

Rules and Regulations

Federal Register

Vol. 72, No. 64

Wednesday, April 4, 2007

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

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

Avocados Grown in South Florida; Suspension of Weekly Handler 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 changing 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 continues in effect the action that indefinitely suspended 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 Date:* May 4, 2007.

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."

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 the action that modified the reporting requirements 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.

This rule continues in effect the action that revised § 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 pack 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 rule continues in effect the action that indefinitely suspended 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.

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 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 continues in effect the action that indefinitely suspended 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 continues in effect the action that reduced 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 Handler's Weekly Report Form" is currently approved under OMB No. 0581-0189, Generic OMB Fruit Crops. The information collection for OMB No. 1581-0189 will be coming up for renewal, at which time the reduction in burden for this form will be addressed. The suspension of the reporting requirement reduces 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.

An interim final rule concerning this action was published in the **Federal Register** on December 22, 2006. 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 February 20, 2007. No comments were received.

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/maob.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 recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 76897, December 22, 2006) 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 71 FR 76897 on December 22, 2006, is adopted as a final rule without change.

Dated: March 29, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7-6243 Filed 4-3-07; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. AMS-FV-07-0031; FV07-922-1 IFR]

Apricots Grown in Designated Counties in Washington; Suspension of Container Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule suspends the container regulations prescribed under the Washington apricot marketing order by extending the temporary 2006 season suspension indefinitely. The marketing order regulates the handling of fresh apricots grown in designated counties in the State of Washington, and is administered locally by the Washington Apricot Marketing Committee (Committee). This indefinite suspension of the container regulations will continue to provide the apricot industry with increased marketing flexibility by allowing handlers to pack and ship apricots in any size, shape, or type of container. After evaluating the impact the temporary 2006 season container regulation suspension has had on the industry, the Committee determined that container regulations no longer contribute to the orderly marketing of the fresh apricot crop.

DATES: Effective April 1, 2007. Comments received by June 4, 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 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.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

Robert J. Curry or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, Suite 385, Portland, Oregon 97204-

2807; Telephone: (503) 326-2724; Fax: (503) 326-7440; or E-mail: Robert.Curry@usda.gov or GaryD.Olson@usda.gov.

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 and Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington, 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. 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 indefinitely extends the temporary 2006 season container regulation suspension (§ 922.306), which ends on March 31, 2007. As it effectively did during the 2006 shipping season, this regulatory suspension will provide additional flexibility to the apricot industry by allowing handlers to