

Proposed Rules

Federal Register

Vol. 65, No. 74

Monday, April 17, 2000

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. FV00-915-2 PR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Avocado Administrative Committee (Committee) for the 2000-2001 and subsequent fiscal periods from \$0.16 per 55-pound bushel container or equivalent to \$0.19 per 55-pound bushel container or equivalent of avocados handled. 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 period began 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 May 17, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, 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: Doris Jamieson, Marketing Specialist,

Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299-4770, Fax: (863) 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 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.

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 proposed herein would be applicable to all assessable avocados beginning on April 1, 2000, 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 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 2000-2001 and subsequent fiscal periods from \$0.16 per 55-pound bushel container or equivalent to \$0.19 per 55-pound bushel container or equivalent of avocados.

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 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 1999-2000 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period 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 March 8, 2000, and unanimously recommended 2000-2001 expenditures of \$186,333 and an assessment rate of \$0.19 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were \$164,335. The assessment rate of \$0.19 is \$0.03 higher than the rate currently in effect.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and

efficiency (7 CFR part 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, the Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The major expenditures recommended by the Committee for the 2000–2001 year include \$69,000 for salaries, \$35,000 for national enforcement, \$20,000 for research, \$14,898 for employee benefits, and \$13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were \$46,000, \$27,000, \$39,500, \$10,040, and \$8,955, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Commodity shipments for the year are estimated at 900,000 55-pound bushel containers, which should provide \$171,000 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 \$174,431) would be kept within the maximum permitted by the order (approximately three fiscal periods' expenses, section 915.42(a)(2)).

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 2000–2001 budget and those for subsequent fiscal periods 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 141 avocado producers in the production area and approximately 49 avocado handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those having annual receipts less than \$500,000,000.

The average grower price for fresh avocados during the 1998–99 season was \$17.90 per 55-pound bushel box equivalent for all domestic shipments and the total shipments were 890,859 bushels. Approximately 10 percent of all handlers handled 90 percent of the Florida avocado shipments. Many avocado handlers ship other tropical fruit and vegetable products, which are not included in the Committee's data but would contribute further to handler receipts.

Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado producers also may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from \$0.16 per 55-pound bushel container or equivalent to \$0.19 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2000–2001 expenditures of \$186,333 and an assessment rate of \$0.19 per 55-pound bushel container or equivalent. The proposed assessment rate of \$0.19 is \$0.03 higher than the 1999–2000 rate. The quantity of assessable avocados for the 2000–2001 season is estimated at 900,000 55-pound bushel containers. Thus, the \$0.19 rate should provide \$171,000 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.

The major expenditures recommended by the Committee for the 2000–2001 fiscal year include \$69,000 for salaries, \$35,000 for national enforcement, \$20,000 for research, \$14,898 for employee benefits, and \$13,782 for insurance and bonds. Budgeted expenses for these items in 1999–2000 were \$46,000, \$27,000, \$39,500, \$10,040, and \$8,955, respectively.

The Florida Lime and the Florida Avocado Administrative Committees share certain costs (staff, office space, and equipment) for economy and efficiency (7 CFR part 911 and 915). Each Committee's share of these costs is based upon the amount of work performed and time devoted to administration. To reflect its increased share of the workload and resources, the Avocado Administrative Committee needs to fund a greater share of the costs. An increased budget for avocados is needed to accomplish this.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of \$186,333, which include increases in administrative and office salaries, and local and national enforcement. 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. However, the Committee ultimately determined that the recommended expenditures were appropriate to reflect its increased share of the workload and resource demands. The assessment rate of \$0.19 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 2000–2001 fiscal year. This is approximately \$11,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2000–2001 season could be close to \$17.90 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2000–2001 fiscal year as a percentage of total grower revenue could be one 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 March 8, 2000, 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 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.

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 2000–2001 fiscal period began on April 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable avocados handled during such fiscal period; (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 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2000, an assessment rate of \$0.19 per 55-pound bushel container or equivalent is established for avocados grown in South Florida.

Dated: April 11, 2000.

James R. Frazier,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–9451 Filed 4–14–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 91 and 161

[Docket No. 99–053–1]

Origin Health Certificates for Livestock Exported From the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal export regulations to allow origin health certificates issued for animals intended for export from the United States to be valid for longer than 30 days in some cases, based on the requirements of the country of destination. Currently, origin health certificates for animals intended for export from the United States must certify that the animals were inspected within the 30 days prior to the movement for export. They must also contain information about any tests required to be conducted prior to export. Generally, the animals are inspected and tested (or samples are taken for testing) on the same day. However, some countries require or allow testing to be conducted more than 30 days prior to the date of export. This action would allow animals to be inspected for the origin health certificate as early as the required testing or sampling may be performed, in accordance with the requirements of the country of destination. We believe

this can be allowed without increasing the risk of infected or exposed animals being exported, since all livestock leaving the United States by sea or air are inspected again by a U.S. Department of Agriculture veterinarian within 24 hours of export; and animals exported to Canada or Mexico by land are inspected by those nations prior to crossing the land border. This action would simplify the export process and reduce costs for exporters.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by June 16, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–053–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–053–1.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Dr. Najam Q. Faizi, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–5256.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, “Inspection and Handling of Livestock for Exportation” (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.3 of the regulations provides, among other things, that all animals intended for exportation to a foreign country must be accompanied from the State of origin of the export movement to the port of embarkation or the border of the United States by an origin health certificate. The origin health certificate must certify that the animals were inspected within the 30