

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 928**

[Docket No. FV98-928-1 FR]

Papayas Grown in Hawaii; Increased Assessment Rate**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This rule increases 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 began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 18, 1998.**FOR FURTHER INFORMATION CONTACT:**

Diane Purvis, Marketing Assistant, or 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 increases 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.

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) will 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 assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by the

Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will 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 will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998-99 budget and those for subsequent fiscal years will 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 final 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 increases 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 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) will 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 expenditures recommended by the Committee for these items for the 1998-99 fiscal year (with budgeted expenses for 1997-98 in parentheses) include \$183,000 for marketing and promotion (\$200,000), \$171,500 for research and development (\$225,000), and \$98,000 for salaries (\$81,000).

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 will 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 will have adequate funds to meet 1998-99 expenses.

A review of historical information and preliminary information pertaining to the 1998-99 fiscal year indicates that the grower price 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 increases 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 will 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 were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This final rule will 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.

Notice of this action was published in the **Federal Register** on June 29, 1998 (63 FR 35164). A 30-day comment period ending July 29, 1998, was provided to allow interested persons to respond to the proposed rule. No comments were received.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5

U.S.C. 553) because: (1) The 1998–99 fiscal year began 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; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; 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 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 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: August 11, 1998.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–22024 Filed 8–14–98; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 971014245–8190–03]

RIN 0648–AK45

National Marine Sanctuary Program Regulations; Florida Keys National Marine Sanctuary Regulations; Anchoring on Tortugas Bank

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule; environmental assessment.

SUMMARY: The National Oceanic and Atmospheric Administration amends the regulations for the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary) to reinstate and make permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on Tortugas Bank. The preamble to this rule contains an environmental assessment for this action. The intent of this rule is to protect the coral reef at Tortugas Bank. The proposed rule was published on February 11, 1998 and the comment period ended on March 13, 1998.

DATES: The effective date of this rule is 12:01 a.m. on August 19, 1998.

ADDRESSES: Requests for copies of the management plan or the complete regulations for the Sanctuary should be sent to Billy Causey, Superintendent, Florida Keys National Marine Sanctuary, Post Office Box 500368, Marathon, Florida, 33050.

FOR FURTHER INFORMATION CONTACT: Billy Causey at (305) 743–2437.

SUPPLEMENTARY INFORMATION:

I. Background

The Sanctuary was designated by an act of Congress entitled the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) which was signed into law on November 16, 1990. The FKNMSPA directed the Secretary of Commerce to develop a comprehensive management plan and regulations for the Sanctuary pursuant to sections 303 and 304 of the National Marine Sanctuaries Act (NMSA) (also known as Title III of the Marine Protection, Research and Sanctuaries Act of 1972), as amended, 16 U.S.C. 1431 et seq. The NMSA authorizes the development of management plans and regulations for national marine sanctuaries to protect their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

The authority of the Secretary to designate national marine sanctuaries and implement designated sanctuaries is delegated to the Under Secretary of Commerce for Ocean and Atmosphere by the Department of Commerce, Organization Order 10–15, § 3.01(x) (Jan. 26, 1996). The authority to administer the other provisions of the NMSA is delegated to the Assistant Administrator for Ocean Services and Coastal Zone Management of NOAA by NOAA Circular 83–38, Directive 05–50 (September 21, 1983, as amended). The final Sanctuary regulations implementing the designation were published in the **Federal Register** on June 12, 1997, (62 FR 32154) and were

effective July 1, 1997, and codified at 15 CFR Part 922, Subpart P.

In September 1997, NOAA became aware that significant injury to, and destruction of, living coral on the Tortugas Bank, west of the Dry Tortugas National Park, was being caused by the anchoring of vessels 50 meters or greater in registered length.

Section 922.165 of the Sanctuary regulations provides that, where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resources, any and all activities are subject to immediate temporary regulation, including prohibition, for up to 120 days. Emergency regulations cannot take effect until approved by the Governor of the State of Florida. In accordance with 15 CFR 922.165, and the Co-Trustees Agreement for Cooperative Management between NOAA and the State of Florida, in October 1997, NOAA consulted with and received approval by the Governor of the State of Florida to issue a temporary rule prohibiting the anchoring by vessels 50 meters or greater in length on Tortugas Bank west of the Tortugas National Park within the Sanctuary. The temporary rule (62 FR 54381; October 20, 1997), took effect at 12:01 a.m. October 17, 1997 and remained in effect until February 12, 1998. Proposed regulations were printed in the **Federal Register** on February 11, 1998 (63 FR 6883) and the review period for the proposed regulations ended on March 13, 1998. No written comments were received on the proposed regulations. The Florida Keys National Marine Sanctuary Advisory Council reviewed the proposed rule at its meeting on December 9, 1997. The Council recommended approval of the regulation. The Governor and Cabinet of the State of Florida reviewed the rule and approved it without objection on February 10, 1998.

II. Summary of the Regulatory Amendment

The rule reinstates and makes permanent the temporary prohibition on anchoring by vessels 50 meters or greater in registered length on the Tortugas Bank west of the Dry Tortugas National Park within the Sanctuary. Current 15 CFR 922.163(a)(5)(ii) of the final Sanctuary regulations prohibits vessels from anchoring in the Sanctuary on living coral other than hardbottom in water depths less than 40 feet when visibility is such that the seabed can be seen. However, that regulation does not protect the coral located in the area covered by this rule because the water there is deeper than 40 feet.