

# Rules and Regulations

Federal Register

Vol. 64, No. 93

Friday, May 14, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 915

[Docket No. FV99-915-1 FR]

#### Avocados Grown in South Florida; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases 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 began on April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** May 17, 1999.

**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.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 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 increases 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 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 1998-1999 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 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 previous rate. 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 some of 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, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$187,615) will be kept within the maximum of 3 fiscal years' operational expenses permitted by the order (§§ 915.42 and 915.142).

The assessment rate established by this rule will 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 will be in effect for an indefinite period, the Committee will 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 will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will 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 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 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 increases 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 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, should 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 will 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 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 increases 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 are 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.

This rule imposes 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 proposed rule concerning this action was published in the **Federal Register** on March 17, 1999 (64 FR 13123). Copies of the proposed rule were also mailed or sent via facsimile to all avocado handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending April 16, 1999, was provided for interested persons to respond to the proposal. No comments in opposition were received.

After consideration of all relevant material 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 1999–2000 fiscal year began 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 period. The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule.

#### 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 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 915.235 is revised to read as follows:

##### § 915.235 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: May 10, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–12238 Filed 5–13–99; 8:45 am]

BILLING CODE 3410–02–P

#### SMALL BUSINESS ADMINISTRATION

##### 13 CFR Part 120

##### Business Loan Program

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the Small Business Reauthorization Act of 1997, enacted on December 2, 1997, with respect to SBA financing in the pilot Premier Certified Lenders Program (PCLP). The final rule extends the authority of a Certified Development Company (CDC) participating in the PCLP (Premier CDC).

**DATES:** This rule is effective on May 14, 1999.

##### FOR FURTHER INFORMATION CONTACT:

LeAnn M. Oliver, 202–205–6490.

**SUPPLEMENTARY INFORMATION:** On May 5, 1998 (63 FR 24739), SBA published in the **Federal Register** an interim final rule in order to implement Pub. L. 105–135, the “Small Business Reauthorization Act of 1997” (1997 legislation), enacted on December 2, 1997, which amends Section 504 of the Small Business Investment Act of 1958 (15 U.S.C. 661–697f) (Act). SBA promulgated the regulation in interim final rule form to enable qualified CDCs to participate in the PCLP Program as soon as possible. SBA received 4 timely comments on its interim final rule. These comments addressed several issues, each of which is discussed below.

The 1997 legislation established a goal of the PCLP to have each Premier CDC process 50% of its loans made under Section 504 of the Act (“504 loans”) under PCLP procedures. Two commenters suggested that SBA make it clear in the regulation that it is a goal and not a requirement. The commenters noted that SBA stated in an internal procedural notice that a Premier CDC was “required” to process 50% of its 504 loans under PCLP rather than correctly stating that the 50% level is a goal. SBA agrees with the commenters but believes that the issue should be addressed in a new procedural notice and not in SBA regulations.

One commenter suggested that we substitute the term “loan” in place of “financing” in several places in the rule. The commenter noted that in certain other sections of SBA regulations the term “financing” or “504 financing” refers to the combination of the CDC loan, the Third Party Lender’s loan, and the Borrower’s equity injection and not just the CDC loan. In order to eliminate any possible confusion, SBA will use the term “loan” or “PCLP loan” in place of “financing” throughout this preamble and the final rule.

One commenter objected to SBA’s requirement in the interim final rule that a letter of credit comprising any portion of a Premier CDC’s loss reserve must have a term “equal to or longer than the term of the financings it secures”. The commenter stated that: “While I understand that the intent of this provision is to protect SBA from excessive exposure or loss, I believe that this requirement is not commercially reasonable and that it imposes an unnecessary burden on both the CDC and ultimately the borrowing small business concerns.” The commenter suggested that SBA amend the requirement so that each letter of credit supporting a PCLP loan (1) has a term of at least one year and (2) provides for at least 90 days prior written notice to SBA and the Premier CDC if the issuer intends to decline issuing a letter of credit on substantially similar terms for another term. While SBA has considered the commenter’s suggestion, SBA believes that it is inappropriate to develop and implement regulations for the program that do not fully protect SBA from undue exposure to risk of non-reimbursement resulting from a mismatch in maturity of a PCLP loan and the period a letter of credit providing protection is outstanding. SBA will continue to require that a letter of credit have a term equal to or longer than the maturity of the PCLP loan which triggered the requirement for