

1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. 5 U.S.C. 804.

#### *Unfunded Mandates Reform Act*

For the purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of \$100 million or more (as adjusted for inflation).

#### **List of Subjects in 5 CFR Part 6201 and 12 CFR Part 400**

Conflict of interests, Government employees.

Dated: August 25, 2010.

**Jonathan J. Cordone,**

*General Counsel, Export-Import Bank of the United States.*

Approved: August 30, 2010.

**Robert I. Cusick,**

*Director, Office of Government Ethics.*

■ Accordingly, for the reasons set forth in the preamble, the Export-Import Bank of the United States, with the concurrence of the Office of Government Ethics, is adopting the interim rule, adding 5 CFR part 6201 and revising 12 CFR part 400, which was published at 60 FR 17625–17628, April 7, 1995, as a final rule with the following changes:

#### **TITLE 5—ADMINISTRATIVE PERSONNEL**

#### **PART 6201—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXPORT-IMPORT BANK OF THE UNITED STATES**

■ 1. The authority citation for part 6201 is revised to read as follows:

**Authority:** 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

#### **§ 6201.102 [Removed]**

■ 2. Section 6201.102 is removed.

#### **§ 6201.103 [Redesignated as § 6201.102]**

■ 3. Section 6201.103 is redesignated as § 6201.102.

[FR Doc. 2010–22410 Filed 9–14–10; 8:45 am]

**BILLING CODE 6690–01–P**

### **DEPARTMENT OF AGRICULTURE**

#### **Agricultural Marketing Service**

#### **7 CFR Part 915**

[Doc. No. AMS–FV–10–0067; FV10–915–1 IR]

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

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

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

**SUMMARY:** This rule increases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2010–11 and subsequent fiscal periods from \$0.27 to \$0.37 per 55-pound bushel container of Florida avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Assessments upon Florida avocado handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective September 16, 2010. Comments received by November 15, 2010, 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>. Comments should reference the document 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, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the

comments will be made public on the Internet at the address provided above.

#### **FOR FURTHER INFORMATION CONTACT:**

Doris Jamieson, 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:* [Doris.Jamieson@ams.usda.gov](mailto:Doris.Jamieson@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.usda.gov).

Small businesses may request information on complying with this regulation by contacting Antoinette Carter, 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:* [Antoinette.Carter@ams.usda.gov](mailto: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 Order 12866.

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 April 1, 2010, 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 2010–11 and subsequent fiscal periods from \$0.27 to \$0.37 per 55-pound bushel container of Florida avocados.

Section 915.29(c) of 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 2005–06 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 July 22, 2010, and unanimously recommended 2010–11 expenditures of \$351,502 and an assessment rate of \$0.37 per 55-pound bushel container of avocados. In comparison, last year's budgeted expenditures were \$259,400. The assessment rate of \$0.37 is \$0.10 higher than the rate currently in effect.

The Committee held an emergency meeting to discuss an increase in the assessment rate in order to fund research to find an insecticide that will kill or control the Red Bay Ambrosia beetle. The beetle carries the Laurel Wilt fungus which can infect and kill avocado trees. Research into the beetle and fungus had been funded by the University of Florida. However, the Committee was informed that funding ceased on August 1, 2010. Without funding, researchers will be unable to continue testing to determine which insecticides work best to kill/control the beetle and at what application rate. The Committee believes it is essential for the industry that the research continues. Therefore, they voted to increase the assessment rate to provide the additional research money.

The major expenditures recommended by the Committee for the 2010–11 year include \$110,000 for

research, \$98,732 for salaries, \$48,000 for employee benefits, and \$25,300 for insurance and bonds. Budgeted expenses for these items in 2009–10 were \$25,000, \$94,030, \$48,000, and \$25,300, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Florida avocado shipments for the year are estimated at 1,000,000 55-pound bushel containers which should provide \$370,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$242,000) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses as stated 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 is effective 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 2010–11 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

#### Initial 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 initial 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.

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 2009–10 season was around \$16.50 per 55-pound bushel container and total shipments were near 900,000 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 rule increases the assessment rate established for the Committee and collected from handlers for the 2010–11 and subsequent fiscal periods from \$0.27 to \$0.37 per 55-pound bushel container of Florida avocados. The Committee unanimously recommended 2010–11 expenditures of \$351,502 and an assessment rate of \$0.37 per 55-pound bushel container. The assessment rate of \$0.37 is \$0.10 higher than the 2009–10 rate. The quantity of assessable Florida avocados for the 2010–11 season is estimated at 1,000,000. Thus, the \$0.37 rate should provide \$370,000 in assessment income and be adequate to meet this year's expenses. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve fund, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2010–11 year include \$110,000 for research, \$98,732 for salaries, \$48,000 for employee benefits, and \$25,300 for insurance and bonds. Budgeted expenses for these items in 2009–10 were \$25,000, \$94,030, \$48,000, and \$25,300, respectively.

The increase in assessment rate is needed to fund research to find an

insecticide that will kill or control the Red Bay Ambrosia beetle. The beetle carries the Laurel Wilt fungus which can infect and kill avocado trees. Research into the beetle and fungus had been funded by the University of Florida. However, the Committee was informed that funding ceased on August 1, 2010. Without funding, researchers will be unable to continue testing to determine which insecticides work best to kill/control the beetle and at what application rate. The Committee believes it is essential for the industry that the research continues. Therefore, they voted to increase the assessment rate to provide the additional research money.

The Committee reviewed and unanimously recommended 2010–11 expenditures of \$351,502 which included increases in research programs. Prior to arriving at this budget, alternative expenditure levels were discussed based upon the relative value of various research projects to the Florida avocado industry. The assessment rate of \$0.37 per 55-pound bushel container of assessable Florida avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 1,000,000 55-pound bushel containers for the 2010–11 season. This is approximately \$18,400 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the grower price for the 2010–11 season could range between \$9.00 and \$66.00 per 55-pound bushel container of avocados. Therefore, the estimated assessment revenue for the 2010–11 season as a percentage of total grower revenue could range between .6 and 4 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. Some of the additional costs may be passed on to producers. However, 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 avocados industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 22, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule,

including the regulatory and informational impacts of this action on small businesses.

This action 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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/MarketingOrdersSmallBusinessGuide>. 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 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 rule until 30 days after publication in the **Federal Register** because: (1) The 2010–11 fiscal period began on April 1, 2010, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Florida avocados handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (3) handlers are aware of this action which was unanimously recommended by the Committee at an emergency, public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to the finalization of this rule.

## 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. Section 915.235 is revised to read as follows:

#### § 915.235 Assessment rate.

On and after April 1, 2010, an assessment rate of

\$0.37 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: September 10, 2010.

**David R. Shipman,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2010–22978 Filed 9–14–10; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 984

[Doc. No. AMS–FV–10–0060; FV10–984–1 IR]

### Walnuts Grown in California; Decreased Assessment Rate

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

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

**SUMMARY:** This rule decreases the assessment rate established for the California Walnut Board (Board) for the 2010–11 and subsequent marketing years from \$0.0177 to \$0.0174 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order that regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** September 16, 2010; comments received by November 15, 2010 will be considered prior to issuance of a final rule.