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. FV98–928–1 PR]

Papayas Grown in Hawaii; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Papaya Administrative Committee (Committee) under Marketing Order No. 928 for the 1998–99 and subsequent fiscal years from $0.0059 to $0.0063 per pound of papayas handled. The Committee is responsible for local administration of the marketing order which regulates the handling of papayas grown in Hawaii. Authorization to assess papaya handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by July 29, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Diane Purvis, Marketing Assistant, and Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 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) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, 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) 205–6632.

SUPPLEMENTARY INFORMATION: This 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, papaya 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 papayas beginning on July 1, 1998, and continue 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.

This rule would increase the assessment rate established for the Committee for the 1998–99 and subsequent fiscal years from $0.0059 per pound to $0.0063 per pound of papayas handled.

The papaya 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 and handlers of papayas. 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.

For the 1996–97 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 7, 1998, and recommended 1998–99 expenditures of $561,500 and an assessment rate of $0.0063 per pound of papayas. In comparison, last year's budgeted expenditures were $623,000. The assessment rate of $0.0063 per pound is $0.0004 higher than the rate currently in effect. The Committee determined that the present assessment rate would be inadequate to fund its anticipated expenses and maintain a sufficient reserve fund for the 1998–99 fiscal year. The Committee is authorized to maintain an operating reserve in an amount not to exceed approximately one fiscal year's operational expenses. Last year, the reserve fund was $110,000. At the end of the 1998–99 fiscal year the operating reserve is

expected to be $25,200, which is considered adequate by the Committee. After consideration of anticipated expenses for the 1998–99 fiscal year, it was determined that assessment income, interest, and income from other sources would provide sufficient funds to meet anticipated expenses and maintain an adequate reserve fund.

The major expenditures recommended by the Committee for the 1998–99 fiscal year include $183,000 for marketing and promotion, $171,500 for research and development, and $98,000 for salaries. Budgeted expenses for these items in 1997–98 were $200,000 for marketing and promotion, $225,000 for research and development, and $81,000 for salaries, respectively.

The assessment rate recommended by the Committee was derived by dividing assessment income needed by expected shipments of papayas. Papaya shipments for 1998–99 are estimated at 38 million pounds which should provide $239,400 in assessment income. Income derived from handler assessments, when combined with income from the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income and $84,800 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $25,200 at the end of the 1998–99 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year 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 are encouraged to express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by the Department.

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. 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 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 400 producers of papayas in the production area and approximately 60 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.

Last year, as a percentage, four handlers each shipped in excess of 3.85 million pounds of papayas, and the remaining handlers each shipped less than 3.85 million pounds of papayas. Using an average f.o.b. price of $1.30 per pound, the four handlers shipping in excess of 3.85 million pounds of papayas each could be considered large businesses and the remaining handlers could thus be considered small businesses under SBA's definition. Using an average grower price of $0.45 per pound and industry shipments of 36 million pounds, grower revenues would be $16.2 million. Average revenue per grower would thus be $40,500. Based on the foregoing, the majority of handlers and producers of papayas may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal years from $0.0059 per pound to $0.0063 per pound of papayas handled. The Committee recommended 1998–99 expenditures of $561,500 and an assessment rate of $0.0063 per pound of papayas handled. The proposed assessment rate of $0.0063 per pound is $0.0004 higher than the 1997–98 rate. The quantity of assessable papayas for the 1998–99 fiscal year is estimated at 38 million pounds. Thus, the $0.0063 rate should provide $239,400 in assessment income. Income derived from handler assessments, the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and Japanese Inspection program, along with interest income and $84,800 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $25,200 at the end of the 1998–99 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The Committee recommended 1998–99 expenditures of $561,500 which include decreases in marketing and promotion, and research and development programs. The Committee discussed further decreases in these budget categories to avoid increasing the assessment rate, but it decided that the programs should be funded at the recommended levels. Salary increases were budgeted to cover the costs of a new employee. The assessment rate of $0.0063 per pound of assessable papayas was determined by dividing the assessment income needed by the quantity of assessable papayas, estimated at 38 million pounds for the 1998–99 fiscal year. This estimate would generate $239,400 in assessment income. When combined with $237,300 in anticipated income from other sources including $84,800 from the reserve, the Committee would have adequate funds to meet 1998–99 expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the grower price for the 1998–99 season could range between $.30 and $0.45 per pound of papayas. Therefore, the estimated assessment revenue for the 1998–99 fiscal year as a percentage of total grower revenue could range between 1.4 and 2.1 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the papaya industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee

meetings, the May 7, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large papaya handlers. 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.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1998–99 fiscal year begins on July 1, 1998, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable papayas handled during such fiscal year; and (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.

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 928.226 is proposed to be revised to read as follows:

§ 928.226 Assessment rate.

On and after July 1, 1998, an assessment rate of $0.0063 per pound is established for papayas grown in Hawaii.

Dated: June 23, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–17251 Filed 6–26–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–21]

Proposed Establishment of Class E Airspace; Davenport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class E airspace area at Davenport Municipal Airport, Davenport, IA. The FAA has received a request to establish Class E surface area at Davenport, IA. The commissioning of the Davenport Automated Surface Observation System (ASOS) qualifies the Davenport Municipal Airport for a Class E surface area. The intended effect of this action is to establish controlled airspace for instrument operations at the Davenport Municipal Airport.

DATES: Comments must be received on or before July 20, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ACE–520, Federal Aviation Administration, Docket No. 98–ACE–21, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone number: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–ACE–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E surface airspace area at Davenport, IA. The FAA has received a request to establish a Class E surface area. Commissioning of the ASOS qualifies the Davenport Municipal Airport for a Class E surface area. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.