

Proposed Rules

Federal Register

Vol. 64, No. 170

Thursday, September 2, 1999

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

Food and Nutrition Service

7 CFR Part 246

RIN 0584-AA80

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: The proposed rule entitled Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems was published in the **Federal Register** (64 FR 32308-32343) on June 16, 1999. Public comments were requested to be postmarked on or before September 14, 1999. This action extends the public comment period to October 14, 1999. This extension gives the public additional time to analyze the provisions of the proposed rulemaking and to develop substantive comments which will assist the Department in modifying the requirements regarding WIC Food Delivery Systems.

DATES: To be assured of consideration, comments must be submitted or postmarked on or before October 14, 1999.

ADDRESSES: Comments may be mailed to: Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. All written submissions will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, at the above address or by telephone at (703) 305-2730.

SUPPLEMENTARY INFORMATION:

Background

The Department published the proposed rule addressing WIC Food Delivery Systems in the **Federal Register** (64 FR 32308-32343) on June 16, 1999. The Department provided a 90-day comment period. Commenters have indicated that because this rule is expected to affect a significant number of vendors in the retail food industry, the 90-day comment period is not enough to provide a thorough analysis and to develop detailed comments.

The Department acknowledges the importance of providing commenters with sufficient time to evaluate the proposal and to develop substantive comments. To achieve this end, the Department will continue to accept comments submitted or postmarked on or before October 14, 1999.

Dated: August 25, 1999.

Samuel Chambers, Jr.,
Administrator.

[FR Doc. 99-22904 Filed 9-1-99; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV99-928-1 PR]

Papayas Grown in Hawaii; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from \$.0063 to \$.008 per pound of assessable papayas established for the Papaya Administrative Committee (Committee) under Marketing Order No. 928 for the 1999-2000 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of papayas grown in Hawaii. Authorization to assess papaya handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, 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 complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

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

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, papaya handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable papayas beginning on July 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal years from \$0.0063 per pound to \$0.008 per pound of assessable papayas.

The papaya marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of papayas. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–1999 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon

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

The Committee met on April 22, 1999, to discuss the crop estimate, the budget, and the assessment rate for the 1999–2000 fiscal year. On July 15, 1999, the Committee completed a mail ballot on the crop estimate and assessment rate, and on an eight to one vote, adopted a crop estimate of 40 million pounds of assessable papayas and an assessment rate of \$0.008 per pound for the 1999–2000 and subsequent fiscal years. The person who voted no objected to the higher assessment rate. The Committee unanimously recommended a 1999–2000 fiscal year budget of \$522,500.

The assessment rate of \$0.008 is \$0.0017 higher than the rate currently in effect. The budgeted expenses are \$39,000 less than the \$561,500 budgeted for last year. The Committee determined that a higher assessment rate was necessary to meet the recommended expenses and maintain a reserve fund for the 1999–2000 fiscal year. For several fiscal years, money from the reserve fund has been used to meet a portion of budgeted expenses in an effort to keep the assessment rate as low as possible. The Committee believes a further reduction of the reserve fund would not be prudent.

The Committee is authorized to maintain reserve funds in an amount not to exceed approximately one fiscal year's operational expenses. Last year, the reserve fund was \$25,200. This year it is expected to be \$25,000, which is approximately one percent lower than the previous year and considered adequate by the Committee. After consideration of the estimated crop size and anticipated expenses for the 1999–2000 fiscal year, it was determined that increasing the assessment rate by approximately 27 percent would provide sufficient funds to meet anticipated expenses and maintain an adequate reserve fund.

The major expenditures recommended by the Committee for the 1999–2000 year include \$230,000 for marketing and promotion, \$90,500 for research and development, and \$98,000 for salaries. Budgeted expenses for these items in 1998–99 were \$183,000 for marketing and promotion, \$171,500 for research and development, and \$98,000 for salaries, respectively.

The assessment rate recommended by the Committee was derived by dividing assessment income needed by expected shipments of papayas. Papaya shipments for the year are estimated at 40 million pounds which should provide \$320,000 in assessment income. Income derived from handler

assessments, when combined with income from the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income of \$16,000, would be adequate to cover budgeted expenses. Funds in the reserve (estimated to be \$25,000 at the end of the 1999–2000 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by the Department.

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

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

There are approximately 400 producers of papayas in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the

Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

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 rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal years from \$0.0063 per pound to \$0.008 per pound of assessable papayas. The Committee recommended 1999–2000 expenditures of \$522,500 and the \$0.008 per pound assessment rate. The proposed assessment rate of \$0.008 is \$0.0017 higher than the 1998–99 rate. The quantity of assessable papayas for the 1999–2000 fiscal year is estimated at 40 million pounds. Thus, the \$0.008 rate should provide \$320,000 in assessment income. Income derived from handler assessments, the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income of \$16,000, would be adequate to cover budgeted expenses. Funds in the reserve (estimated to be about \$25,000 at the end of the 1999–2000 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The Committee recommended 1999–2000 expenditures of \$522,500. The major expenditures recommended by the Committee for the 1999–2000 year include \$230,000 for marketing and promotion, \$90,500 for research and development, and \$98,000 for salaries. Budgeted expenses for these items in 1998–99 were \$183,000 for marketing and promotion, \$171,500 for research and development, and \$98,000 for salaries, respectively.

Regarding alternatives, the Committee discussed decreasing expenditure levels for marketing and promotion, and further reductions in research and development expenditures to avoid increasing the assessment rate, but it determined that the programs should be funded at the recommended levels. The assessment rate of \$0.008 per pound of assessable papayas was determined by dividing the assessment income needed by the quantity of assessable papayas, estimated at 40 million pounds for the 1999–2000 fiscal year. This estimate would generate \$320,000 in assessment income. When combined with \$208,800 in anticipated income from the previously mentioned sources, and \$16,000 in interest income, the Committee would have adequate funds to meet its 1999–2000 expenses.

A review of historical information and preliminary information pertaining to the 1999–2000 fiscal year indicates that the grower price for the season could range between \$.30 and \$0.45 per pound of papayas. Therefore, the estimated assessment revenue for the 1999–2000 fiscal year as a percentage of total grower revenue could range between 1.8 and 2.7 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the papaya industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 22, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large papaya handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1999–2000 fiscal year began on July 1, 1999, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable papayas handled during such fiscal year; and (3) handlers are aware of this action which was discussed by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is proposed to be amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.226 is revised to read as follows:

§ 928.226 Assessment rate.

On and after July 1, 1999, an assessment rate of \$0.008 per pound is established for papayas grown in Hawaii.

Dated: August 26, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22908 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–7]

Nuclear Energy Institute; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI). The petition has been docketed by the Commission and