

# Rules and Regulations

Federal Register

Vol. 60, No. 31

Wednesday, February 15, 1995

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 911 and 915

[FV95-911-1IFR]

#### Expenses and Assessment Rates for Marketing Orders Covering Limes and Avocados Grown in Florida

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenses and establishes assessment rates for the Florida Lime Administrative Committee and the Avocado Administrative Committee (Committees) under Marketing Orders 911 and 915 for the 1995-96 fiscal year. The Committees are responsible for local administration of the marketing orders which regulate the handling of Florida limes and avocados. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

**DATES:** Effective beginning April 1, 1995, through March 31, 1996. Comments received by March 17, 1995, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, Fax # (202) 720-5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the

Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Britthany Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone (202) 720-5331; or Aleck Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883, telephone (813) 299-4770.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 911 [7 CFR Part 911], as amended, regulating the handling of limes grown in Florida; and Marketing Agreement and Order No. 915 [7 CFR Part 915] regulating the handling of avocados grown in Florida. These agreements and orders are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes and avocados grown in Florida are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Florida limes and avocados handled during the 1995-96 fiscal year, beginning April 1, 1995, through March 31, 1996. This interim final 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 the Secretary 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 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 45 handlers of limes grown in Florida, and approximately 40 producers in the regulated area. Also, there are approximately 65 handlers of avocados grown in Florida, and approximately 95 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of lime and avocado producers and handlers may be classified as small entities.

The lime and avocado marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable limes and avocados handled from the beginning of such year. Annual budgets of expenses are prepared by the Committees, the agencies responsible for local administration of their respective marketing orders, and submitted to the Department for approval. Each Committee consists of producers, handlers and a non-industry public member. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The Committees' budgets are formulated and discussed in public meetings. Thus, all directly affected

persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of limes and avocados (in bushels). Because those rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committees will have funds to pay their expenses.

The Florida Lime Administrative Committee met on December 14, 1994, and unanimously recommended 1995-96 expenses of \$92,270. In comparison, the 1994-95 fiscal year expense amount was \$92,197, which is \$73 less in expenses than the amount recommended for this fiscal year.

The Committee also unanimously recommended an assessment rate of \$0.16 per 55-pound bushel of limes. The 1995-96 assessment rate remains unchanged from the previous fiscal year. Assessment income for 1995-96 is estimated to total \$64,000 based on anticipated fresh domestic shipments of 400,000 bushels of limes. This, along with \$2,500 in interest income, and a withdrawal of \$25,770 from the Committee's reserve fund will be adequate to cover estimated expenses. Funds in the reserve at the end of the 1995-96 fiscal year are expected to be within the maximum permitted by the order of three fiscal years' expenses.

Major budget categories for 1995-96 are \$34,000 for administrative staff salaries, \$10,000 for research, \$8,300 for compliance, and \$7,300 for employee benefits.

The Avocado Administrative Committee also met on December 14, 1994, and unanimously recommended 1995-96 expenses of \$107,570. In comparison, 1994-95 fiscal year expenses were \$116,420, which is \$8,850 more than the \$107,570 recommended for this fiscal year.

An assessment rate of \$0.16 per 55-pound bushel of avocados was also unanimously recommended by the Committee. The 1995-96 rate of assessment remains the same as the previous fiscal year. Assessment income for 1995-96 is estimated to total \$112,000 based on anticipated fresh domestic shipments of 700,000 bushels of avocados. Assessment income, plus an additional \$1,500 in interest income will provide sufficient funds to cover

budgeted expenses. The Committee anticipates a reserve fund increase of \$5,930 because assessment income is more than budgeted expenses. Funds in the reserve at the end of the 1995-96 fiscal year are within the maximum permitted by the order of three fiscal years' expenses.

Major budget categories for the 1995-96 are \$34,000 for administrative staff salaries, \$15,600 for compliance, \$12,810 for insurance and bonds, and \$10,000 for research.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committees' recommendations, and other available information, it is found that this interim final 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 upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the 1995-96 fiscal year begins on April 1, 1995, and the marketing orders require that the rate of assessment for the fiscal year apply to all assessable limes and avocados handled during the fiscal year; (3) handlers are aware of this action which was recommended by the Committees at public meetings; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

#### List of Subjects

##### 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR Parts 911 and 915 continues to read as follows:

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

**Note:** These sections will not appear in the Code of Federal Regulations.

#### PART 911—LIMES GROWN IN FLORIDA

2. A new §911.233 is added to read as follows:

##### § 911.233 Expenses and Assessment rate.

Expenses of \$92,270 by the Florida Lime Administrative Committee are authorized, and an assessment rate of \$0.16 per 55-pound bushel of assessable limes is established for the 1995-96 fiscal year ending on March 31, 1996. Unexpended funds may be carried over as a reserve.

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

3. A new §915.233 is added to read as follows:

##### § 915.233 Expenses and Assessment rate.

Expenses of \$107,570 by the Avocado Administrative Committee are authorized, and an assessment rate of \$0.16 per 55-pound bushel of assessable avocados is established for the 1995-96 fiscal year ending on March 31, 1996. Unexpended funds may be carried over as a reserve.

Dated: February 8, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*  
[FR Doc. 95-3786 Filed 2-14-95; 8:45 am]

BILLING CODE 3410-02-P

#### 7 CFR Part 985

[FV94-985-5FR]

#### Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 1995-96 Marketing Year

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

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 1995-96 marketing year. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far