

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 915

[Docket No. AMS-FV-06-0170; FV07-915-1 IFR]

#### Avocados Grown in South Florida; Suspension of Weekly Handler Reporting Requirements

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule changes the reporting requirements currently prescribed under the marketing order for avocados grown in South Florida (order). The order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). This rule indefinitely suspends the weekly handler reporting requirements specified under the order. The information from the weekly reports is no longer being used by the industry or the Committee staff and the germane information is available from other sources. This action reduces the reporting burden on handlers, while aligning information collection requirements with the needs of the industry.

**DATES:** Effective December 26, 2006; comments received by February 20, 2007 will be considered prior to issuance of a final rule.

**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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail:

*moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

#### FOR FURTHER INFORMATION CONTACT:

William G. Pimental, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793 or E-mail: *William.Pimental@usda.gov* or *Christian.Nissen@usda.gov*, respectively.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: *Jay.Guerber@usda.gov*.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 121 and Marketing 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 order is 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 USDA 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 USDA 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 USDA'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 changes the reporting requirements currently prescribed under the order by indefinitely suspending the weekly handler reporting requirements. The information from the weekly report is no longer being used by the industry or the Committee staff and the germane information is available from other sources. This action reduces the reporting burden on handlers, while aligning information collection requirements with the needs of the industry. The Committee unanimously recommended this change at a meeting on April 19, 2006.

Section 915.60 of the avocado marketing order provides authority for the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform its duties. Section 915.150 of the order's rules and regulations specifies the requisite reporting requirements, containing, in part, provisions requiring handlers to submit a weekly report.

This rule revises § 915.150 by indefinitely suspending paragraphs (a), (b), and (c) which specify the weekly handler reporting requirements. Prior to this action, handlers were required to submit a weekly report to the Committee listing all avocados handled, the disposition of each lot of noncertified avocados removed from handler's premises, and each lot of noncertified avocados received from another district. The Committee provided a form to assist handlers with supplying the required information. This information was compiled into a report which was made available to the industry. The Committee also used this data for statistical reporting purposes, to assess handlers, and for program compliance.

When instituted, the information from the weekly reports was adequate for industry and Committee needs.

However, for the past several seasons, the industry has stopped requesting the reports compiled from the weekly data. The Committee believes timely data is necessary for the information to be valuable. The industry is still interested in the volume of avocados handled, but weekly reports are not timely enough to be beneficial when it comes to using such information to help growers and handlers make harvesting and packing decisions.

In addition to the weekly reporting information, the Committee staff also receives daily shipment information for all avocado handlers from the Federal-State Inspection Service (FSIS). This information is collected from handlers at the time of inspection and includes information on the volume packed. The Committee staff uses this information to generate daily shipping reports. The reports generated from the FSIS information are more accurate and timely, and the industry finds this information to be more beneficial. As such, the Committee staff has stopped generating reports based on the weekly information.

Further, the Committee has found reporting at the time of inspection to be an effective and efficient way of collecting information. Recently, the rules and regulations were amended to require handlers to report added information to the FSIS at the time of inspection (70 FR 59622, October 13, 2005). With that change, handlers are now required to provide information regarding the number of avocados packed per container, in addition to the previous requirement that handlers provide the number and sizes of containers packed.

In comparison, handlers find weekly reporting to be time consuming and that it places an additional burden on their staff to ensure weekly reports are submitted. Also, with some of the information contained in the weekly report already being reported at the time of inspection, it represents a duplication of effort.

At one time, the Committee staff used the information from the weekly handler reports for statistical reporting purposes, to assess handlers, and for program compliance. However, they too have found the information in the daily shipment reports to be more useful, and of more interest to the industry. Further, the Committee staff has not been using the weekly reports to support program operations or for compliance purposes for some time. The information needed for Committee operations, marketing

policies, and compliance is available from the daily inspection information provided by FSIS and from other sources.

In addition, damages sustained from hurricanes in 2004 and 2005 resulted in a substantial reduction in assessment income. This rule reduces the amount of time required by the Committee staff to monitor handler reports. Thus, this rule offers the potential for cost savings.

This action indefinitely suspends the provisions requiring the submission of the weekly handler report. The information collected under this requirement is no longer being utilized and is not necessary for the operations of the order. This action reduces the reporting burden on handlers and lessens the reporting oversight demands on the Committee staff. Therefore, the Committee voted unanimously to suspend § 915.150 paragraphs (a), (b), and (c).

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. As this rule changes the reporting requirements under the domestic handling regulations, no corresponding changes to the import regulations are required.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 300 producers of avocados in the production area and approximately 35 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service and Committee data, the average price for Florida avocados during the 2005–06 season was around \$46.75 per 55-pound bushel container, and total shipments were near 470,000 55-pound bushel equivalents. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under the SBA definition. In addition, based on avocado production, grower prices, and the total number of Florida avocado growers, the average annual grower revenue is less than \$750,000. Thus, the majority of Florida avocado producers may also be classified as small entities.

This rule changes the reporting requirements currently prescribed under the order. This rule suspends the weekly handler reporting requirements required under the order. The information from the weekly report is no longer being used by the industry or the Committee staff and the germane information is available from other sources. This action reduces the reporting burden on handlers, while aligning information collection requirements with the needs of the industry. This rule revises § 915.150, which specifies the requisite reporting requirements. Authority for this action is provided for in § 915.60 of the order. The Committee unanimously recommended this change at a meeting held on April 19, 2006.

This rule is not expected to result in any additional costs for handlers. This rule reduces the reporting burden on handlers by indefinitely suspending the provisions requiring the submission of a weekly report. It also reduces the amount of time required by the Committee staff to monitor and review handler reports. Thus, this rule offers the potential for cost savings. The potential reduction in costs would benefit all handlers regardless of their size. Consequently, the benefits of this rule are expected to be equally available to all.

The Committee discussed keeping the weekly reporting requirements in place as an alternative to this action. However, the Committee believes continuing to collect information that is no longer being utilized by the industry or the Committee staff is unnecessary. Therefore, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large avocado handlers. The form, FV–215, “Avocado Handlers Weekly Report Form” is currently approved under OMB No. 0581–0189, Generic OMB

Fruit Crops. The suspension of the reporting requirement would reduce the overall burden for that collection by 54 hours. 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, the Committee's meeting was widely publicized throughout the avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 19, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <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.

This rule invites comments on changes to the reporting requirements currently prescribed under the Florida avocado marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The season has started and handlers are filing reports at this time; (2) this rule relaxes the reporting burden on handlers; (3) the Committee unanimously recommended these

changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this 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.

#### § 915.150 [Suspended in part]

■ 2. In § 915.150, paragraphs (a), (b) and (c) are suspended indefinitely.

Dated: December 18, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–21910 Filed 12–21–06; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1207

[Docket No. AMS–FV–06–0177; FV–06–703–IFR]

#### Potato Research and Promotion Plan; Amendment of Administrative Committee Structure

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

**SUMMARY:** This rule amends the structure of the Administrative Committee (Committee) of the National Potato Promotion Board (Board) as prescribed in the Potato Research and Promotion Plan by increasing the number of Vice-Chairperson positions on the Committee from six to seven. The change is intended to more closely correlate the Committee's representation with potato production in the Northwest district—a five state region which accounts for more than half of all U.S. potato production.

**DATES:** Effective December 26, 2006; comments received by February 20, 2007 will be considered prior to issuance of a final rule.

**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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or e-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.ams.usda.gov/fv/rpb.html>.

#### FOR FURTHER INFORMATION CONTACT:

Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: [barry.broadbent@usda.gov](mailto:barry.broadbent@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under the Potato Research and Promotion Plan [7 CFR Part 1207], hereinafter referred to as the “Plan.” The Plan is authorized by the Potato Research and Promotion Act, as amended [7 U.S.C. 2611–2627], hereinafter referred to as the “Act.”

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 311 of the Act, a person subject to a plan may file a petition with the U.S. Department of Agriculture (USDA) stating that such plan, any provision of such plan, or any obligation imposed in connection with such plan is not in accordance with law and request a modification of such plan or to be exempted therefrom. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which such person is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on