

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 915

[Docket No. FV99-915-1 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would increase the assessment rate from \$0.08 to \$0.16 per 55-pound bushel container or equivalent of avocados established for the Avocado Administrative Committee (Committee) under Marketing Order No. 915 for the 1999-2000 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year begins April 1 and ends March 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by April 16, 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: moabdocket_clerk@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: Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276;

Winter Haven, FL 33883-2276; telephone: (941) 299-4770, Fax: (941) 299-5169; 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_N_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. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, 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, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable avocados beginning on April 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 \$0.08 per 55-pound bushel container or equivalent to \$0.16 per 55-pound bushel container or equivalent of South Florida avocados handled.

The Florida avocado 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 South Florida avocados. 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 1998-99 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 January 13, 1999, and unanimously recommended 1999-2000 expenditures of \$167,335 and an assessment rate of \$0.16 per 55-pound bushel container or equivalent of avocados handled. In comparison, last year's budgeted expenditures were \$174,344. The assessment rate of \$0.16 is \$0.08 higher than the rate currently in

effect. For the 1998–99 fiscal period, the Committee voted to lower its assessment rate from \$0.16 to \$0.08 to reduce the funds in its operating reserve. It wanted to bring its reserve closer to one year's operating expenses. With this accomplished, the Committee voted to return the assessment rate to the previous level of \$0.16 to cover 1999–2000 expenses. As discussed later, the Committee expects to use interest income and reserve funds to cover its anticipated expenses during 1999–2000 because the \$0.16 per 55-pound bushel container or equivalent assessment rate is expected to generate \$144,000, which is \$23,335 less than the Committee's budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 year include \$46,000 for salaries, \$39,500 for production research, \$27,000 for local and national enforcement, \$10,040 for employee benefits, \$8,955 for insurance and bonds, and \$5,500 for travel. Budgeted expenses for these items in 1998–99 were \$46,000, \$41,500, \$32,000, \$9,778, \$8,516, and \$7,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 900,000 55-pound bushel containers which should provide \$144,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently \$187,615) would be kept within the maximum of 3 fiscal years' operational expenses permitted by the order (§§ 915.42 and 915.142).

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 period 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 may 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 149 producers of avocados in the production area and approximately 48 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.

The average price for fresh avocados during the 1996–97 season was \$13.20 per 55-pound bushel box equivalent for all domestic shipments and the total shipments were 917,861 bushels. Approximately 10 percent of all handlers handled 90 percent of the South Florida avocado shipments during that season. Many handlers ship other tropical fruit and vegetable products which are not included in the Committee data but would contribute further to handler receipts. Using the average price per 55-pound container or equivalent, about 90 percent of the avocado handlers could be considered small businesses under SBA's definition and about 10 percent of the handlers could be considered large businesses. The majority of handlers and producers of Florida avocados 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 \$0.08 per 55-pound bushel container or equivalent to \$0.16 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 1999–2000 expenditures

of \$167,335 and an assessment rate of \$0.16 per 55-pound bushel container or equivalent handled. The proposed assessment rate of \$0.16 is \$0.08 higher than the 1998–99 rate. The quantity of assessable avocados for the 1999–2000 season is estimated at 900,000 containers. Thus, the \$0.16 rate should provide \$144,000 in assessment income. Assessment income, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 year include \$46,000 for salaries, \$39,500 for production research, \$27,000 for local and national enforcement, \$10,040 for employee benefits, \$8,955 for insurance and bonds, and \$5,500 for travel. Budgeted expenses for these items in 1998–99 were \$46,000, \$41,500, \$32,000, \$9,778, \$8,516, and \$7,000, respectively.

During the 1998–99 season, the Committee voted to decrease the assessment rate to bring its operating reserve closer to one year's operating expenses. For the 1999–2000 fiscal period, the Committee voted to return to the previous rate of \$0.16 to cover authorized expenses. The Committee expects to use interest income and funds from its operating reserve to cover 1999–2000 expenses. This would be necessary because assessment income is expected to total \$144,000, and the Committee's budget totals \$167,335.

The Committee's 1999–2000 budgeted expenditures of \$167,335 include increases in employee benefits and office equipment. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Alternative expenditure levels were discussed, based upon the relative value of various research projects to the South Florida avocado industry.

The assessment rate of \$0.16 per 55-pound bushel container or equivalent of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 55-pound bushel containers or equivalents for the 1999–2000 fiscal period. This rate is expected to provide \$144,000 in assessment income, which is \$23,335 below budgeted expenses. The Committee found this acceptable because interest income and funds from the Committee's operating reserve would be available to make up the deficit.

A review of historical information indicates that the grower price for the 1999–2000 season could range between

\$13.20 and \$14.90 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 1999–2000 fiscal year as a percentage of total grower revenue could range between 1 and 1.2 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 Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 13, 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 Florida avocado 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 1999–2000 fiscal year begins on April 1, 1999, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable avocados handled during such fiscal year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is proposed to be amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.233 is revised to read as follows:

§ 915.233 Assessment rate.

On and after April 1, 1999, an assessment rate of \$0.16 per 55-pound bushel container or equivalent is established for avocados grown in South Florida.

Dated: March 11, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–6490 Filed 3–16–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

[DA–99–01]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Suspension of Supply Plant Shipping Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend portions of the supply plant shipping requirements for the Nebraska-Western Iowa order for the months of March through September 1999. This action was requested by North Central Associated Milk Producers, Inc. (AMPI), a cooperative association that supplies milk for the market's fluid needs. Suspension would enable AMPI producers historically associated with the order to share in the Nebraska-Western Iowa Federal order pool for March through August 1999.

DATES: Comments must be submitted on or before March 24, 1999.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies of such comments may be faxed to (202) 690–0552 or e-mailed to OFB_FMMO_Comments@usda.gov. Reference should be given to the title of action and docket number.

FOR FURTHER INFORMATION CONTACT:

Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address:

connie_m_brenner@usda.gov.

SUPPLEMENTARY INFORMATION: The Department is issuing this proposed rule in conformance with Executive Order 12866.

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

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purpose of determining which dairy farms are "small businesses," the \$500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may