

Proposed Rules

Federal Register

Vol. 67, No. 51

Friday, March 15, 2002

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

Animal and Plant Health Inspection Service

7 CFR Part 305

[Docket No. 98-030-3]

RIN 0579-AA97

Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; supplemental.

SUMMARY: We are proposing additional changes related to an earlier proposed rule to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against fruit flies and the mango seed weevil. This supplemental proposed rule concerns the use of radiation indicators on packaging of irradiated articles and additional provisions for monitoring foreign irradiation facilities.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by April 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 98-030-3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 98-030-3. If you use e-mail, address your comment to regulations@aphis.usda.gov. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 98-030-3" on the subject line.

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 dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: For general information on program and phytosanitary issues, contact Donna L. West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; (301) 734-6799. For information on technical irradiation issues, contact Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1237; (301) 734-7710.

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule published in the **Federal Register** on May 26, 2000 (65 FR 34113-34125, Docket No. 98-030-1), we proposed a framework for the use of irradiation as a phytosanitary treatment for imported fruits and vegetables, and proposed specific standards for an irradiation treatment for fruit flies and the mango seed weevil in imported fruits and vegetables. We solicited comments concerning our proposed rule for a period of 60 days, ending July 25, 2000. On August 4, 2000, we published a **Federal Register** notice that reopened and extended the comment period until August 21, 2000 (65 FR 47908, Docket No. 98-030-2). We received 2,212 comments by the end of the comment period, including many form letters and form postcards.

Several of those comments suggested that the proposed rule establish certain requirements not included in the proposal. We are publishing this supplemental proposed rule to allow an opportunity for public comment on these issues that were not included in the earlier proposed rule. After evaluating any comments received on this supplemental proposal, we will

publish a final rule addressing comments received on both the earlier proposed rule and this supplemental proposed rule.

Monitoring of Foreign Irradiation Facilities by Foreign Plant Protection Organizations and by APHIS

Several commenters suggested that effective monitoring of operations at foreign facilities where treatments are conducted is crucial to ensure that treatments are safe and effective. These commenters pointed out that in some countries the national plant protection organization could provide most of this monitoring, while in others APHIS would have to provide most of the monitoring, depending on different situations in different countries. They suggested that the section of the rule dealing with monitoring should be flexible enough to let APHIS vary its level of monitoring as needed, based on the infrastructure and capabilities of plant protection organizations in different countries. They also suggested that the activities that foreign plant protection services would conduct to enforce the regulations and monitor compliance should be recorded in an agreement between the foreign plant protection service and APHIS.

Furthermore, commenters suggested that APHIS should develop documentation to demonstrate that the requirements APHIS imposes for importation of irradiated articles are consistent from country to country, and are consistent with the requirements other countries apply to imported irradiated articles, in accordance with the equivalence principle of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures. They suggested that, in addition to establishing the level of monitoring required at individual foreign irradiation facilities, APHIS should sign work plans with foreign plant protection services to clearly state what regulatory requirements and levels of inspection, monitoring, and other activities apply to importation of irradiated articles into the United States and into the signatory foreign country.

We agree with these comments, and have decided that the monitoring section of the rule should allow APHIS to target its monitoring as needed and provide the appropriate level of monitoring, ranging from intermittent

monitoring of operations and inspection of records to a continual APHIS presence at facilities and regular inspection of untreated and treated articles for target and nontarget pests. We also believe that providing this level of monitoring may require APHIS to arrange for foreign plant protection services to deposit monies into a trust fund to reimburse APHIS for services, as is common practice under many other APHIS import regulations (e.g., importing Fuji apples from Japan and the Republic of Korea under § 319.56–2cc, or importing Hass avocados from Mexico under § 319.56–2ff).

We also agree that the activities of foreign plant protection services with regard to irradiation facilities in their countries in support of the regulations should be recorded in a work plan that the foreign plant protection service submits to APHIS. We further agree that, in support of the equivalence principle, APHIS and each foreign plant protection service should sign an irradiation treatment framework equivalency work plan that clearly states what legislative, regulatory, and other requirements must be met, and what monitoring and other activities must occur, for irradiated articles to be imported into the United States, or into the foreign country.

We propose to revise the monitoring section of the proposed rule, § 305.2(f), published on May 26, 2000, at 65 FR 49770, to allow APHIS to provide an appropriate level of monitoring at irradiation facilities, depending on the situations in different countries, to require that APHIS and foreign plant protection services sign work plans, and to establish trust fund agreements with national plant protection organizations to reimburse APHIS expenses. The new proposed paragraph (f) would read as follows:

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation treatment operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a

framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

- (i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables into that country;
- (ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and
- (iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be

imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

Much of this language is similar to the language already contained in APHIS regulations for programs where it has been necessary to establish trust fund agreements with foreign plant protection services to reimburse APHIS for inspection and monitoring activities necessary to allow importation of fruits and vegetables into the United States.

Indicators and Tests To Identify Irradiated Fruit

Several commenters suggested that we should require that, prior to treatment, irradiation indicators be attached to cartons of articles. These indicators would change color, or undergo some other obvious change, when exposed to irradiation in the required dose range for regulated articles. The commenters stated that these indicators would be a very useful safeguard, and could be used by enforcement personnel and others as a quick check to confirm that a particular carton had in fact been exposed to the required level of radiation. Commenters identified several inexpensive devices and dye-impregnated labels that react to radiation at various doses in the 100–250 gray range. Such tools could aid Federal and State inspectors who may find live larvae in shipments where the accompanying paperwork claims the shipment was irradiated.

We agree that carton indicators could be a useful enforcement tool. They could not serve as primary documentation that articles have been irradiated in accordance with the regulations, because such indicators are not as sensitive or accurate as the dosimetry systems required by the regulations, and because it would be relatively easy to produce fraudulent indicators (e.g., by subjecting a large number of indicators to irradiation and then attaching them to cartons that have not been irradiated). However, we believe that such indicators can be useful when used in conjunction with the other documentation and system controls required by the regulations. In particular, they can be a useful “cross check” when personnel at irradiation facilities are distinguishing irradiated cartons from non-irradiated cartons, and when inspectors at ports of entry are correlating the required import documents with the cartons referred to in the documents.

Therefore, we propose to add additional language to § 305.2(g)(1) of

the proposed rule published on May 26, 2000, at 65 FR 49770, to state that “each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.”

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This action supplements a proposed rule published in the **Federal Register** on May 26, 2000, that proposed to establish regulations providing for use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The economic analysis for the earlier proposed rule was set forth in that proposed rule. It included a cost-benefit analysis as required by Executive Order 12866 and an analysis of the potential economic effects on small entities as required by the Regulatory Flexibility Act.

The economic effects of this supplemental proposed rule lie in two areas: The establishment of trust fund agreements to reimburse APHIS for its activities monitoring irradiation facilities in foreign countries and the requirement for radiation indicators to be attached to cartons holding irradiated articles.

Trust Fund Agreements

APHIS proposes that the inspection and monitoring activities performed by a foreign plant protection service at irradiation facilities located overseas be recorded in an agreement signed by the foreign service and APHIS. The purpose of the agreement would be to ensure appropriate levels of inspection and monitoring at the facilities, thereby reducing any pest risk due to misunderstandings or shortcomings in the oversight of irradiation and related processes at facilities.

When a foreign plant protection service establishes a trust fund agreement to reimburse APHIS for expenses, that service may or may not pass along the cost of depositing those funds to producers in that country, depending on the service's funding mechanisms. If it passes along that cost to foreign producers, those producers will likely raise the price of fruits and vegetables exported to the United States

to cover the costs. In this sense, the trust fund requirement would have an adverse differential effect on foreign producers relative to domestic producers. However, the cost of the trust fund agreement for APHIS services could be distributed among many foreign producers treating a large volume of products, and would probably result in a price increase for imported articles of only a few cents per pound. Therefore, trust fund agreement costs are expected to have a negligible effect on the prices paid by U.S. merchants and consumers for the imported produce.

Irradiated Carton Indicators

APHIS proposes that indicators be put on cartons to show that irradiation has taken place. Prototypes that have already been developed are based on dosimeter technology, but are much less expensive to manufacture than dosimeters because no precise measurement is involved, only an indication that irradiation has occurred.

A phosphor-based technology for irradiation indication produces an invisible fluorescence that can be easily detected by an inexpensive hand-held “light-pen” reader. According to the manufacturer, a “light-pen” reader can be thought of as a hand-held product similar to a common barcode reader. When the indicator has received a dose above 100 Gy, the hand held “light-pen” reader will activate a signal, such as an audible beep or a light. The indicator is able to be read easily and inexpensively.

Indicators could also be incorporated into a white-on-white bar code that would only become apparent (darkened background) after irradiation. Bar code information could record lot number or other marketing information that could prove useful in tracing a carton back to its source. As a safeguard against repeated use of the same indicator, they could be applied with one-time-only adhesive. Or, as an alternative, an indicator might not provide any visual indication at all that the carton has been irradiated, thereby reducing any chance of counterfeited indicators.

The manufacturer expects to be able to produce indicators in large quantities at a low unit cost—pennies per indicator—with a reader cost comparable to that of hand-held barcode readers. The cost of the indicators, once they are produced in volume, would be negligible compared to the value of the produce shipped, and would add at most a few cents per pound to the retail price of the irradiated fruits and vegetables.

Costs and Benefits

As discussed above, the proposed trust fund and carton indicator requirements contained in this supplemental proposed rule involve moderate costs distributed among many importers, with an end result of an increase of a few cents per pound in the retail price of irradiated articles. The benefits of the proposed changes accrue because the proposed changes would increase the reliability of irradiation as a phytosanitary treatment. Thus, benefits are evaluated in terms of preventing potential economic losses in U.S. fruit and vegetable markets that could occur if pests should enter the United States with articles that were not properly irradiated, either because trust fund agreements to monitor treatments were not in effect, or because carton indicators were not employed as a monitoring tool. These benefits cannot be readily quantified. As an example, however, averting the costs associated with a single fruit fly outbreak in the United States would save more than the total costs for trust fund agreements and indicators over several years.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses, organizations, and governmental jurisdictions. In this case, entities that would be most affected by the proposed rule are the operators of foreign irradiation facilities. Under the Small Business Administration's Standard Industry Classification (SIC) category 0723 (Crop Preparation Services, except Cotton Ginning), a firm would qualify as a small entity if it had annual revenues of \$5 million or less. None of the foreign irradiation companies that have submitted comments on previous irradiation proposed rules, or that have expressed interest in the current rulemaking, are small by this standard.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) administrative proceedings would not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 98-030-3. Please send a copy of your comments to: (1) Docket No. 98-030-3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to require that the national plant protection service of each country from which irradiated articles are imported into the United States must sign a trust fund agreement with APHIS, and must submit an annual work plan to APHIS describing the activities the plant protection service will carry out to meet the requirements of the regulations. These documents would be drafted jointly by the foreign plant protection service and APHIS. We estimate that developing and approving each document would require about 20 hours of development and review time by the submitting foreign plant protection service.

These information collection requirements would be in addition to information collection activities that we described in the original proposal published August 21, 2000 (65 FR 47908, Docket No. 98-030-1), including a compliance agreement, labeling requirements, 24-hour notification, dosimetry recordings, requests for dosimetry device approval, recordkeeping requirements, and requests for facility approval.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

- (1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of our estimate of the burden of the proposed

information collection, including the validity of the methodology and assumptions used;

- (3) Enhance the quality, utility, and clarity of the information to be collected; and

- (4) Minimize the burden of the information collection on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.08411 hours per response.

Respondents: Foreign plant protection services, irradiation facility personnel.

Estimated annual number of respondents: 124.77.

Estimated annual number of responses per respondent: 1001.

Estimated annual number of responses: 124,895.

Estimated total annual burden on respondents: 10,505 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects in 7 CFR Part 305

Irradiation, Phytosanitary treatment, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, we propose to amend part 305 as set out in the proposed rule published on May 26, 2000 (65 FR 34113-34125), as follows:

1. The authority citation for part 305 would be revised to read as follows:

Authority: 7 U.S.C. 166, 450, 7711-7714, 7718, 7731, 7732, and 7751-7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 305.2, paragraphs (f) and (g)(1) are revised to read as follows:

§ 305.2 Irradiation treatment of imported fruits and vegetables for certain fruit flies and mango seed weevils.

* * * * *

(f) *Monitoring and interagency agreements.* Treatment must be monitored by an inspector. This monitoring must include inspection of treatment records and unannounced inspections of the facility by an inspector, and may include inspection of articles prior to or after irradiation. Facilities that carry out irradiation

operations must notify the Director of Preclearance, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236, of scheduled operations at least 30 days before operations commence, except where otherwise provided in the facility preclearance work plan. To ensure the appropriate level of monitoring, before articles may be imported in accordance with this section, the following agreements must be signed:

(1) *Irradiation treatment framework equivalency work plan.* The plant protection service of a country from which articles are to be imported into the United States in accordance with this section must sign a framework equivalency work plan with APHIS. In this plan, both the foreign plant protection service and APHIS will specify the following items for their respective countries:

- (i) Citations for any requirements that apply to the importation of irradiated fruits and vegetables;
- (ii) The type and amount of inspection, monitoring, or other activities that will be required in connection with allowing the importation of irradiated fruits and vegetables into that country; and
- (iii) Any other conditions that must be met to allow the importation of irradiated fruits and vegetables into that country.

(2) *Facility preclearance work plan.* Prior to commencing importation into the United States of articles treated at a foreign irradiation facility, APHIS and the plant protection service of the country from which articles are to be imported must jointly develop a preclearance work plan that details the activities that APHIS and the foreign plant protection service will carry out in connection with each irradiation facility to verify the facility's compliance with the requirements of this section. Typical activities to be described in this work plan may include frequency of visits to the facility by APHIS and foreign plant protection inspectors, methods for reviewing facility records, and methods for verifying that facilities are in compliance with the separation of articles, packaging, labeling, and other requirements of this section. This facility preclearance work plan will be reviewed and renewed by APHIS and the foreign plant protection service on an annual basis.

(3) *Trust fund agreement.* Irradiated articles may be imported into the United States in accordance with this section only if the plant protection service of the country in which the irradiation facility is located has entered into a trust fund agreement with APHIS. That

agreement requires the plant protection service to pay, in advance of each shipping season, all costs that APHIS estimates it will incur in providing inspection and treatment monitoring services at the irradiation facility during that shipping season. Those costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement will describe the general nature and scope of APHIS services provided at irradiation facilities covered by the agreement, such as whether APHIS inspectors will monitor operations continuously or intermittently, and will generally describe the extent of inspections APHIS will perform on articles prior to and after irradiation. The agreement requires the plant protection service to deposit a certified or cashier's check with APHIS for the amount of those costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the plant protection service to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more articles irradiated in that country may be imported into the United States. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the plant protection service or held on account until needed, at the option of the plant protection service.

(g) * * *

(1) All fruits and vegetables treated with irradiation must be shipped in the same cartons in which they are treated. Irradiated fruits and vegetables may not be packaged for shipment in a carton with nonirradiated fruits and vegetables. Each carton must bear an indicator device, securely attached prior to irradiation, that changes color or provides another clear visual change when it is exposed to radiation in the dose range required by this section for the pests for which the articles are being treated.

* * * * *

Done in Washington, DC, this 11th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02-6267 Filed 3-14-02; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV02-915-2 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 2002-03 and subsequent fiscal periods from \$0.19 per 55-pound bushel container or equivalent to \$0.20 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers 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 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 15, 2002.

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. 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

FOR FURTHER INFORMATION CONTACT:

Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, 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.

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 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. 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, 2002, 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 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. Such 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 would increase the assessment rate established for the Committee for the 2002-03 and subsequent fiscal periods from \$0.19 per 55-pound bushel container or