

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 915**

[Docket No. FV05-915-2 FIR]

**Avocados Grown in South Florida; Changes in Container and Reporting Requirements****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that changed the container and reporting requirements prescribed under the marketing order for avocados grown in South Florida. The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). This rule continues in effect the action prohibiting the handling of fresh market avocados in 20 bushel plastic field bins to destinations inside the production area. This rule also continues in effect the action requiring that handlers provide, at the time of inspection, information regarding the number of avocados packed per container (count per container). These changes are expected to help reduce packing costs and facilitate the distribution of useful marketing information.

**DATES:** *Effective date:* November 14, 2005.**FOR FURTHER INFORMATION CONTACT:**

William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; 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](mailto: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."

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 continues in effect an action prohibiting the handling of fresh market avocados in 20 bushel plastic field bins to destinations inside the production area. This rule also continues in effect the requirement that handlers provide, at the time of inspection, information regarding the avocado count per container, which provides the Committee and the industry with information regarding the sizes of avocados packed. These changes are expected to decrease packing costs by reducing the annual loss of field bins and provide handlers with additional marketing information. The Committee unanimously recommended these changes at meetings held on September 8, 2004, and November 10, 2004.

Section 915.51(4) of the order provides authority for establishing container requirements for the handling of avocados. Section 915.51(6) of the order provides that any or all requirements effective pursuant to § 915.51(4) shall be different for the handling of avocados within the production area and outside the

production area. Section 915.305 of the order's rules and regulations specifies the avocado container requirements.

Section 915.60 of the 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 specifies the requisite reporting requirements.

This rule amends § 915.305 by adding a prohibition to the handling of fresh market avocados in 20 bushel plastic field bins to all destinations within the regulated production area. This rule also amends § 915.150 by adding a requirement that handlers provide additional pack information at the time of inspection.

There were no specific container net weight or dimension requirements for avocados handled to destinations within the production area before this rule. However, shipments of avocados within the production area must meet maturity requirements and be inspected.

Prior to this action, 20 bushel plastic field bins (bins) were commonly being used for the purpose of moving avocados into the current of commerce within the production area (handling). Following the successful inspection of avocados packed in bins, the inspector would place a cardboard cover over the top of the bin and seal it with official Federal-State Inspection Service tape. The bins could then be transported and sold at the various markets throughout the production area. It should be noted that current container regulations do not authorize the use of field bins for shipments of avocados from within the production area to any point outside of the production area.

At the September 8, 2004, meeting, Committee members raised the issue that, each year, a large number of bins are apparently misappropriated during the avocado season. Committee consensus is that the ongoing loss of the bins has been costly to the industry, with the average cost of a bin about \$150 each. By Committee estimates, over 700 bins were lost during the previous season at a cost of over \$100,000 to the bins' owners.

In the harvesting of avocados, field bins have the primary function of transporting avocados from grove to packing facility. These bins are usually owned by individual packinghouses, or handlers, and are either delivered to, or picked up at, the packing facility by the harvester. Handlers have found that, much too often, field bins are not returned to the proper packinghouse, but are instead apparently misappropriated and used for other purposes. Because of their durability,

many of the bins are acquired and reused by small cash handlers to pack and transport fruit in the production area. Often these bins are then abandoned at various market locations throughout the production area.

Once the bins are transported to different market locations throughout the production area, they become very difficult to recover. The avocado groves and packinghouses are situated around the Homestead, Florida area. However, the production area stretches into Central Florida. Consequently, bins often end up in locations over 100 miles away in cities such as Tampa and Orlando. Once the avocados have been marketed, the bins are purportedly used for many different purposes and may be dispersed even further from the originating packinghouse. Handlers are thus provided very little chance of recovering them for their own use.

The Committee believes that once bins are no longer authorized for use as containers for inspection, transportation, and sale of fresh avocados to markets within the production area, the movement of these containers will be limited, helping to reduce the number of lost bins. Cash handlers—generally handlers without packing facilities that tend to buy bulk avocados directly from the growers—now have to use different containers to pack and transport avocados within the production area. Committee members suggested that one such option could be a commonly available 20 bushel field bin constructed of cardboard rather than plastic, but at a much lower cost of about \$10 each.

The Committee believes this change will help to restrict the use of the expensive plastic field bins to their originally intended purpose as a method of conveyance of avocados from grove to packinghouse. Prohibiting the use of these bins for the purpose of handling fresh market avocados helps prevent them from being transported to locations far from the originating packinghouse. This, in turn, results in the majority of the bins remaining in the local area where they are much more easily recovered. Reducing the number of lost bins represents a significant potential cost savings for the industry. Therefore, the Committee voted unanimously to put this regulation in place.

This rule also revises the reporting requirements under the order. Handlers are reporting to the inspector at the time of inspection the number of 1/4 bushel, 1/2 bushel, and 4/5 bushel containers packed. This rule not only requires that handlers continue to provide the number and sizes of containers packed,

but in addition, requires handlers to provide information regarding the number of avocados packed per type of container, or “count per container.” Knowing the actual number of avocados packed per container, in addition to the number and size of containers packed, the Committee and the industry are armed with information regarding the various sizes of avocados being packed, as well as the quantity of different sizes being marketed. For example, a handler might report to the inspector on duty that the current lot being inspected has 500 1/4 bushel containers, 6 count each. This type of information would provide the Committee with information regarding the quantity of large avocados being packed.

Prior to this change, no data was collected that provided information on the various sizes of avocados being packed. During the Committee’s discussion of this issue, handlers agreed that although they were getting information regarding the number of bushels packed, it would be valuable to have information regarding the volume of small, medium, and large avocados packed for market. The Committee believes the availability of such information helps both grower and handler when making harvesting and packing decisions.

Committee members agreed having information to help determine if any sizes are overrepresented or underrepresented in the marketplace would be valuable when planning and making marketing decisions. There is a close correlation between size and price. An oversupply of one size of fruit can negatively impact the price for that size and all sizes. By reporting count per container, the industry is better able to gauge available markets by knowing the volume of what sizes are available.

An avocado will never reach full maturity unless it is severed from the tree. Consequently, harvest can be delayed without affecting the flavor or the quality of the fruit. This fact, in combination with information on sizes, allows the industry to make harvesting and marketing decisions based on available markets.

Without good information regarding the sizes available in the market, the market pipelines for certain sizes can become full, driving prices down. Having access to this information will help the industry better balance supply with demand. By knowing which sizes are in short supply, the industry can determine which sizes need to be harvested. Such information may help reduce periods of oversupply and the effect oversupply has on price, providing the industry with another tool

to more efficiently market avocados and maximize industry returns.

Previously, at the time of inspection, handlers were commonly reporting container size and quantity to the inspector, who then included this information on the inspection certificates. Inspection certificates were then provided to the Committee, which compiled the information into reports that were in turn provided to the avocado industry. Committee members believe this procedure has been working effectively, and that having handlers report the count per container in the same fashion will be equally effective. In most cases, this is information the handler already has available, and thus needs only to supply it to the inspector at the time of inspection. As with the previous report, the Committee is compiling the data received and reporting it to the industry on a composite basis to aid growers and handlers in planning their individual operations and in making marketing decisions during the season.

This change provides the industry with an indication of the volume of small, medium, and large sized avocados being shipped to the fresh market. With this change, handlers believe they have more information on which to base their harvesting and marketing decisions. Consequently, the Committee voted unanimously to make this change.

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 container and reporting requirements under the domestic handling regulations, no corresponding changes to the import regulations are required.

#### **Final 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 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 150 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 \$6,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service and Committee data, the average price for Florida avocados during the 2003–04 season was around \$22.22 per 55-pound bushel container, and total shipments were near 660,000 55-pound bushel equivalents. Approximately 11 percent of all handlers handled 76 percent of Florida avocado shipments. Using the average price and shipment information provided by the Committee, nearly all 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 approximately \$98,000. Thus, the majority of Florida avocado producers may also be classified as small entities.

This rule changes the container and reporting requirements currently prescribed under the order. This rule continues in effect the action prohibiting the handling of fresh market avocados in 20 bushel plastic field bins to destinations within the production area. This rule also continues in effect the action requiring handlers to provide information regarding the avocado count per container, which in turn provides the Committee and the avocado industry with an indication of the sizes of avocados being packed. These changes are expected to decrease packing costs by reducing losses of field bins and to provide handlers with additional information on which to base their harvesting and marketing decisions. The Committee unanimously recommended these changes at meetings held on September 8, 2004, and November 10, 2004. This rule modifies the container and reporting requirements specified in §§ 915.305 and 915.150 respectively. The authorities for these actions are provided for in §§ 915.51 and 915.60.

It is not anticipated that this rule will generate any increased costs for handlers or producers. The Committee recommended the change in the container requirements in an effort to reduce the costs stemming from the

misappropriation of bins. According to estimates, more than 700 bins were lost last season, at a cost to the industry of around \$100,000. The primary purpose of these field bins is to provide bulk conveyance of harvested avocados from the groves to the packinghouses. However, a segment of the industry has been using them to pack and transport avocados to markets within the production area. Handlers have found that bins have been misappropriated, used for the handling of avocados for sale within the production area, and not subsequently returned to the rightful owner. With a prohibition on the use of the plastic bins in the handling of avocados to points within the production area, the Committee hopes to break this cycle and move those who prefer this size container to a lower cost alternative. While an alternative cardboard container that holds an equivalent volume costs only about \$10, an individual plastic bin costs around \$150. This change should result in a cost savings.

By requiring handlers to supply information on the count per container at the time of inspection, the industry has access to additional shipment information. There is little or no cost associated with this action, as most handlers have this information readily available and are supplying it along with information already provided. However, the industry can use this data when making harvesting and marketing decisions. As previously noted, there previously was no reliable information widely available regarding the sizes of avocados in the channels of commerce. Without good information regarding the sizes available in the market, handlers had no way to tell whether a certain size was overly available or in short supply. Having access to this information will help the industry more efficiently balance supply with demand, thus reducing periods of oversupply and price variations, while providing the industry with another tool to better market its fruit, serve customers, and maximize returns.

This rule will have a positive impact on affected entities. The changes were recommended to reduce costs and improve available industry information. The reduction in costs associated with lost bins is expected to benefit all handlers regardless of size. The availability of more timely and accurate industry information also benefits both large and small handling operations. Consequently, the opportunities and benefits of this rule are expected to be equally available to all.

An alternative to the actions recommended by the Committee was

considered prior to making the final recommendations. The alternative considered was requesting the count per container from handlers on a voluntary basis. However, by requiring the information under authority of the order, all handlers are required to participate, which means more accurate reporting and information. Therefore, this alternative was rejected.

This rule will require small and large avocado handlers to provide some additional information at the time of inspection. However, handlers have access to this information and are already providing other information at the time of inspection. This action requires no additional forms. The information is recorded by the inspector on the inspection certificate.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS has received OMB approval for the information collection requirements for this marketing order program. These requirements are approved under the Fruit Crops collection package, OMB No. 0581–0189 OMB. The reporting modifications made by this rule are small and will have no impact on the overall total burden hours approved by OMB.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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.

Further, the Committee's meetings were widely publicized throughout the avocado industry and all interested persons were invited to attend and participate in Committee deliberations. Like all Committee meetings, the September 8, 2004, and November 10, 2004, meetings were public meetings and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on June 24, 2005. Copies of the rule were mailed by the Committee's staff to all Committee members and avocado handlers. In addition, the rule

was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended August 23, 2005. One response was received. However, it was not relevant to this rulemaking action. Therefore, no changes will be made as a result of this response.

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.

After consideration of all relevant material presented, including the Committee's recommendations, and other information, it is found that finalizing this interim final rule, without change, as published in the **Federal Register** (70 FR 36467, June 24, 2005) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

#### PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 915 which was published at 70 FR 36467 on June 24, 2005, is adopted as a final rule without change.

Dated: October 6, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20472 Filed 10–12–05; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 927

[Docket No. FV05–927–2]

#### Marketing Order Regulating the Handling of Pears Grown in Oregon and Washington; Control Committee Rules and Regulation

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

**ACTION:** Correcting amendment.

**SUMMARY:** The Agricultural Marketing Service (AMS) is adding provisions to the Code of Federal Regulations that include rules and regulations used in

administering the marketing order regulating the handling of pears grown in Oregon and Washington. Inadvertently, Subpart—Control Committee Rules and Regulations was removed in May 2005 when the marketing order was amended.

**EFFECTIVE DATE:** May 21, 2005.

#### FOR FURTHER INFORMATION CONTACT:

Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, D.C. 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

**SUPPLEMENTARY INFORMATION:** A final rule published in the **Federal Register** on Friday, May 20, 2005 (70 FR 29388), was intended to only amend Subpart—Order Regulating Handling of Part 927 and to leave Subpart—Control Committee Rules and Regulations unchanged. However, amendatory language in the final rule resulted in Subpart—Control Committee Rules and Regulations being removed from 7 CFR part 927.

The codified provisions of 7 CFR part 927 do not include the Control Committee Rules and Regulations. This correction document adds Subpart—Control Committee Rules and Regulations back into 7 CFR part 927.

#### List of Subjects in 7 CFR Part 927

Marketing agreements, Winter pears, Reporting and recording keeping requirements.

■ Accordingly, 7 CFR Part 927 is corrected by adding the following provisions:

#### PART 927—PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR Part 927 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Part 927 is corrected by adding Subpart—Control Committee Rules and Regulations consisting of §§ 927.100 through 927.316 to read as follows:

#### Subpart—Control Committee Rules and Regulations

##### Definitions

Sec.

- 927.100 Terms.
- 927.101 Marketing agreement.
- 927.102 Order.
- 927.103 Organically produced pears.

#### Communications

927.105 Communications.

#### Exemption Certificates

- 927.110 Determination of district percentages.
- 927.110a Application for exemption certification.
- 927.111 Exemption committee.
- 927.112 Issuance of exemption certificate.
- 927.113 Appeal to Control Committee.
- 927.114 Appeal to Secretary.

#### Exemptions and Safeguards

- 927.120 Pears for charitable or byproduct purposes.
- 927.121 Pears for gift purposes.
- 927.122 Shipments to designated storages.
- 927.123 Interest and late payment charges.

#### Reports

- 927.125 Reports.
- 927.142 Reserve fund.
- 927.236 Assessment rate.
- 927.316 Handling regulation.

#### Subpart—Control Committee Rules and Regulations

##### Definitions

##### § 927.100 Terms.

Each term used in this subpart shall have the same meaning as when used in the marketing agreement and order.

##### § 927.101 Marketing agreement.

*Marketing agreement* means Marketing Agreement No. 89, as amended, regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California.

##### § 927.102 Order.

*Order* means Order No. 927, as amended (§§ 927.1 to 927.81), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in the States of Oregon, Washington, and California.

##### § 927.103 Organically produced pears.

*Organically produced pears* means pears that have been certified by an organic certification organization currently registered with the Oregon or Washington State Departments of Agriculture, or such certifying organization accredited under the National Organic Program.

#### Communications

##### § 927.105 Communications.

Unless otherwise prescribed in this subpart, or in the marketing agreement and order, or required by the Control Committee, all reports, applications, submittals, requests, inspection