



**Billing code 3410-02 P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 915**

**[Doc. No. AMS-FV-12-0067; FV13-915-1 FR]**

**Avocados Grown in South Florida; Change in Minimum Grade Requirements**

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the minimum grade requirements currently prescribed under the Florida avocado marketing order (order). The order regulates the handling of avocados grown in South Florida, and is administered locally by the Avocado Administrative Committee (Committee). This action increases the current minimum grade requirement from a U.S. No. 2 to a U.S. Combination grade for avocados shipped to destinations outside of the production area. Increasing the minimum grade requirement aligns marketing order regulations with current industry practices to the benefit of growers, handlers, and consumers.

**EFFECTIVE DATE:** [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-7893, or E-mail: Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 915, 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 entry of the ruling.

This final rule revises the minimum grade requirements currently prescribed under the order. This rule increases the current minimum grade requirement from a U.S. No. 2 to a U.S. Combination grade for avocados shipped to destinations outside of the production area and was

recommended by the Committee at a meeting on October 10, 2012.

Section 915.51 of the order provides, in part, authority to issue regulations establishing specific grade requirements for avocados. Section 915.52 of the order provides authority for the modification, suspension or termination of established regulations.

Section 915.306 of the order's container and pack regulations prescribe grade, pack, and container marking requirements for Florida avocados. Paragraph (a)(1) of that section prescribes, in part, that no handler shall handle any variety of avocados grown in the production area unless such avocados grade at least U.S. No. 2.

While marketing order regulations specify a minimum grade requirement of a U.S. No. 2, it is standard industry practice to ship avocados to destinations outside of the production area at the higher grade of a U.S. Combination, especially at the beginning of the season. The minimum requirement for a U.S. Combination grade provides that at least 60 percent of the fruit in the pack must meet the U.S. No. 1 grade and the remaining fruit must meet at least a U.S. No. 2 grade. Handlers have voluntarily shipped the

higher grade fruit in order to get the best price for growers and to provide quality fruit to consumers.

During the first four months of the 2012-13 season, the volume of U.S. No. 2 grade fruit was 13 percent higher than shipments of that grade during the comparable period of the previous season. Buyers were reluctant to pay a higher price for the better grade fruit when they could purchase the lower grade fruit for less. This negatively affected the price of the U.S. Combination grade fruit and resulted in the loss of sales of the higher grade fruit.

During several meetings, Committee members expressed concern that volume of the U.S. No. 2 grade fruit may continue to increase and negatively impact price. Further, the Florida avocado industry has established a reputation for providing consumers with high quality fruit and the Committee believes shipping U.S. No. 2 grade fruit outside of the production area could lower that standard.

As the majority of handlers are currently shipping at the higher grade, it is not anticipated that this change will reduce overall shipments. Even though there was an increase in shipments of U.S. No. 2 grade fruit to destinations outside of the production area during the 2012-13 season, Committee data indicates total shipments of

U.S. No. 2 grade fruit represented only about one percent of total shipments this season, which were over 1.1 million 55-pound bushel containers.

Consequently, the Committee recommended raising the minimum grade requirement to a U.S. Combination for avocados shipped to destinations outside of the production area. Fruit shipped within the production area will continue to be required to meet the current minimum grade of a U.S. No. 2, which will provide an outlet for U.S. No. 2 grade not utilized in the U.S. Combination pack. This final rule aligns marketing order regulations with current industry practices to the benefit of growers, handlers, and consumers. This rule will help maintain the industry's reputation for providing consumers with high quality avocados from Florida, while continuing to provide handlers with an outlet for their U.S. No. 2 fruit.

One member of the Committee voted against the recommendation. He stated that the minimum grade requirement should be raised, but only during the beginning of the season when domestic production was minimal. He believed that when imports begin arriving in October, the minimum grade should revert back to a U.S. No. 2 in order for the Florida avocado industry to compete with imported

fruit. However, the majority of the Committee agreed that the quality of the fruit was the most important issue and shipping the lower grade fruit undermined the high standard established by the Florida avocado industry. Other members of the Committee also commented that they believe raising the minimum grade for Florida avocados will cause the quality of imported fruit to improve to match the industry's higher standard.

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. The changes in this rule apply only to shipments outside of the production area. The current, less restrictive regulations will continue to apply to shipments within the production area and to imported avocados. A clarification will be made to the import regulation in a separate action.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. Small agricultural service firms, which include avocado handlers, are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts less than \$750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service, the average price for Florida avocados during the 2011-12 season was approximately \$20.79 per 55-pound bushel container and total shipments were slightly higher than 1.2 million 55-



pound bushels. Using the average price and shipment information provided by the Committee, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than \$750,000. Consequently, the majority of avocado handlers and producers may be classified as small entities.

This final rule revises the minimum grade requirements currently prescribed for Florida avocados under § 915.306 of the order. This change raises the minimum grade from a U.S. No. 2 to a U.S. Combination grade for avocados shipped to destinations outside of the production area and aligns marketing order regulations with current industry practices. This rule was recommended by the Committee at a meeting on October 10, 2012. Authority for this action is provided in §§ 915.51 and 915.52 of the order.

Any additional costs associated with this change are anticipated to be minimal. The order requires that all containers be marked with the grade of the fruit in the container. However, the vast majority of handlers are currently shipping at the higher grade requirement, and

marking their containers accordingly. Any containers currently in inventory that have been pre-stamped with a U.S. No. 2 can be used for shipments within the production area. Therefore, this change should not yield any additional costs.

As previously stated, the volume of U.S. No. 2 grade Florida avocados shipped during a season represents less than one percent of total annual shipments. In addition, the U.S. Combination grade requires that at least 60 percent of the fruit in the pack be a U.S. No. 1 grade and the remaining fruit must meet a U.S. No. 2 grade. Consequently, U.S. No. 2 fruit can be utilized in the U.S. Combination pack. Further, U.S. No. 2 grade avocados can still be shipped to destinations within the production area. Therefore, implementation of this rule is not expected to impact the overall volume of U.S. No. 2 fruit being utilized as adequate uses for such fruit will continue to exist.

Raising the minimum grade requirement aligns marketing order requirements with current industry practices. Consumers benefit as a result of the higher quality pack available in the marketplace. It also builds consumer confidence and improves grower returns. The benefits of

this rule are not expected to be disproportionately greater or smaller for small handlers or growers than for large entities.

The Committee considered alternatives to this recommended change. The Committee discussed raising the minimum grade to U.S. Combination grade during the early part of the season and then reverting back to the minimum grade requirement of a U.S. No. 2 in October when imported fruit typically begins arriving in the U.S. There was concern that having the higher grade requirements in effect when imports begin arriving would make it difficult for the domestic industry to compete. However, the Committee agreed that the quality of the fruit was the most important issue and shipping the lower grade fruit undermined the high standard established by the Florida avocado industry. Also, Committee members stated that they believe raising the minimum grade for Florida avocados shipped outside of the production area for the entire season would result in improved quality of both domestic and imported avocados, as importers would likely strive to match the quality standards set by the Florida avocado industry. Therefore, this alternative was rejected.

The Committee also considered changing the minimum grade requirements for all Florida avocados handled, regardless of market destination. However, maintaining the current minimum grade requirement for avocados shipped to destinations within the production area provides an outlet for U.S. No. 2 grade fruit not utilized in the higher grade packs. Therefore, the Committee also rejected this alternative.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, Generic Fruit Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule revises the minimum grade requirement under the Florida avocado marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. 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.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. Further, no comments were received concerning the initial regulatory flexibility analysis.

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.

In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 10, 2012, meeting was a public meeting. All entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 23, 2013 (78 FR 30782). Copies of the rule were mailed or sent via facsimile to all Committee members and avocado handlers. Finally, the rule

was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending June 24, 2013, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
[www.ams.usda.gov/MarketingOrdersSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide). Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) as handlers are already shipping avocados for the 2013-14 season. Further, handlers are aware of this rule, which

was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

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

Avocados, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 915 is amended as follows:

**PART 915 - AVOCADOS GROWN IN SOUTH FLORIDA**

1. The authority citation for 7 CFR Part 915 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. In § 915.306, paragraph (a)(1) is revised to read as follows:

**§ 915.306 Florida avocado grade, pack and container marking regulation.**

(a) \* \* \*

(1) Such avocados grade at least U.S. Combination, except that avocados handled to destinations within the production area grade U.S. No. 2 and except further that such avocados may be placed in containers with avocados of dissimilar varietal characteristics.

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Dated: August 14, 2013

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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