

# 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. FV00-928-1 PR]

#### **Papayas Grown in Hawaii; Removal of Suspension Regarding Grade, Inspection, and Related Reporting Requirements and Notice of Request for Revision of a Currently Approved Information Collection**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule invites comments on removing the suspension of grade, inspection, inspection waiver procedure, and related exempt shipment reporting requirements under the marketing order regulating papayas grown in Hawaii. These requirements were suspended in July of 1994 because the industry was exploring alternative methods of quality control to reduce costs. The alternative methods have not been as successful as the industry had hoped. This rule also announces the Agricultural Marketing Service's (AMS) intention to request a revision to the currently approved information collection requirements issued under the marketing order. This action is expected to facilitate the shipment of satisfactory quality papayas and program compliance.

**DATES:** Comments must be received by April 18, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. 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) 720-5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public

inspection in the Office of the Docket Clerk during regular business hours.

#### **FOR FURTHER INFORMATION CONTACT:**

Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

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) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement No. 155 and Marketing Order No. 928, both as amended (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A

handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to a recommendation of the Papaya Administrative Committee (committee or PAC), this proposal invites comments on the removal of the suspension of three sections of the order's rules and regulations regarding grade and inspection (§ 928.313), maturity shipment exemptions (§ 928.152), and inspection waiver procedures (§ 928.150). The proposal also would amend § 928.160 regarding reporting requirements to require handlers to add the inspection certificate number on PAC Form 1, Papaya Utilization. The removal of the suspension of the grade requirements in § 928.313 would require handlers of papayas to adhere to the minimum quality requirements that were in effect prior to their suspension on July 1, 1994, except that a 5 percent tolerance for immature papayas in Hawaii No. 1 would be removed, as recommended by the committee. An interim final rule implementing these suspensions was published in the **Federal Register** on July 27, 1994 (59 FR 38102). A final rule finalizing the interim final rule was published in the **Federal Register** on October 18, 1994, (59 FR 52409).

Removal of the suspension on minimum quality requirements would require handlers to obtain inspection through the Federal or Federal-State Inspection Service (inspection service) prior to shipment. Removal of the suspension of the maturity exemption and related reporting requirements in § 928.152 would require handlers interested in becoming approved handlers of immature papayas to apply to the committee for approval, and to report handling of immature papayas. Immature papayas are used in a popular dish called green papaya salad and as a vegetable substitute in recipes. In addition, amendment of § 928.160 would require handlers to include the number of the inspection certificate issued by the inspection service on each

PAC Form 1, Utilization Report, filed with the committee. Finally, removal of the suspension of the inspection waiver procedures in § 928.150 would allow handlers to ship papayas without inspection under certain conditions when it is not practicable for the inspection service to provide such inspection.

This proposal was recommended by the committee at its meeting on February 18, 1999, by a vote of seven in favor, two opposed, and one abstention. The two dissenters believed that the cost of mandatory inspection continues to outweigh its benefits to the industry and that there are other less expensive methods of achieving quality control, and that voluntary quality control should be continued. Those in favor believed that voluntary controls have not been effective, and that mandatory controls were needed to ensure that buyers receive the quality they desire and help the industry compete more effectively in the marketplace.

Section 928.52 of the papaya marketing order authorizes the establishment of grade, size, quality, maturity, and pack and container regulations for shipments of papayas. Section 928.53 allows for the modification, suspension, or termination of such regulations when warranted. Section 928.55 provides that whenever papayas are regulated pursuant to §§ 928.52 or 928.53, such papayas must be inspected by the inspection service and certified as meeting the applicable requirements. The cost of inspection and certification is borne by handlers. Section 928.54 authorizes regulation exemptions when shipping papayas for commercial processing, relief agencies, or charitable institutions. In addition, 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. Section 928.60 of the papaya marketing order authorizes handler reporting requirements.

In 1994, §§ 928.150, 928.152, and 928.313 of the order's rules and regulations were suspended. Section 928.313 established minimum grade requirements for shipments of papayas prior to its suspension. This section required that papayas grade at least Hawaii No. 1, except that not more than

5 percent of the fruit may be immature. Also, the weight requirements specified in the Hawaiian grade standards did not apply. This proposed rule would remove the suspension of these regulations with some changes. First, paragraph (a) of § 928.313 would be amended to remove the 5 percent tolerance for immature fruit. The committee believes that the quality of papayas shipped needs to improve for the industry to regain buyer confidence and that removal of that tolerance would improve the quality shipped into the fresh market. Second, paragraph (b) of that section would be amended to correct the information regarding the name, address, and telephone number of the Department contact to obtain copies of the Hawaii papaya quality standards which are incorporated by reference. The standards for Hawaii-grown papaya are dated August 6, 1990, and replace standards dated May 29, 1981, previously incorporated.

As a result of removing the suspension of the grade regulations issued pursuant to § 928.52, mandatory inspection would also be required, except where specifically exempted.

Prior to its suspension, § 928.152 of the order's rules and regulations defined immature papayas and established the procedures for handling immature papayas exempt from regulation. This section also required handlers to apply to the PAC to become approved handlers of immature papayas and report the handling of immature papayas. This rule would remove the suspension of these regulations in their entirety, thus affording approved handlers the opportunity to handle immature papayas, exempt from minimum grade, size, quality, and maturity regulations. PAC Form 7 (Application to be an Approved Handler of Immature Papayas) and PAC Form 7(c) (Maturity Exemption Report) would also be reinstated so the committee could approve handlers of immature papayas and such handlers could report their handling of immature papayas. Handlers pay assessments on such shipments.

Section 928.150 established the procedures for granting inspection waivers under certain conditions prior to its suspension. This rule would remove the suspension of § 928.150, giving the inspection service the flexibility to issue inspection waivers to handlers when it is impracticable to provide inspection services. For example, a handler might be in a remote location and the inspection service might not be able to provide an inspector to perform the inspection at the time and place requested.

Section 928.160 was amended in 1994 as a result of the suspension of §§ 928.150, 928.152, and 928.313. Because the quality requirements, and, thus, the requirement for mandatory inspection was suspended, § 928.160 was amended to remove the requirement to include the inspection certificate number on the PAC Form 1, Utilization Report. Since the quality and inspection requirements would be reinstituted, a change would be necessary in § 928.160 to require the inspection certificate number to be reported by the handler on the PAC Form 1. PAC Form 1 would also be revised to include this additional information collection.

Minimum grade and inspection requirements were initially established to assure that only acceptable quality fruit entered fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to papaya producers. The reporting requirements were established to authorize the committee to allow approved handlers to handle immature papayas, and to aid the committee in assessment billings and program compliance.

In committee discussions on the suspension of grade, inspection, and reporting requirements in 1994, members who supported the suspension advised that the papaya industry was committed to instituting alternative quality assurance procedures in the absence of mandatory inspection. This was to be achieved by handlers providing financial incentives to producers to harvest and deliver only high quality fruit. Such a program was to be arranged with handlers by the newly-formed producers' bargaining cooperative. It was anticipated that this program would provide incentives for growers to deliver high-quality fruit to handlers. However, the producer's bargaining cooperative was not as successful as hoped in implementing this program. To date, the industry has not instituted any effective alternative means of quality control. As a result, the overall quality of papayas shipped from Hawaii has declined and the industry has lost market share.

Most committee members also believed that the elimination of inspection requirements would increase producer returns because handlers would pass on to producers the savings they realized when inspection costs were eliminated. This has happened to a limited extent. Finally, the committee hoped that buyers of fresh papayas would encourage handlers to continue to ship high-quality fruit by paying premium prices for higher-quality fruit.

As handlers became more aware of the price differentials between various quality levels, the committee believed that competition among handlers would ensure shipments of good quality fruit. This has not occurred like the committee had hoped.

At the time the suspension was recommended, the industry was suffering from an infestation of Papaya Ringspot Virus (PRSV), a debilitating disease which attacks papaya trees, eventually killing them. Production from the Island of Hawaii, the primary growing region, declined substantially, and the papayas produced from those trees were of lower quality.

Since 1994, the committee has reported deteriorating wholesale buyer and consumer confidence with Hawaiian papayas, resulting in lost market share. The condition of poor quality papayas often deteriorates during shipment, frequently requiring buyers to discard some fruit and repack the rest. This has resulted in financial losses for some buyers, decreased buyer confidence, and reduced market opportunities for handlers of Hawaii papayas. As a result, competing supplies from the Philippines, Brazil, and Mexico have made inroads into existing Hawaii papaya markets.

This is of great concern to the committee, especially because the domestic production from two PRSV-resistant papaya varieties is increasing significantly, and production is expected to continue growing. The committee would like to regain the confidence of buyers by shipping high-quality Hawaii papayas. It believes that mandatory quality control is needed to ensure buyers the quality they prefer. Removing the suspension of the grade, inspection, and reporting requirements in place prior to July 1, 1994, should help the industry achieve its goals and compete more effectively in the marketplace.

During its deliberations on the removal of the suspension of grade, inspection, and reporting requirements on February 18, 1999, the committee discussed the current state of the industry and what actions the committee could take to enhance the quality of shipments, improve grower and handler returns, increase wholesale buyer and consumer confidence, and regain lost market share. The committee decided that to successfully market the increasing production from the PRSV-resistant papaya varieties, the industry must reestablish a quality image for Hawaii papayas among buyers and consumers. It would be counterproductive, they noted, to utilize

assessment dollars promoting a product which was not of acceptable quality.

In addition, the committee noted that reinstituting mandatory inspection would augment information available to the committee on assessments owed by handlers. Once inspections begin, a copy of each inspection certificate would be provided to the committee staff by the inspection service. This third-party information would permit the committee staff to have accurate and timely data upon which to bill each handler for papayas handled. Currently, the committee staff utilizes information gathered from transshippers (air freight and shipping companies) to augment and confirm information provided by handlers' reports for assessment collection compliance purposes under § 928.31(n). This information is obtained at a significant cost of committee time and resources. While information from transshippers would continue to be used as a random check, data provided from the inspection certificates would be the primary source of third-party information for assessment billings by the committee staff.

Inspection costs on handlers would result from this action. Inspection costs incurred would total \$24.24 per hour for on site inspections and mileage travel costs of 37 cents a mile round-trip from the office to the processing plant or handler's premises. For a trip less than 10 minutes or 7 miles, no travel time cost is charged, just the mileage cost. For a trip taking 10 or more minutes, or covering 7 or more miles, the travel time cost is based on the \$24.24 hourly rate.

The committee members who opposed the recommendation believe that the cost of inspection would be passed on to producers, lowering overall producer returns, and that the benefits of mandatory quality control would not outweigh the costs. In addition, they believed that voluntary quality control should be given more time to work. However, most committee members favored the recommendation, as they believe the alternatives attempted have not been successful, and that prompt action is imperative to assure the long-term viability of the Hawaii papaya industry.

The committee's recommendation resulted from the efforts of a task force assigned by the committee chairman in 1998. The task force reviewed the current marketing and quality conditions affecting the Hawaii papaya industry for several months, and urged the committee to consider removing the suspension of quality control-related requirements.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 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.

Based on a reported average f.o.b. price of \$1.30 per pound of papayas, a handler would have to ship in excess of 3.85 million pounds of papayas to have annual receipts of \$5,000,000. Last year, two handlers each shipped in excess of 3.85 million pounds of papayas, and, therefore, could be considered large businesses. The remaining handlers could be considered small businesses under SBA's definition.

Based on a reported average grower price of \$0.45 per pound and industry shipments of 36 million pounds, total grower revenues would be \$16.2 million. Average grower revenue would, thus, be \$40,500. Based on the foregoing, the majority of handlers and producers of papayas may be classified as small entities.

This proposal would remove the suspension of grade, inspection, and related reporting requirements under the order's rules and regulations. As a result of removing the suspension, §§ 928.150, 928.152, and 928.313 would be reinstated; and § 928.160 would be amended to include the requirement that inspection certificate numbers be added to the utilization reports filed by handlers. Section 928.313 would also be amended to remove the 5 percent tolerance for immature papayas since the committee believes that the quality of papayas shipped into fresh market channels must be improved dramatically. Section 928.313 would also be amended to correct the name and address of Department references

for obtaining copies of the Hawaii papaya quality standards which are incorporated by reference. References to Department contacts are outdated, as is the mailing address listed in that section. The quality standards for Hawaii-grown papayas have been revised as of August 6, 1990, and would replace the standards dated May 29, 1981, currently incorporated by reference.

During its deliberations, the committee discussed the current state of the industry with the advent of the two PRSV-resistant papaya varieties. Production is increasing and overall production levels of Hawaii papayas are expected to reach pre-1994 levels by the 2001 crop year, and then continue growing. Such increasing production could reduce handler and producer returns if the quality of papayas shipped is not improved.

Since the suspension of the grade and inspection requirements in 1994, the quality of Hawaii papayas in the marketplace has been deteriorating. The condition of poor quality fruit has often deteriorated during shipment, requiring buyers to discard some fruit and repack the remaining fruit. This has resulted in financial losses for some buyers and caused decreased buyer confidence in Hawaii papaya quality, resulting in reduced market share.

With the new varieties, the industry is now in a position to provide ample supplies of good quality fruit, and restore wholesale buyer and consumer confidence in Hawaii papayas. Ample supplies of good quality fruit would allow the industry to regain its market share, thus, improving returns to handlers and producers.

The committee discussed continuing the suspension as an alternative to this change. However, the committee believes that removing the suspension of the grade, inspection, and reporting requirements would benefit producers and handlers by enhancing the market quality of papayas grown in Hawaii. The committee estimated that the increased cost of inspection would be offset by the increased market value of the inspected papayas. Inspection costs incurred would total \$24.24 per hour for on site inspections and mileage travel costs of 37 cents a mile round-trip from the office to the processing plant or handler's premises. For a trip of less than 10 minutes or 7 miles, no travel time cost is charged, just the mileage cost. For a trip taking 10 or more minutes, or covering 7 or more miles, the travel time cost is based on the \$24.24 hourly rate. The majority of committee members agreed that removing the suspension of the grade,

inspection, and reporting requirements is in the long-term best interests of the industry. Improved quality of Hawaii papayas is expected to result in increased consumer satisfaction and repeat purchases, thereby improving handler and producer returns. The increased handling costs due to mandatory inspection is expected to be offset by the aforementioned benefits. In addition, greater information collection authority may result in enhanced assessment collections, permitting the committee to utilize more funds to promote a larger and higher-quality crop, if they deem it appropriate.

This action would impose additional reporting requirements on an estimated five papaya handlers by requiring handlers to file PAC Form 7, the Application to be an Approved Handler of Immature Papayas, and PAC Form 7(c), Maturity Exemption Report. It would also require including the inspection certificate number on PAC Form 1. PAC Form 7 is estimated to take 15 minutes to complete, and PAC Form 7(c) is estimated to take less than 10 minutes to complete. There is no additional measurable reporting burden estimated for PAC Form 1. In all, requiring both forms would result in an estimated additional reporting burden to the previously-mentioned five handlers of 9.25 annual hours. The current burden is approximately 1,000 hours. The benefits of the additional reporting requirements are expected to outweigh the costs. Handlers would be able to utilize exemptions to the grade and inspection requirements, and the committee would have additional information to aid in assessment collections and program compliance.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule are being submitted to the Office of Management and Budget (OMB) for approval. This rule would not become effective until this additional information collection is approved by the OMB. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

In addition, the committee's meeting was widely publicized throughout the papaya industry and all interested persons were encouraged to attend the meeting and participate in committee deliberations on all issues. Like all

committee meetings, the February 18, 1999, meeting was a public meeting and all entities, both large and small, were encouraged to express views on this issue. The committee itself is comprised of 13 members, of which nine are producers and three are handlers. The committee also includes a public member who does not represent an agricultural interest nor have a financial interest in papayas. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces AMS' intention to request a revision to a currently approved information collection for Papayas Grown in Hawaii, Marketing Order No. 928.

*Title:* Papayas Grown in Hawaii, Marketing Order No. 928.

*OMB Number:* 0581-0102.

*Expiration Date of Approval:* November 30, 2000.

*Type of Request:* Revision of a currently approved information collection.

*Abstract:* Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Act, industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order's operations and issue regulations recommended by a committee of representatives from each commodity industry.

The Hawaii papaya marketing order program, which has been in operation since 1971, authorizes the issuance of grade, size, maturity regulations,

inspection requirements, and marketing and production research, including paid advertising. Regulatory provisions apply to papayas shipped within and out of the area of production to any market, except those specifically exempted by the marketing order.

The order, and rules and regulations issued thereunder, authorize the committee, the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions. The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Hawaii papaya marketing order program.

The committee has developed forms as a convenience to persons who are required to file information with the committee that is needed to carry out the purposes of the Act and the order. These forms require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order, and the rules and regulations issued thereunder. Papayas may be shipped year-round and these forms are utilized accordingly.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Program regional and headquarters staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information and AMS is the secondary user.

This proposed collection consists of the requirement for handlers to provide information on PAC Forms 7 and 7(c) for their application to become an approved handler of immature papayas and on their handling of immature papayas. Shipments of immature papayas for special markets are exempt from certain requirements under the order. A conforming change to the PAC Form 1, the papaya utilization report, would require the addition of the inspection certificate number on the form. Use of these forms is authorized under §§ 928.152 and 928.160 of the order. Form 7 would be filed once annually and Form 7(c) would be filed approximately 10 times per year by each of the estimated five reporting handlers. The estimated increase in burden hours is 1.25 hours for PAC Form 7 and 8 hours for PAC Form 7(c), bringing the total annual hours added to the current response burden to 9.25. The current

burden is approximately 1,000 hours. There would be no measurable increase in burden hours resulting from including the number of the inspection certificate on PAC Form 1.

The committee recommended reinstating the reporting requirement in conjunction with removing the suspension of the grade and inspection requirements. With information provided by handlers, the committee would be able to approve handlers' requests to handle immature papayas exempt from regulation and to track such handling of immature papayas. In addition, by adding the inspection certificate number to the PAC Form 1, the committee will have accurate and timely data with which to bill handlers for assessments. Such revisions to the information collection authority would enhance program administration and improve information available to the committee for assessment billings.

The proposed revision to the currently approved information requirements issued under the order is as follows:

*Estimate of Burden*“: Public reporting burden for PAC Form 7 of this collection of information is estimated to average 15 minutes per response.

*Respondents*: Handlers of papayas grown in the production area of Hawaii.

*Estimated Number of Respondents*: 5.

*Estimated Number of Responses per Respondent*: 1.

*Estimated Total Annual Burden on Respondents*: 1.25 hours.

*Estimate of Burden*: Public reporting burden for PAC Form 7(c) of this collection of information is estimated to average 9.60 minutes per response.

*Respondents*: Handlers of papayas grown in the production area of Hawaii.

*Estimated Number of Respondents*: 5.

*Estimated Number of Responses per Respondent*: 10.

*Estimated Total Annual Burden on Respondents*: 8.00 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the functioning of the Hawaii papaya marketing order program and USDA's oversight of that program; (2) the accuracy of the collection burden estimate and the validity of the methodology and assumptions used in estimating the burden on respondents; (3) ways to enhance the quality, utility, and clarity of the information requested; and (4) ways to minimize the burden, including use of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0102 and Hawaii Papaya Marketing Order No. 928, and be sent to the USDA in care of the docket clerk at the address referenced above. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of the public record.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

#### 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. The suspensions of §§ 928.150 and 928.152 are removed.

3. In § 928.160, paragraph (a)(1) is revised to read as follows:

#### § 928.160 Utilization reports.

(a) \* \* \*

(1) Quantity of papayas handled subject to assessments and regulations including the date, destination, and inspection certificate number of each shipment;

\* \* \* \* \*

3. The suspension of § 928.313 is removed and the section is revised to read as follows:

#### § 928.313 Hawaiian Papaya Regulation 13.

(a) 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 section is specified in the Hawaii Department of Agriculture Standards for Fruits and Vegetables (Title 4, Subtitle 4, Chapter 41, Subchapter 7, § 4-41-52) (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 Information Center, 800 North Capitol Street, NW., suite 700, Washington, DC 20408; telephone: (202) 720-2491. This incorporation by reference was approved by the Director of the Federal Register. 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**.

Dated: February 14, 2000.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-3874 Filed 2-17-00; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 2 and 3

[Docket No. 97-001-4]

RIN 0579-AA85

#### Animal Welfare; Draft Policy on Training and Handling of Potentially Dangerous Animals

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Draft policy statement and request for comments.

**SUMMARY:** We have developed a draft policy statement to provide guidance to exhibitors and other regulated entities on how to comply with the regulations regarding training and handling of potentially dangerous animals (e.g., lions, tigers, bears, and elephants). We are seeking public comment on the policy statement before we implement it.

**DATES:** We invite you to comment. We will consider all comments that we receive by April 18, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 97-001-4 Regulatory Analysis and Development PPD, APHIS Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737-1238 Please state that your comment refers to Docket No. 97-001-4.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** Dr. Barbara Kohn, Senior Staff Veterinarian, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234; (301)734-7833.

**SUPPLEMENTARY INFORMATION:** The Animal Welfare Act (AWA) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, exhibitors, and other regulated entities. The Secretary of Agriculture has delegated the responsibility for enforcing the AWA to the Administrator of the Animal and Plant Health Inspection Service (APHIS). Regulations established under the AWA are contained in 9 CFR parts 1, 2, and 3. The APHIS Animal Care program ensures compliance with the AWA regulations by conducting inspections of premises with regulated animals.

Regulations regarding training and handling of animals are found in 9 CFR part 2. Section 2.131 contains provisions for the humane training and handling of animals. In § 2.131, paragraph (a) states that handling of all animals must be done as expeditiously and carefully as possible in a manner that does not cause trauma, overheating, excessive cooling, behavioral stress, physical harm, or unnecessary discomfort. Paragraph (a) also prohibits physical abuse and deprivation of food or water as tools to train, work, or otherwise handle animals (except that short-term withholding of food or water is allowed as long as the animals receive their full dietary requirements each day). Paragraphs (b) and (c) of § 2.131 set forth humane conditions for public exhibition of animals, including providing that animals must be handled in a manner that minimizes risk to the animals and the public, be given rest periods, not be exposed to rough handling or extended periods of exhibition that would be inconsistent with their good health and well-being, and be under the supervision and control of knowledgeable handlers at all times.

Regulations regarding personnel qualifications for trainers and handlers are found in 9 CFR part 3, § 3.85, 3.108, and 3.132. These sections generally require that personnel have

adequate knowledge and experience to care for and handle the animals. Section 3.85 concerns nonhuman primates, § 3.108 concerns marine mammals, and § 3.132 concerns animals such as bears, big cats, and elephants.

The general public, regulated industries, and APHIS inspectors have requested that we provide more guidance on how to meet the requirements of the regulations as they pertain to potentially dangerous animals. On July 24, 1997 (62 FR 39802, Docket No. 97-001-1), we published a notice in the **Federal Register** requesting information concerning what practices are currently used for training and handling potentially dangerous animals and what training and experience levels trainers and handlers of such animals have. We requested this information to help us more thoroughly examine all issues pertaining to the training and handling of potentially dangerous animals. We received over 400 comments in response to the request for information. Some comments contained guidance or training manuals used by individual facilities in caring for and handling specific animals (elephants, big cats). Many comments supported efforts to clarify the existing regulations to help ensure the safe and humane handling of animals in exhibition.

Based on information received in the comments and our experience in enforcing the AWA and the regulations, we have developed a draft policy statement to provide more guidance to our inspectors and regulated entities as to what we consider acceptable under the regulations for the safe and humane handling and training of potentially dangerous animals. We intend this policy to be used by exhibitors of potentially dangerous animals as a basis for assessing the qualifications of their personnel and evaluating their training and handling procedures. We also intend that the policy statement place regulated entities on notice regarding APHIS' interpretation of the regulations.

This policy statement is not a comprehensive guide on training and handling potentially dangerous animals, nor is the policy intended to replace any existing regulations or any existing industry standards. We are unaware of any written standards recognized by the industry as a whole. However, individual facility guides and many books and articles exist that contain standards used by members of the industry for training and handling a variety of potentially dangerous animals, and adoption of this policy would not preclude use of those guides and information. We believe the