

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 928

[Docket No. FV02-928-3 FR]

#### Papayas Grown in Hawaii; Suspension of Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule suspends the reporting and assessment regulations in effect under the Hawaii papaya marketing order. The Department of Agriculture has determined that the order should be terminated due to the results of a recently held referendum in which growers indicated they did not want the program to continue. Termination of the order must be delayed until after a 60-day Congressional notification period. Because the 2002 fiscal year has begun, suspension of reporting and assessment requirements is needed so that papaya handlers are not subject to regulation during that year.

**EFFECTIVE DATE:** August 1, 2002.

**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 Anne Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs,

AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action is being taken under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and §§ 928.53(b) and 928.64(b) of Marketing Order No. 928, regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order."

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 8c(15)(A) of the Act, any handler subject to an order may file with USDA 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 USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order has been in effect since 1971. It authorizes the establishment of grade, size, quality, pack, and container requirements, although such requirements are not currently in effect. The order also authorizes production and marketing research, market development, and paid advertising for Hawaii papayas. The program is funded by assessments imposed on papaya handlers.

This rule suspends the assessment and reporting requirements currently prescribed under the order.

Section 928.64(e) of the order specifies that continuance referenda must be conducted among papaya producers every sixth year before October 1. Therefore, during the period from May 6 to May 31, 2002, USDA conducted a referendum among papaya growers to determine if they favored continuation of their program. The referendum order provided that USDA would consider terminating the provisions of the order if less than two-thirds of the number of growers voting and growers of less than two-thirds of the papaya volume represented in the referendum favored continuance.

Ballots were mailed to 462 known papaya growers in Hawaii. By the close of the voting period, 55 valid votes had been cast. The results show that 49 percent of the growers voting, who produced 21 percent of the volume represented in the referendum, favored continuation of the program. The order failed to pass both criteria for continuance, demonstrating a lack of producer support needed to carry out the objectives of the Act. Thus, it has been determined that the provisions of the order no longer tend to effectuate the declared policy of the Act.

Therefore, pursuant to section 8c(16)(A) of the Act and § 928.64 of the order, it has been found that the order provisions should be terminated. Section 8c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order program. Congress has been so notified.

The 2002-03 fiscal year for Hawaii papayas began July 1. Because implementation of any regulatory requirements during the 2002-03 fiscal year would be inconsistent with USDA's decision to terminate the order, this action suspends the assessment and reporting requirements in effect under the order. Papayas shipped during the month of July would have to be reported to the Papaya Administrative Committee (committee), the agency established to locally administer the program, by August 15. Based on those handler reports, the committee would bill handlers for assessments owed. Suspending these requirements results in no regulatory requirements imposed

on papayas handled during the 2002–03 fiscal year.

It is hereby determined that the reporting and assessment requirements specified in §§ 928.160 and 928.226, respectively, do not effectuate the declared policy of the Act and should not be applied during the 2002–03 and subsequent seasons. Therefore, these sections are suspended effective August 1. Once the order provisions pertaining to papayas grown in Hawaii have been terminated, these and other regulations under the order will no longer be in effect.

#### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 those 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 are defined as those having annual receipts of less than \$750,000, and small agricultural service firms, which include handlers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000.

Based on a reported current average f.o.b. price for fresh papayas of \$0.65 per pound, a handler would have to ship in excess of 7.69 million pounds to have annual receipts of \$5 million. Based on a reported current average grower price of \$0.25 per pound, and average annual industry shipments of 40 million pounds since 1996, annual total grower revenues would be \$10 million. Average annual grower revenue would, therefore, be \$25,000. Thus, the majority of handlers and producers of papayas may be classified as small entities, excluding receipts from other sources.

This final rule suspends the reporting and assessment requirements specified in §§ 928.160 and 928.226, respectively. This is consistent with USDA's decision to terminate the provisions of the Hawaii papaya marketing order. The

order is being terminated because in a recently held referendum, papaya producers failed to support continuation of the program.

This action eliminates the cost of assessments. Currently, handlers are required to pay an assessment rate of \$0.008 per pound handled.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Suspension of the reporting requirements specified in § 928.160 is expected to reduce the total annual reporting burden on Hawaii papaya handlers by 720 hours (60 handlers × 12 reports per year × 1 hour per report).

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <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.

After consideration of all relevant matter presented, including the results of a recently held producer referendum, it is hereby found that the regulations in effect under the papaya marketing order do not tend to effectuate the declared policy of the Act and, therefore, are being suspended.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and 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) This action relieves restrictions on handlers by lifting reporting and assessment requirements; (2) this rule should apply to all papayas handled during the 2002–03 fiscal year, which began July 1; (3) handlers were given notice of this action in a press release issued by USDA; and (4) no useful purpose would be served by delaying the effective date.

#### List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth above, 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. In part 928, §§ 928.160 and 928.226 are suspended.

Dated: July 31, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 02–19671 Filed 8–2–02; 8:45 am]

**BILLING CODE 3410–02–P**

#### FEDERAL ELECTION COMMISSION

##### 11 CFR Part 100

[Notice 2002–12]

#### Reorganization of Regulations on “Contribution” and “Expenditure”

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** The recently enacted Bipartisan Campaign Reform Act of 2002 (“BCRA”) substantially amended the Federal Election Campaign Act (“FECA” or “the Act”). Among its amendments is the deletion of the office building or facility exception in the definition of “contribution” in section 431(8)(B) of FECA. The Federal Election Commission (“the Commission”) is amending the regulations to reflect this statutory change. As part of this effort, the Commission is also reorganizing the sections defining “contribution” and “expenditure” in its regulations. Further information is provided in the supplementary information that follows.

**EFFECTIVE DATE:** November 6, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel, 999 E Street, NW., Washington DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002, Public Law 107–155, 116 Stat. 81 (March 27, 2002), significantly amends the Federal Elections Campaign Act, as amended, 2 U.S.C. 431 *et seq.*, and directs the Commission to promulgate regulations implementing Title I of BCRA within 90 days of enactment and to promulgate regulations implementing the other titles of BCRA that are under the Commission's jurisdiction within 270 days of enactment. *See* BCRA, section 402(c). One amendment to the definition of “contribution” is in Title I, section 103(b)(1) of BCRA. These final rules address this amendment.