee shall be a qualified grower recommended by the grower group with which the former member was associated immediately prior to vacating the position; and the recommended nominee for a handler member or alternate handler member position shall be the

handler recommended to the committee by the incumbent handler representatives of the committee, or such nominee shall be a qualified handler recommended by the packinghouse with which the former member was associated immediately prior to vacating the position.

[53 FR 864, Jan. 14, 1988]

### § 928.27 Alternate members.

An alternate member of the committee, during the absence or at the request of the member for whom he is an alternate, shall act in the place and stead of such member and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

### § 928.30 Powers.

The committee shall have the following powers:

- (a) To administer the provisions of this part in accordance with its terms;
- (b) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part;
- (c) To make and adopt rules and regulations to effectuate the terms and provisions of this part; and
- (d) To recommend to the Secretary amendments to this part.

### § 928.31 Duties.

The committee shall have, among others, the following duties:

- (a) To select a chairman and such other officers as may be necessary, and to define the duties of such officers; and to select sub-committees, advisory committees or other committees and define the duties of each;
- (b) To appoint such employees, agents, and representatives as it may deem necessary, and to determine the compensation and to define the duties and procedures of each;
- (c) To submit to the Secretary prior to each fiscal year a budget for such fiscal year, including a report in explanation of the items appearing therein and a recommendation as to the rate of assessment for such fiscal year;
- (d) To keep minutes, books, and records which will reflect all of the

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acts and transactions of the committee and which shall be subject to examination by the Secretary;

(e) To prepare a statement of the financial operations of the committee and to make copies of each such statement available to growers and handlers for examination at the office of the committee;

(f) To require adequate fidelity bonds for all persons handling funds;

(g) To cause its books to be audited by a competent public accountant at least once each fiscal year, and at such other times as the Secretary may request;

(h) To act as intermediary between the Secretary and any grower or handler;

(i) To provide an adequate system for estimating the total season crop of papayas and to make such determinations, as it may deem necessary, or as may be prescribed by the Secretary, in connection with the administration of this part;

(j) To investigate the growing, handling, and marketing conditions with respect to papayas, and to assemble data in connection therewith;

(k) To engage in such research relating to the determination of maturity and grade standards for papayas as may be approved by the Secretary;

(l) To submit to the Secretary such available information, including verified reports, as he may request;

(m) To notify producers and handlers of meetings of the committee to consider recommendations for regulation;

(n) To investigate compliance with the provisions of this part; and

(o) With the approval of the Secretary, 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 and handler members including their alternates. Any such changes shall reflect, insofar as practicable, structural changes within the papaya industry and shifts in papaya

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production among the districts within the production area.

[36 FR 8925, May 15, 1971, as amended at 53 FR 864, Jan. 14, 1988; 53 FR 44551, Nov. 3, 1988]

### § 928.32 Procedure.

(a) A majority of all members of the committee, including alternates acting for members, shall be necessary to constitute a quorum and such majority must concur to approve any committee action.

(b) The committee may vote by telegraph, telephone, or other means of communication, and any vote so cast shall be confirmed promptly in writing: *Provided*, That if any assembled meeting is held, all votes shall be cast in person.

(c) All meetings of the committee held for the purpose of formulating a marketing policy, for formulating recommendations for regulations, or for consideration of matters pertaining to production research, marketing research and development projects, including paid advertising shall be open to the growers and handlers. The committee shall give notice to each grower and handler who has requested such notice and has filed his name and address with the committee.

[36 FR 8925, May 15, 1971, as amended at 53 FR 864, Jan. 14, 1988]

### § 928.33 Expenses and compensation.

The members of the committee and alternates when acting as members, or when requested by the committee to attend a committee meeting or to perform another committee function, may be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

### § 928.34 Annual report.

The committee may, as soon as practicable after the end of the fiscal year, prepare and mail an annual report to the Secretary and make a copy available to each handler and grower who requests a copy of the report. This annual report shall contain at least: (a) A complete review of the regulatory operations during the fiscal year; (b) an

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appraisal of the effect of such regulatory operations upon the papaya industry; and (c) any recommendations for changes in the program.

### EXPENSES AND ASSESSMENTS

#### § 928.40 Expenses.

The committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the committee for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part during each fiscal year. The funds to cover such expenses shall be acquired by the levying of assessments as prescribed in § 928.41.

#### § 928.41 Assessments.

(a) Each person who first handles papayas shall, with respect to the papayas so handled by him, pay to the committee upon demand such person's pro rate share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during each fiscal year. Each such person's share of such expenses shall be equal to the ratio between the total quantity of papayas handled by him as the first handler thereof during the applicable fiscal year and the total quantity of papayas so handled by all persons during the same fiscal year. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each such person. At any time during or after the fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such expenses shall be applied to all papayas handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year before sufficient operating income is available from assessments on the current year's shipments, the com-

mittee may accept the payment of assessments in advance, and may also borrow money for such purpose. Assessments not paid within a period of time prescribed by the committee may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the committee and approved by the Secretary. When such interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

[36 FR 8925, May 15, 1971, as amended at 53 FR 864, Jan. 14, 1988]

#### § 928.42 Accounting.

(a) If, at the end of a fiscal year the assessments collected are in excess of expenses incurred, such expenses shall be accounted for as follows:

(1) Except as provided in paragraphs (a) (2) and (3) of this section, each person entitled to a proportionate refund of any excess assessment shall be credited with such refund against the operation of the following fiscal year unless such person demands payment thereof, in which event it shall be paid to him: *Provided*, That any sum paid by a person in excess of this pro rata share of the expenses during any fiscal year may be applied by the committee at the end of such fiscal year to any outstanding obligations from such person.

(2) The committee, with the approval of the Secretary, may establish and maintain during one or more fiscal years, an operating monetary reserve in an amount not to exceed approximately 1 fiscal year's operational expense. Upon approval by the Secretary, funds in such reserve shall be available for use by the committee for all expenses pursuant to § 928.40.

(3) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds will be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the

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purposes specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in his possession to his successor in office and shall execute such assignments and other instruments as may be necessary or appropriate to vest in such successor full title to all of the property, funds and claims vested in such member pursuant to this part.

**RESEARCH**

**§ 928.45 Production research, marketing research and development.**

(a) The committee, with the approval of the Secretary may establish or provide for the establishment of production research, marketing research, and development projects designed to assist, improve, or promote the production, marketing, distribution, and consumption of papayas. Such projects may provide for any form of marketing promotion including paid advertising. The expense of such projects shall be paid by funds collected pursuant to § 928.41.

(b) In recommending projects pursuant to this section, the committee shall give consideration to the following factors:

(1) The expected supply of papayas in relation to market requirements;

(2) The supply situation among competing areas and commodities;

(3) The need for production or marketing research with respect to any production or marketing development activity.

(c) If the committee should conclude that a program of production or marketing research or development should be undertaken or continued pursuant to this section in any fiscal year, it shall submit the following for the approval of the Secretary:

(1) Its recommendation as to funds to be obtained pursuant to the applicable provisions of this part and the rate of

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assessment required to obtain such funds;

(2) Its recommendation as to any production research or marketing research projects; and

(3) Its recommendation as to promotion activity and paid advertising.

**REGULATIONS**

**§ 928.50 Marketing policy.**

(a) Each season prior to making any recommendations pursuant to § 928.51, the committee shall submit to the Secretary a report setting forth its marketing policy for the season. Such marketing policy report shall contain information relative to:

(1) The estimated total production of papayas within the production area;

(2) The estimated utilization of the crop, showing the quantity and percentages of the crop expected to be marketed through fresh fruit channels within the State of Hawaii, within the continent of North America, and within the balance of the markets of the world; and showing the quantity and percent of the crop expected to be marketed through byproduct channels, together with quantities otherwise to be disposed of;

(3) Available supplies of competitive papayas in all producing areas of the United States and other competitive producing areas;

(4) Trend and level of consumer income;

(5) Other factors having a bearing on the marketing of papayas; and

(6) The type of regulations expected to be recommended during the season.

(b) In the event that it becomes advisable to substantially modify such marketing policy the committee shall submit to the Secretary a revised marketing policy setting forth the information as required in this section. The committee shall transmit a copy of each marketing policy report or revision thereof to the Secretary. Copies of all such reports shall be maintained in the office of the committee where they shall be available for examination by growers and handlers. The committee shall announce the contents of each marketing policy report, including each revised marketing policy report.

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### § 928.51 Recommendations for regulation.

(a) Whenever the committee deems it advisable to regulate the handling of papayas in the manner provided in § 928.52 it shall so recommend to the Secretary.

(b) In arriving at its recommendations for regulation pursuant to paragraph (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for papayas during the period or periods when it is proposed that such regulation should be made effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

### § 928.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of papayas whenever he finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the act. Such regulation may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of any variety or varieties of papayas grown in the production area;

(2) Limit the shipment of papayas by establishing, in term of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level;

(3) Fix the size, capacity, weight, dimension, marking, or pack of the container, or containers, which may be used in the packaging or handling of papayas.

(4) Prescribe different requirements under paragraphs (a)(1) through (a)(3) of this section for the handling of any variety of papayas to destinations within any geographical area or market type identified and recommended by the committee and approved by the Secretary.

(b) The committee shall be informed immediately of any such regulation issued by the Secretary, and the committee shall promptly give notice thereof, to growers and handlers.

[36 FR 8925, May 15, 1971, as amended at 53 FR 865, Jan. 14, 1988]

### § 928.53 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 928.52 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds from the recommendation and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments of papayas in order to effectuate the declared policy of the act, he shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

### § 928.54 Special purpose and minimum quantity shipments.

(a) Except as otherwise provided in this section, any person may, without regard to the provisions of §§ 928.41, 928.52, 928.53 and 928.55, and the regulations issued thereunder, handle papayas (1) for consumption by charitable institutions; (2) for distribution by relief agencies; or (3) for commercial processing into products.

(b) Upon the basis of recommendations and information submitted by the committee, or from other available information, the Secretary may relieve from any or all requirements under or established pursuant to §§ 928.41, 928.52, 928.53, and 928.55, the handling of papayas in such minimum quantities, in such types of shipments, or for such specified purposes (including shipments to facilitate the conduct of marketing research and development projects established pursuant to § 928.45) as the committee, with the approval of the Secretary, may prescribe.

(c) The committee shall, with the approval of the Secretary, prescribe such rules, regulations, and safeguards as it

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may deem necessary to assure compliance with this section. Such rules, regulations, and safeguards may include the requirements that handlers shall file applications and receive approval from the committee for authorization to handle papayas pursuant to this section, and that such application be accompanied by certification by the intended purchaser or receiver that the papayas will not be used for any purpose not authorized by this section.

**§ 928.55 Inspection and certification.**

(a) Whenever the handling of any variety of papayas is regulated pursuant to § 928.52 or § 928.53, each handler who handles papayas shall, prior thereto, cause such papayas to be inspected by the Federal or Federal-State Inspection Service, and certified by it as meeting the applicable requirements of such regulation: *Provided*, That inspection and certification shall be required for papayas which previously have been so inspected and certified only if such papayas have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit or cause to be submitted to the committee a copy of the certificate of inspection issued with respect to such papayas.

(b) The committee may enter into an agreement with the inspection agency with respect to the costs of inspection required by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

(c) The committee, with the approval of the Secretary, may prescribe such rules and regulations as it may deem necessary to assure compliance with this section and provide for identification of containers of papayas which have been inspected and certified for handling.

[36 FR 8925, May 15, 1971, as amended at 53 FR 865, Jan. 14, 1988]

**REPORTS**

**§ 928.60 Reports.**

(a) Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at

such time as it may prescribe, reports of papayas received and disposed of and such other information as may be necessary for the committee to perform its duties under this part.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers are authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least 2 succeeding fiscal years such records of the papayas received and of papayas disposed of by such handler as may be necessary to verify reports pursuant to this section.

(d) Verification of reports: For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Committee, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where papayas are handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

**MISCELLANEOUS PROVISIONS**

**§ 928.61 Compliance.**

Except as provided in this part, no person shall handle papayas, the shipment of which has been prohibited by the Secretary in accordance with the provisions of this part; and no person shall handle papayas except in conformity with the provisions and the regulations issued under this part.

**§ 928.62 Right of the Secretary.**

The members of the committee (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other

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act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

### § 928.63 Effective time.

The provisions of this part and of any amendments thereto shall become effective at such time as the Secretary may declare above his signature, and shall continue in force until terminated in one of the ways specified in § 928.64.

### § 928.64 Termination.

(a) The Secretary may at any time terminate the provisions of this order by giving at least one day's notice by means of a press release or in any other manner which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this order whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this order at the end of any fiscal year whenever the Secretary finds by a referendum or otherwise that continuance is not favored by the majority of producers who, during a representative period determined by the Secretary, were engaged in the production area in the production of papayas for market: *Provided*, That such majority has produced for market during such period more than 50 percent of the volume of papayas produced in the production area. Such termination shall be effective only if announced on or before December 15 of the then current fiscal year.

(d) Upon recommendation of the committee, received not later than October 1 of an even-numbered year, the Secretary shall conduct a referendum prior to December 1 of such year to ascertain whether continuance of this order is favored by the producers.

(e) The Secretary shall conduct a continuance referendum every sixth fiscal year prior to October 1, with the

first such referendum to be conducted within six years from the effective date of this amendment of this section, to ascertain whether continuance of this order is favored by producers. The Secretary may terminate the provisions of this order at the end of any fiscal year in which the Secretary has found that continuance of this order is not favored by producers, who, during a representative period determined by the Secretary, have been engaged in the production for market of papayas in the production area. Such termination of the order shall be effective only if announced on or before December 15 of the then current fiscal year.

(f) The provisions of this order shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

[53 FR 865, Jan. 14, 1988]

### § 928.65 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the committee shall, for the purpose of liquidating the affairs of the committee, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such persons as the Secretary may direct; and (3) upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person, full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant thereto.

(c) Any person to whom funds, property, or claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligation imposed upon the committee and upon the trustees.

### § 928.66 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of

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this part or of any regulation issued pursuant to this part, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this part or any regulation issued under this part, or (b) release or extinguish any violation of this part, or of any regulation issued under this part, or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any violation.

## § 928.67 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

## § 928.68 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

## § 928.69 Derogation.

Nothing contained in the provisions of this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

## § 928.70 Personal liability.

No member or alternate member of the committee and no employee or agent of the committee shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

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## § 928.71 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

## § 928.106 Fiscal year.

Pursuant to § 928.6, the term *fiscal year* is redefined to mean the 12-month period beginning on July 1 of each year and ending on June 30 of the following year: *Provided*, That an interim fiscal period is established for the period October 1, 1986, through June 30, 1987.

[51 FR 35342, Oct. 2, 1986]

## § 928.111 District redefinition.

*District* means the applicable one of the following described subdivisions of the production area:

(a) District 1 shall include the island of Hawaii.

(b) District 2 shall include 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.

(c) District 3 shall include the county of Honolulu which includes all of the island of Oahu.

[49 FR 44200, Nov. 5, 1984 and 50 FR 1439, Jan. 11, 1985]

## § 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. Seven grower members and their alternates shall represent District 1, one grower member and alternate shall represent District 2, and one grower member and alternate 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

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be included on the committee. The eligibility requirements and nomination procedures for the public member and alternate are specified in § 928.122.

[59 FR 55336, Nov. 7, 1994]

### § 928.121 Term of office.

Pursuant to § 928.21, the term of office for each member and alternate member on the committee is reestablished to be a 24-month period beginning July 1 of each odd-numbered year and ending on the second succeeding June 30: *Provided*, That committee members currently serving on the committee shall continue to serve through June 30, 1987.

[52 FR 15489, Apr. 29, 1987]

### § 928.122 Public member eligibility requirements and nomination procedures.

(a) The public member and alternate member shall be nominated by the Papaya Administrative Committee and shall serve a two-year term which coincides with the term of the grower and handler members of the committee.

(b) Public member and alternate member candidates should be able to devote sufficient time to attend committee activities regularly and to familiarize themselves with the background and economics of the papaya industry.

(c) The public member and alternate member shall be residents of the production area.

(d) Public member and alternate member candidates shall not represent an agricultural interest and shall not have a financial interest in, or be associated with, the production, processing, financing, or marketing of papayas.

[54 FR 20516, May 12, 1989]

## Subpart—Rules and Regulations

SOURCE: 36 FR 22360, Nov. 25, 1971, unless otherwise noted.

### § 928.141 Interest charges.

(a) Assessments levied pursuant to § 928.41 not paid within five days after the 25th of each month on papayas handled during the preceding month shall

be subject to an interest charge of one and one-half percent per month.

(b) Notification that assessments are due not later than five days after the 25th of each month shall constitute a demand on a handler for the payment of the handler's pro rata share of expenses within the meaning of § 928.41(a).

[50 FR 31586, Aug. 5, 1985]

### § 928.150 Exemption from inspection.

The requirements in this section apply through January 2, 2002.

(a) *Waivers*. A handler may handle papayas without inspection and certification, as prescribed under § 928.55, if all the following conditions are met:

(1) The handler requests the Federal-State Inspection Service to provide inspection during its regular working hours at least 2 hours in advance of the time when inspection is needed. The request need not be in writing but it shall be confirmed immediately in writing on a waiver form supplied by the inspection service;

(2) The Federal-State Inspection Service advises the handler that it is not practicable to provide inspection at the time and place designated by the handler. Such advice may be verbal but it shall be confirmed in writing by the Federal-State Inspection Service by execution of the waiver form on which the handler submitted his written request. A confirmed copy thereof shall be forwarded by the inspection service to the office of the Papaya Administrative Committee;

(3) The Federal-State Inspection Service furnishes the handler with the number of the waiver which shall cover the fruit on which inspection is requested;

(4) When so instructed, the handler plainly and conspicuously marks one end of each container with the letter "W" and the waiver number supplied by the Federal-State Inspection Service. The letter W and the number so marked shall be not less than one-half inch in height.

[36 FR 22360, Nov. 25, 1971, as amended at 65 FR 70284, Nov. 22, 2000]

EFFECTIVE DATE NOTE: At 66 FR 29219, May 30, 2001, § 928.150 was suspended indefinitely.

**§ 928.151**

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**§ 928.151 Special purpose shipments.**

(a) Papayas delivered to a handler for sale by the handler for the account of the grower shall be deemed a consignment only with respect to papayas which are actually sold by the handler; consignment shall not extend to those papayas delivered but disposed of by dumping as evidenced by a dumping certificate issued by the Federal-State Inspection Service. Papayas not consigned as herein defined shall not be subject to assessment levied pursuant to § 928.41.

(b) Any handler may, after application for and receipt of committee approval, handle papayas to be used as animal feed exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55 and the regulations issued thereunder.

(1) Such application shall be made prior to handling, on the forms provided by the committee and shall be accompanied by certification stating that the fruit will be used for the applied for purpose.

(c) Any handler may, after application for and receipt of committee approval, handle papayas exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55, and the regulations issued thereunder: *Provided*, That such fruit is donated for use by charitable institutions or distribution by relief agencies.

(d) Any handler may, after application for and receipt of committee approval, handle papayas exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55 and the regulations issued thereunder, for market research and development projects.

(e) Any handler may handle papayas exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55 and the regulations issued thereunder, for commercial processing. Commercial processing of papayas means to can, freeze, cook, slice, dice, or pickle or convert such fruit into a beverage base for resale. All other product forms are considered fresh fruit and are subject to the provisions of the agreement and order.

**§ 928.152 Maturity exemption.**

The requirements in this section apply through January 2, 2002.

(a) An immature papaya is one which has not reached the stage of maturity wherein the lower or blossom end half

of the papaya shows a definite tinge of yellow.

(b) The handling of immature papayas shall be limited to papaya handlers whose name appears on the committee's current list of approved immature papaya handlers established pursuant to paragraph (c) of this section. Such papayas so handled shall be exempt from grade, size, quality, and maturity regulations issued pursuant to §§ 928.52 and 928.53.

(c) Any handler who desires to handle immature papayas shall, prior thereto, file with the committee an application and agreement therefor on PAC Form 7, which shall contain the following information: (1) Name and address of the applicant; (2) an agreement that containers of immature papayas handled to destinations within the State of Hawaii shall be clearly marked "Off-Grade—Immature" or "Immature" in letters not less than one-half inch in height and further that each immature papaya, regardless of destination, shall be stamped or labeled in a uniform manner approved by the committee indicating immaturity; and (3) an agreement to promptly submit such reports on immature papayas handled at such times as may be required by the committee. The application shall be signed by the applicant or an authorized employee of the applicant and filed with the committee.

(d) If approved by the committee, the applicant's name shall be placed on the committee's list of approved immature papaya handlers. The applicant shall be notified of the committee's action.

(e) The committee may reject an application for just cause, such as a handler's past failure to comply with the requirements for the handling of immature papayas or his past failure to promptly submit reports as may be required under paragraph (c)(3) of this section and may also, for like causes, immediately suspend upon written notice, authorization previously granted a handler to handle immature papayas and remove his name from the list of approved immature papaya handlers.

[42 FR 17422, Apr. 1, 1977, as amended at 65 FR 70284, Nov. 22, 2000]

EFFECTIVE DATE NOTE: At 66 FR 29219, May 30, 2001, § 928.152 was suspended indefinitely.

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### § 928.153 Minimum quantities exemption.

(a) Any producer may apply to the committee to handle papayas he or she produces direct to consumers exempt from the provisions of §§ 928.41, 928.52, 928.53, and 928.55. Such application shall show:

(1) The name and address of the producer;

(2) The location of the orchard, the acreage in such orchard, and the estimated production thereof;

(3) The location at which the producer will sell the papayas to consumers; and

(4) An agreement to submit such reports as may be required by the committee.

(b) Upon approval of the producer's application, such producer may sell not to exceed a total of 100 pounds of papayas during any one day direct to consumers for home use and not for resale.

[45 FR 50325, July 29, 1980]

### § 928.160 Utilization reports.

(a) Each handler shall file with the Papaya Administrative Committee, not later than the 15th day of each month, a duly executed PAC Form 1 reporting all papayas handled by him during the immediately preceding calendar month. Such report shall include, but is not limited to, the following information:

(1) Quantity of papayas handled subject to assessments including the date and destination of each shipment;

(2) Quantity of papayas handled without regard to the assessment or regulatory provisions of the marketing agreement and order with such quantity itemized as to the amount (i) shipped to authorized commercial processors, (ii) donated to charitable organizations or relief agencies, (iii) shipped to authorized market research and development projects, and (iv) disposed of otherwise, and indicating such disposition.

(b) [Reserved]

[36 FR 22360, Nov. 25, 1971, as amended at 59 FR 38104, July 27, 1994; 65 FR 70284, Nov. 22, 2000; 66 FR 29219, May 30, 2001]

EDITORIAL NOTE: After January 1, 1979, "Budget of Expenses and Rate of Assessment" regulations (e.g. sections .200 through .299) and "Handling" regulations (e.g. sections .314 through .399) which are in effect for a year or less, will not be carried in the Code of Federal Regulations. For FEDERAL REGISTER citations affecting these regulations, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 928.226 Assessment rate.

On and after July 1, 1999, an assessment rate of \$0.008 per pound is established for Hawaii papayas.

[64 FR 59606, Nov. 3, 1999]

### § 928.313 Hawaiian Papaya Regulation 13.

(a) During the period January 2, 2001, through January 2, 2002, no handler shall ship any container of papayas to any destination (except immature papayas handled pursuant to § 928.152) unless such papayas grade at least Hawaii No. 1: *Provided*, That the weight requirements specified in this grade shall not apply to such shipments.

(b) *Hawaii No. 1* cited in this regulation is specified in the Hawaii Department of Agriculture, Standards for Fruits and Vegetables (Title 4, Subtitle 4, Chapter 41, Subchapter 7, § 4-41-52, Standards for Hawaii-Grown Papaya) (8/6/90). Copies of the grade specifications are available from the Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250; and they are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a), and 1 CFR part 51. The materials are incorporated as they exist on the date of approval and a notice of any changes in the material will be published in the FEDERAL REGISTER.

[65 FR 70284, Nov. 22, 2000]

EFFECTIVE DATE NOTE: At 66 FR 29219, May 30, 2001, § 928.313 was suspended indefinitely.