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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 915**

[Doc. No. AMS-SC-15-0083; SC16-915-2 FR]

**Avocados Grown in South Florida; Increased Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the Avocado Administrative Committee (Committee) for an increase of the assessment rate established for the 2016-17 and subsequent fiscal periods from \$0.30 to \$0.35 per 55-pound bushel container of Florida avocados handled under the marketing order (order). The Committee locally administers the order and is comprised of growers and handlers of avocados operating within the area of production. Assessments upon Florida avocado handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period began on April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective [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, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, 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 Antoinette Carter, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This 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 Orders 12866, 13563, and 13175.

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 issued herein will be applicable to all assessable Florida avocados beginning on April 1, 2016, and continue until amended, suspended, or terminated.

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 increases the assessment rate established for the Committee for the 2016-17 and subsequent fiscal periods from \$0.30 to \$0.35 per 55-pound bushel container of avocados.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area, and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2013-14 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment

rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 9, 2015, and recommended 2016-17 expenditures of \$302,553 and an assessment rate of \$0.35 per 55-pound bushel container of avocados. In comparison, last year's budgeted expenditures were \$602,553. The assessment rate of \$0.35 is \$0.05 higher than the rate currently in effect. During the 2015-16 season, the Committee used its authorized reserves to fund several large research projects to address the Laurel Wilt fungus, which can infect and kill avocado trees. This substantially reduced the funds in the Committee's reserves to \$214,733. Further, at the current assessment rate, assessment income would equal only \$300,000, an amount insufficient to cover the Committee's anticipated expenditures of \$302,553. By increasing the assessment rate by \$0.05, assessment income will be approximately \$350,000. This amount should provide sufficient funds to meet 2016-2017 anticipated expenses and add money back into the Committee's authorized reserves.

The major expenditures recommended by the Committee for the 2016-17 year include \$119,483 for salaries, \$51,500 for employee benefits, and \$25,500 for insurance and bonds. Budgeted expenses for these items in 2015-16 were \$119,483, \$51,500, and \$25,500, respectively.

The assessment rate recommended by the Committee was derived by reviewing anticipated expenses, expected shipments of Florida avocados, and the level of funds in reserve. As mentioned earlier, avocado shipments for the year are estimated at one million 55-pound bushel containers which should provide \$350,000 in assessment income. Income derived from handler assessments, along with interest income, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$214,733) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses as authorized in § 915.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2016-17 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

#### **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 rule 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 the 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 400 producers of Florida avocados in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

According to the National Agricultural Statistical Service (NASS), the average grower price paid for Florida avocados during the 2014-15 season was approximately \$18.00 per 55-pound bushel container and total shipments were slightly higher than 1.2 million 55-pound bushels. Based on this information, the majority of avocado producers would have annual receipts less than \$750,000. In addition, based on Committee information, the majority of Florida avocado handlers could be considered small business

under SBA's definition. Thus, the majority of Florida avocado producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2016-17 and subsequent fiscal periods from \$0.30 to \$0.35 per 55-pound bushel container of avocados. The Committee recommended 2016-17 expenditures of \$302,553 and an assessment rate of \$0.35 per 55-pound bushel container. The assessment rate of \$0.35 is \$0.05 higher than the previous rate. The quantity of assessable avocados for the 2016-17 season is estimated at one million 55-pound bushel containers. Thus, the \$0.35 rate should provide \$350,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2016-17 fiscal period include \$119,483 for salaries, \$51,500 for employee benefits, and \$25,500 for insurance and bonds. Budgeted expenses for these items in 2015-16 were \$119,483, \$51,500, and \$25,500, respectively.

During the 2015-16 season, the Committee used its authorized reserves to fund several large research projects

to address the Laurel Wilt fungus. This substantially reduced the funds in the Committee's reserves. Further, at the current assessment rate and with the 2016-17 crop estimated to be one million 55-pound bushel containers, assessment income would equal only \$300,000, an amount insufficient to cover the Committee's anticipated expenditures of \$302,553. By increasing the assessment rate by \$0.05, assessment income will be approximately \$350,000. This amount should provide sufficient funds to meet 2016-17 anticipated expenses and add money back into the Committee's authorized reserves. Consequently, the Committee recommended increasing the assessment rate.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee. Alternative expenditure levels were discussed by this group, based upon the relative value of various activities to the South Florida avocado industry. The Committee ultimately determined that 2016-17 expenditures of \$302,553 were appropriate, and the recommended assessment rate, along with interest income, would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2016-17 season should be around \$18 per 55-pound bushel container of avocados. Therefore, the estimated assessment revenue for the 2016-17 fiscal period as a percentage of total grower revenue would be approximately two percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Additionally, these costs are offset by the benefits derived by the operation of the marketing order. 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 December 9, 2015, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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 rule imposes no 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.

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.

A proposed rule concerning this action was published in the **Federal Register** on March 16, 2016 (81 FR 14019). Copies of the proposed rule were also mailed or sent via

facsimile to all Florida avocado handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 15, 2016, was provided for interested persons to respond to the proposal. One comment was received in support of the proposal. Accordingly, no changes will be made to the rule as proposed, based on the comment 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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material 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.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2016-17 crop avocados from growers, and the fiscal period began on April 1, 2016, and the assessment rate applies to all Florida avocados received during the 2016-17 and subsequent seasons. 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.

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

Avocados, Marketing agreements, 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. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2016, an assessment rate of \$0.35 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: June 10, 2016.

Elanor Starmer  
Administrator  
Agricultural Marketing Service  
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