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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV00-928-1 FR]

Papayas Grown in Hawaii; Removal of Suspension Regarding Grade, Inspection, and Related Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule removes the suspension of grade, inspection, inspection waiver procedure, and related exempt shipment reporting requirements under the marketing order regulating papayas grown in Hawaii and makes those requirements applicable for one year. 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 action is expected to facilitate the shipment of satisfactory quality papayas and program compliance. This rule also amends § 928.160 regarding reporting requirements to require handlers to add the inspection certificate number on PAC Form 1, Papaya Utilization, for one year.

DATES: Effective January 2, 2001. The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of January 2, 2001.

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 final rule 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This action 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 final rule removes 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) and makes these regulations applicable until January 2, 2002. This final rule also amends § 928.160 regarding reporting requirements to require handlers to add the inspection certificate number on PAC Form 1, Papaya Utilization during the period of regulation. The removal of the suspension of the grade requirements in § 928.313 will 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 will 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 of minimum quality requirements will 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 will 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 will 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 will allow handlers to ship papayas without inspection under certain conditions when it is not practicable for the

inspection service to provide such inspection.

This rule 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, 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 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 final rule removes the suspension of these regulations with some changes. First, paragraph (a) of § 928.313 will be amended to remove

the 5 percent tolerance for immature fruit. Second, paragraph (b) of that section will 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 will 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 removes the suspension of these regulations in their entirety for 12 months, 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) will also be reinstated so the committee can approve applications of handlers who would like to handle immature papayas. Removal of the suspension will require such handlers to 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 removes the suspension of § 928.150 for one year, giving the inspection service the flexibility to issue inspection waivers to handlers when it is impracticable to provide inspection services during the period of regulation. 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 were 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 will be

reinstated, a change will 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 has been 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 as 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 that attacks papaya trees,

eventually killing them. Production from the Island of Hawaii, the primary growing region, declined substantially, and the papayas produced from infected 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 further 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 is expected to continue. 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, is anticipated to 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 reinstating mandatory inspection will augment information available to the committee on assessments owed by handlers. Once inspections begin, a copy of each inspection certificate will be provided to the committee staff by the inspection service. This third-party information will 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 handler's 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 will continue to be used as a random check, data provided from the inspection certificates will be the primary source of third-party information for assessment billings by the committee staff.

Inspection costs to handlers will result from this action. Inspection costs incurred will 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 will be passed on to producers, lowering overall producer returns, and that the benefits of mandatory quality control will not outweigh the costs. In addition, they believe 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 recommended to the committee removal of 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 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 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 121.201) 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, would be considered large businesses. The remaining handlers are considered to be 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 would be classified as small entities.

This rule removes 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 will be reinstated. This rule also amends these sections to make the requirements in these sections applicable for one year; and § 928.160 will be amended to include the requirement that inspection certificate numbers be added to the utilization reports filed by handlers during the time mandatory inspection is required.

Section 928.313 will 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. In their recommendation to remove the 5 percent tolerance for immature papayas from the reinstated rules and regulations, the committee believed that they were tightening the quality requirements by utilizing the quality requirements in effect under the Hawaii Department of Agriculture Standards for Fruits and Vegetables (Hawaii Standards).

Under the Hawaii Standards, tolerances are applied based upon the number of samples and number of fruit in the sample that contains defects.

Immaturity is considered a serious defect under the Hawaii Standards for Papaya. According to the Hawaii inspection service, in the routine application of the number of defects in a papaya sample, the average tolerance applied would generally be less than 5 percent, which would result in the increased papaya quality envisioned by the committee.

Section 928.313 will 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 will 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 2001–2002 fiscal 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 further 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 will allow the industry to regain its market share; and, thus, improve returns to handlers and producers.

The committee discussed continuing the suspension as an alternative to this change. However, the committee believed that removing the suspension of the grade, inspection, and reporting requirements will benefit producers and handlers by enhancing the market quality of papayas grown in Hawaii.

The committee estimated that the increased cost of inspection will be offset by the increased market value of the inspected papayas. Inspection costs incurred will 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 are 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 imposes 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 also requires 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 will 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 will be able to utilize exemptions to the grade and inspection requirements, and the committee will have additional information to aid in assessment collections and program compliance. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in Part 928 have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0102.

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.

As noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule. However, as previously stated, handlers of Hawaii papayas will be required to obtain inspection prior to shipment, except under certain conditions when it is not practicable for the inspection service to provide such inspection, apply for approval to handle immature papayas, and report handling of immature papayas. In addition, changes to PAC Form 1 will require handlers to include the number of the inspection certificate issued by the inspection service.

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 whom 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.

A proposed rule concerning this action was published in the **Federal Register** on February 18, 2000 (65 FR 8313). Copies of the rule were mailed or sent via facsimile to all committee members and handlers. Finally, the rule was made available on the Internet by the Office of the Federal Register. A 60-day comment period, ending April 18, 2000, we provided to allow interested persons to respond to the proposal.

One comment, signed by eight persons, was received in response to the proposal. The commenters collectively opposed the removal of the suspension of grade and inspection requirements, citing that the current economic condition of the papaya industry did not warrant reinstatement of these requirements. The commenters also noted that production of papayas, which they estimate at only 29 million pounds, is not yet adequate to warrant minimum grade and inspection requirements and that further market study should have been done prior to the committee recommendation. Also, according to the comment, papaya trees that are not PRSV-resistant still continue to be lost due to PRSV, and the Hawaii Department of Agriculture (HDOA) has not put forth a plan to clear abandoned papaya fields. Finally, the comment

indicated that reinstating minimum grade and inspection requirements would be detrimental to small growers, handlers, and marketers.

It is anticipated that the reinstatement of the grade and inspection requirements will have a positive effect on the industry. These requirements would ensure that higher-quality papayas are offered for sale, thus enhancing the overall image of Hawaii papayas. Such an increase in quality is also likely to stimulate consumer confidence and lead to repeat purchases, and, thus, improve grower prices. Improved grower prices should, in turn, improve the general economic condition of the industry. Accordingly, such action would not be detrimental to growers, handlers, and marketers, small or large.

Regarding the comment about additional market studies, this recommendation was the result of nearly one year's work by a task force assigned by the committee chairman in 1998. The task force reviewed the current marketing and quality conditions affecting the industry for several months prior to making a recommendation to the committee. As a result of the work and recommendation of the task force, the committee made its recommendation to the Department after a thorough discussion on February 18, 1999. Discussions of the recommendation continued at a subsequent committee meeting held on September 23, 1999. At that meeting, a thorough analysis of the current condition of the industry and the potential effects of reinstating minimum grade and inspection requirements was held. It should be noted that the committee did not change its original recommendation at that time.

In response to the comment that the production of papayas is only 29 million pounds, the PAC estimated the 1999–2000 production of papayas to be 40 million pounds. This estimate was discussed and approved by the PAC at its April 22, 1999, meeting. The fiscal year ended June 30, 2000, and the PAC's final production figure for 1999–2000 is 35.8 million pounds. An estimate of production for the 2000–2001 fiscal year is not yet available.

In any event, the size of a crop alone is not an adequate reason to forego reinstating minimum grade and inspection requirements. Minimum grade and inspection requirements serve other purposes for an industry. The benefits have been previously outlined herein.

Further, the commenters note that grade and inspection requirements should not be reinstated until the HDOA

puts forth a plan to clear abandoned papaya fields. While a plan to clear abandoned papaya fields would likely address the continued infection of non-resistant papayas trees, nothing in this action jeopardizes any plan which HDOA may put forth in the future. Regardless of the variety of papayas being produced and marketed, quality control measures are important to the industry in terms of increased consumer confidence and acceptance, repeat purchases, and the overall improved image of Hawaii papayas.

The cost of inspection may be an additional cost to handlers. However, the cost is borne by all handlers, and the benefits of inspection in terms of increased sales, improved marketability, and other factors, are expected to outweigh the costs.

The comment period was reopened with a notice published in the **Federal Register** on June 5, 2000 (65 FR 35590). Copies of the notice were mailed or sent via facsimile to all committee members and handlers. Finally, the notice was made available on the Internet by the Office of the Federal Register. A 15-day comment period, ending June 20, 2000, was provided to allow interested persons to respond to the notice for additional written comments. One comment was received as the result of the comment period reopening.

The comment was filed on behalf of the committee, which discussed the proposal at its meeting on May 25, 2000. According to the comment, at the meeting the committee clarified its intent regarding the removal of the 5 percent tolerance for immature papayas. Based upon additional information that was gathered, evaluated, and considered by the committee at the meeting, the committee unanimously reaffirmed its 1999 recommendation that the maximum percentage tolerances for immature papayas be based upon the Hawaii No. 1 standard, as established by the State of Hawaii. As noted previously, this would generally limit tolerances to less than 5 percent for immature papayas, in part because this is scored as a serious defect. Thus, this applied tolerance would result in the increased papaya quality envisioned by the committee.

According to the proponents of this action, the voluntary quality control measures anticipated following the 1994 suspension action have not been effective and the quality of papayas has been dropping. This has had an adverse impact on industry shipments and returns. They believe that reinstatement of quality control is in the long term interest of the industry because it will help the industry reestablish a quality

image for Hawaii papayas among buyers and consumers, help increase shipments, augment information available to the committee on assessments owed by handlers, and facilitate program compliance. These are compelling reasons for reinstating quality control under the marketing order.

However, taking into account the views of some in the industry that the benefits of mandatory inspection will not outweigh the costs, and that alternative methods of quality control should continue to be explored and developed in helping the industry solve its marketing problems, and the length of time the requirements have been suspended (1994), we believe that it is preferable to reestablish the mandatory inspection and related requirements and make them applicable for a 12-month period, rather than on a continuing basis. This regulatory approach will require the committee to evaluate the results of mandatory quality control near the end of the regulatory period. The committee will have to decide then whether mandatory inspection should be continued beyond the 12-month regulatory period, and report the basis for its determination and recommendation. This will require the committee to closely assess the benefits of mandatory inspection in the short term which should be of assistance in helping producers and handlers make long term plans.

Changes to the regulatory text as proposed have been made below to implement mandatory quality control only for one year from the effective date of this final rule.

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.

After consideration of all relevant matter presented, including the information and recommendation submitted by the committee, the comment received, 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.

List of Subjects in 7 CFR Part 928

Incorporation by reference, 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. The suspensions of §§ 928.150 and 928.152 are removed and introductory text is added to each section to read as follows:

§ 928.150 Exemption from inspection.

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

* * * * *

§ 928.152 Maturity exemption.

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

* * * * *

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 when inspection requirements specified in § 928.313 apply January 2, 2001, through January 2, 2002; * * *

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

§ 928.313 Hawaiian Papaya Regulation 13.

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

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

are incorporated as they exist on the date of approval and a notice of any changes in the material will be published in the **Federal Register**.

Dated: November 14, 2000.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–29706 Filed 11–21–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–092–1]

Tuberculosis in Cattle, Bison, and Captive Cervids; State and Zone Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the bovine tuberculosis regulations to recognize two separate zones with different tuberculosis risk classifications in the State of Texas. This action is necessary to prevent the spread of tuberculosis and to further the progress of the domestic bovine tuberculosis eradication program.

DATES: This interim rule is effective November 22, 2000. We invite you to comment on this docket. We will consider all comments that we receive on or before January 22, 2001.

ADDRESSES: Please send four copies of your comment (an original and three copies) to: Docket No. 99–092–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comments refer to Docket No. 99–092–1.

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.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, USDA, 4700

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SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is a contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. It affects cattle, bison, deer, elk, goats, and other species, including humans. Bovine tuberculosis in infected animals and humans manifests itself in lesions of the lung, bone, and other body parts, causes weight loss and general debilitation, and can be fatal.

At the beginning of the 20th century, bovine tuberculosis caused more losses of livestock than all other livestock diseases combined. This prompted the establishment of the National Cooperative State/Federal Bovine Tuberculosis Eradication Program for bovine tuberculosis in livestock.

Federal regulations implementing this program are contained in 9 CFR part 77, “Tuberculosis” (referred to below as the regulations), and in the “Uniform Methods and Rules Bovine Tuberculosis Eradication” (UMR), which is incorporated by reference into the regulations. The regulations restrict the interstate movement of cattle, bison, and captive cervids to prevent the spread of tuberculosis. In this interim rule, we are amending the regulations to establish two tuberculosis classification zones in Texas.

Note: On October 23, 2000, we published a final rule in the **Federal Register** (65 FR 63501–63533, Docket No. 99–038–5) that revised part 77 in its entirety. That final rule is scheduled to become effective on November 22, 2000. In describing the actions to be taken in this interim rule, which also becomes effective on November 22, 2000, we will refer to the regulations as they appear in our October 23, 2000, final rule.

Conditions for Zone Recognition

Under §§ 77.3 and 77.4 of the regulations, in order to qualify for zone classification by the Animal and Plant Health Inspection Service (APHIS), the State must meet the following requirements:

1. The State must have adopted and must be enforcing regulations that impose restrictions on the intrastate movement of cattle, bison, and captive cervids that are substantially the same as those in place in part 77 for the interstate movement of those animals.

2. The designation of part of a State as a zone must otherwise be adequate to prevent the interstate spread of tuberculosis.

3. The zones must be delineated by the animal health authorities in the State making the request for zone