

# Proposed Rules

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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 51

[Docket No. AMS-FV-2007-0008; FV-06-310]

#### United States Standards for Grades of Florida Avocados

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

**ACTION:** Advance notice on proposed rulemaking; withdrawal.

**SUMMARY:** The Agricultural Marketing Service (AMS) is withdrawing an advance notice of proposed rulemaking soliciting comments on possible revisions to the voluntary United States Standards for Grades of Florida Avocados. After reviewing and considering the comments received, the agency has decided not to proceed further with this action.

**DATES:** The advance notice of proposed rulemaking is withdrawn as of November 5, 2007.

**FOR FURTHER INFORMATION CONTACT:** Vincent J. Fusaro, Standardization Section, Fresh Products Branch, (202) 720-2185. The United States Standards for Grades of Florida Avocados are available either through the address cited above or by accessing the Fresh Products Branch Web site at: <http://www.ams.usda.gov/standards/stanfrfv.htm>.

#### Background

AMS had identified the United States Standards for Grades of Florida Avocados for possible revisions. AMS solicited comments on possible revisions to the standards including deleting "Florida" to allow the standards to apply to all avocados. The standards were published on September 3, 1957.

On March, 29, 2007, AMS published an advance notice of proposed rulemaking in the **Federal Register** (72 FR 14709), soliciting comments on a

possible revision to the United States Standards for Grades of Florida Avocados. A request was received on behalf of a foreign government expressing the need for additional time to comment. Following a review of the request, AMS published a notice in the **Federal Register** (72 FR 38057), on July 12, 2007, extending the period for comment.

During the initial sixty-day comment period, three opposing comments and one supporting comment were received. The three opposing comments were submitted by a foreign avocado committee, a company representing growers/packers, and a national trade association representing wholesale receivers. The opposing commenters stated that this revision would not be beneficial to their industry as Florida avocados have unique characteristics which differ significantly from other varieties specifically, the Hass variety. They held the view that the revision would directly affect the Florida Marketing Order (7 CFR Part 915) and imports of the Hass variety. The Hass variety of avocados is not regulated currently under the marketing order.

During the extension of the comment period, four opposing comments were received by a foreign government, a foreign avocado committee, a grower/shipper of avocados, and another from an association of packers, producers, and exporters. All expressed concerns regarding the effect this proposed revision might have on the marketing order and import requirements and a comment raised concerns regarding the treatment of California avocados under the proposed standard. The comments are available by accessing the <http://www.regulations.gov> Web site.

While deleting the word "Florida" from the title of the standard would not impact the marketing order and/or import requirements, AMS understands the views and concerns expressed by the avocado industry. After considering all of the comments received regarding the proposed revisions, AMS has decided not to proceed further with this action. Therefore, the advance notice of proposed rulemaking, published March 29, 2007 (72 FR 14709), is withdrawn.

**Authority:** 7 U.S.C. 1621-1627.

Dated: October 29, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 07-5468 Filed 11-2-07; 8:45 am]

**BILLING CODE 3410-02-M**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 29 CFR Part 1401

RIN 3076-AA06

#### Freedom of Information Act Regulations

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) proposes to amend its rules under the Freedom of Information Act (FOIA) primarily to effectuate various provisions under the 1996 Electronic FOIA Amendments. Previously, FMCS had issued a proposed rule on November 3, 1999 (64 FR 59697). FMCS received no comments when the proposed rule was published in 1999. FMCS is withdrawing that proposed rule and issuing a new revised proposed rule. The proposed revisions include a new response time for FOIA requests, procedures for requesting expedited processing, the availability of certain public information on FMCS's Web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, FMCS's proposed amendments would update its fee schedule. FMCS is also updating the names and addresses of the various offices within the agency responsible for FOIA related activities.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before December 5, 2007.

**ADDRESSES:** Submit written comments by mail to the Office of Information and Regulatory Affairs, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Bartlett, Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street,

NW., Washington, DC 20427.  
Telephone: (202) 606-3737.

**SUPPLEMENTARY INFORMATION:** In this rulemaking, FMCS proposes to amend its regulations at 29 CFR part 1401, subpart B under FOIA, 5 U.S.C. 552. The primary focus of these proposed amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law No. 104-231. Significant new provisions implementing the amendments are found at § 1401.21(a) (electronic reading room), (d) (pamphlets distribution), (e) (records disposition), § 1401.22 (deletion marking), § 1401.34(a), (b), (c), (d) (timing of responses), § 1401.34(d) (volume estimation), § 1401.36(a) (definitions), (b) (fee schedules, lack of fees, fee waivers).

Proposed revisions to the FMCS fee schedule can be found at § 1401.36(b)(1)(i), (ii), (iv), (3)(v). The duplication charge will remain the same at twenty cents per page, while document search and review charges will increase to \$4.00 per each quarter hour or portion thereof for clerical time and \$10.00 per each quarter hour or portion thereof for professional time. The amount at or below which the Service will not charge a fee will decrease from \$50.00 to \$14.00.

Sections such as § 1401.32, § 1401.34(d), § 1401.35, § 1401.36(b)(2)(ii) are being revised to reflect minor language or organizational name changes within FMCS. Sections 1401.24 and 1401.37 are being removed because they are neither required by law nor necessary to interpret the law.

#### List of Subjects in 29 CFR Part 1401

Administrative practice and procedure, Freedom of information.

For the reasons stated in the preamble, FMCS proposes to amend 29 CFR part 1401 as follows:

#### PART 1401—PUBLIC INFORMATION

1. The authority citation for part 1401 continues to read as follows:

**Authority:** Sec. 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

2. Revise § 1401.20 to read as follows:

##### § 1401.20 Purpose and scope.

This subpart contains the regulations of the Federal Mediation and Conciliation Service providing for public access to information under the Freedom of Information Act, 5 U.S.C. 552. It is the policy of the FMCS to disseminate information on matters of interest to the public and to disclose upon request information contained in Agency records insofar as such

disclosure is compatible with the discharge of its responsibilities and the principle of confidentiality and neutrality of dispute resolution by third party neutrals.

3. Amend § 1401.21 by revising paragraphs (c), (d), and (e) to read as follows:

##### § 1401.21 Information policy.

\* \* \* \* \*

(c) FMCS maintains a public reading room that contains the records required by the FOIA to be made readily available for public inspection and copying. FMCS shall maintain and make available for public inspection and copying a current subject-matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. FMCS shall also make reading room records created on or after November 1, 1996, available electronically through FMCS's World Wide Web Site (which can be found at <http://www.fmcs.gov>).

(d) Records or documents prepared by FMCS for routine public distribution, e.g., pamphlets and brochures, will be furnished upon request to Office of the Director of Public Affairs, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427, as long as the supply lasts. The provisions of Sec. 1401.36 (fees) are not applicable to such requests except when the supply of such material is exhausted and it is necessary to reproduce individual copies upon specific request.

(e) All existing FMCS records are subject to disposition according to agency record retention schedules and General Records Schedules promulgated by the National Archives and Records Administration.

4. Revise § 1401.22 to read as follows:

##### § 1401.22 Partial disclosure of records.

(a) If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not possible to separate them.

(b) Records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted and the applicable exemption.

##### § 1401.24 [Removed]

5. Remove § 1401.24

6. Revise § 1401.31 to read as follows:

##### § 1401.31 Filing a request for records.

(a) Any person who desires to inspect or copy an Agency record should submit

a written request to the Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. The envelope [or cover sheet] should be marked "Freedom of Information Act request." Electronic mail requests should be sent to [foia@fmcs.gov](mailto:foia@fmcs.gov).

(b) Each request should reasonably describe the records being sought, so that the records requested may be located and identified. If the description is insufficient to locate the requested records, the officer processing the request will notify the requester and ask for additional information.

##### § 1401.32 [Amended]

7. Amend § 1401.32 by removing the words "Legal Services Office" in paragraph (b) and by adding in their place "Office of the General Counsel."

8. Amend § 1401.34 as follows:

A. Revise paragraph (a) and (b) introductory text.

B. Remove paragraph (b)(3) and (4).

C. Revise paragraph (c).

D. Remove the paragraph designation (b) in the last paragraph of the section and redesignate that paragraph (d).

E. Amend newly redesignated paragraph (d) by removing the term "Deputy Director" and adding the term "Chief of Staff" in its place.

F. Add paragraphs (e) and (f) to read as follows:

##### § 1401.34 Time for processing requests.

(a) All time limitations established pursuant to this section shall begin as of the time a request for records is received by the Office of the General Counsel.

(b) The officer or employee responsible for responding to the request shall, within twenty (20) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the Agency shall comply with the request.

\* \* \* \* \*

(c) Where the time limits for processing a request cannot be met because of unusual circumstances and FMCS determines to extend the time limit on that basis, FMCS will, as soon as practicable, notify the requester in writing of the unusual circumstances and the date by which the processing can be expected to be completed. Where the extension is for more than 10 working days, FMCS will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the request or a modified request. If FMCS reasonably believes that multiple requests submitted by a

requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated.

\* \* \* \* \*

(e) FMCS offices may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and or time needed to process the request. A person making a request that does not qualify for the fastest multitrack processing should be given an opportunity to limit the scope of the request in order to qualify for faster processing.

(f) Requests and appeals will be taken out of order and given expedited processing in cases where the requester demonstrates a compelling need.

(1) Compelling need means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(2) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

(3) Within 10 calendar days of its receipt of a request for expedited processing, FMCS will notify the requester of its decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

#### § 1401.35 [Amended]

9. Amend § 1401.35 by removing the term "Deputy Director" wherever it appears in paragraphs (a), (b) and (c) and by adding the term of "Chief of Staff" in its place.

10. Amend § 1401.36 as follows:

A. Remove the word "the" between "foregoing" and "schedules" and add the words "other than those related to arbitration" between "services" and "which" in paragraph (b)(2)(i).

B. Revise paragraphs (a)(2), (3) and (4), (b)(1)(i), (ii), (iv), (b)(2)(ii), (b)(3)(v) and (b) (4) as follows:

#### § 1401.36 Freedom of Information Act fee schedules.

(a) \* \* \*

(2) Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(3) Duplication refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine-readable documentation (e.g., magnetic tape or disk) among others. A requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible with reasonable efforts in the requested form or format.

(4) Review refers to the process of examining documents located in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, e.g., doing all that is necessary to excise them or otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions or reviewing on appeal exemptions that are applied. However, records or portions withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(i) *Clerical time.* For each one-quarter hour or portion thereof of clerical time, \$4.00.

(ii) *Professional time.* For each one-quarter hour or portion thereof of profession time, \$10.00.

\* \* \* \* \*

(iv) *Computer time.* For computer searches of records, requestors will be charged the direct costs of conducting the search (as provided in paragraph (b)(3)(i) of this section), although certain requestors will be charged no search fee (as provided in paragraph (b)(3)(ii) and (iii)), and certain other requestors will be entitled to the cost equivalent of two hours of manual search time without charge (as provided in paragraph (b)(3)(iv)). These direct costs will

include the cost of operating a central processing unit for that portion of operating time that is directly attributable to the searching for responsive records, as well as the costs of operator/programmer salary attributable to the search. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

\* \* \* \* \*

(2) \* \* \*

(ii) For those matters coming within the scope of this regulation, the FMCS will look to the provisions of the guidance published by the Office of Management and Budget's Uniform Fee Schedule and Guidelines (available at <http://www.whitehouse.gov/omb/inforeg/infopoltech.html>) and the Department of Justice Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act (available at [http://www.usdoj.gov/04foia/04\\_7.html](http://www.usdoj.gov/04foia/04_7.html)) for making such interpretations as necessary.

(3) \* \* \*

(v) In no event shall fees be charged when the total charges are less than \$14.00, which is the Agency cost of collecting and processing the fee itself. If the request is expected to involve an assessed fee in excess of \$14.00, the response shall specify or estimate the fee involved before the records are made available.

(4) *Waiver or reduction of charge.* A fee waiver must be requested at the same time that a request for records is made. The requester should provide an explanation of why the waiver is appropriate. If the request for a waiver or reduction is denied, the denial may be appealed to FMCS' Chief of Staff. In the appeal letter the requester should discuss whatever reasons are given in the denial letter. Documents may be furnished without charge or at reduced levels if FMCS determines that disclosure of the information is in the public interest; that is, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

\* \* \* \* \*

#### § 1401.37 [Removed]

11. Remove § 1401.37.

Dated: October 30, 2007.

**Michael J. Bartlett,**

*Deputy General Counsel.*

[FR Doc. E7-21629 Filed 11-2-07; 8:45 am]

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