

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 915

[Docket No. AO-254-A10; AMS-FV-06-0220; FV06-915-2]

#### Avocados Grown in South Florida; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement No. 121 and Order No. 915

**AGENCY:** Agricultural Marketing Service (AMS), USDA.

**ACTION:** Proposed rule and referendum order.

**SUMMARY:** This decision proposes amendments to Marketing Agreement No. 121 and Order No. 915 (order), which regulate avocados grown in South Florida, and provides growers with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the Florida Avocado Administrative Committee (Committee), which is responsible for local administration of the order. The amendments would: Add authority for the Committee to borrow funds; revise voting requirements for changing the assessment rate; allow for District 1 nominations to be conducted by mail; and add authority for the Committee to accept voluntary contributions. The proposed amendments are intended to improve the operation and functioning of the marketing order program.

**DATES:** The referendum will be conducted from July 23 through August 6, 2007. The representative period for the purpose of the referendum is April 1, 2006, through March 31, 2007.

**FOR FURTHER INFORMATION CONTACT:** Marc McFetridge or Melissa Schmaedick, Marketing Specialists, Fruit and Vegetable Programs, Marketing Order Administration Branch (MOAB), AMS, USDA, 1400 Independence Ave., SW., Washington, DC 20250-0237; Telephone: (202) 720-

2491, Fax: (202) 720-8938, or e-mail: [Marc.McFetridge@usda.gov](mailto:Marc.McFetridge@usda.gov) or [Melissa.Schmaedick@usda.gov](mailto:Melissa.Schmaedick@usda.gov).

Small businesses may request information on this proceeding 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing issued on July 18, 2006, and published in the July 24, 2006, issue of the **Federal Register** (71 FR 41740), and a Recommended Decision issued on March 23, 2007, and published in the March 30, 2007, issue of the **Federal Register** (72 FR 15056).

This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

#### Preliminary Statement

The proposed amendments are based on the record of a public hearing held August 16, 2006, in Homestead, Florida. The hearing was held to consider such amendments to the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing was published in the **Federal Register** on July 24, 2006 (71 FR 41740), and contained amendment proposals submitted by the Committee.

The amendments included in this decision would:

1. Add the authority for the Committee to borrow funds;
2. Revise the voting requirements for changing the assessment rate;
3. Allow the District 1 nominations to be conducted by mail; and
4. Add the authority for the Committee to accept voluntary contributions.

In addition, AMS proposed to make changes as may be necessary to the order, if any of the proposed changes are adopted, so that all of the order's

provisions conform to the effectuated amendments. To the extent necessary, conforming changes have been identified and made to the amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on March 23, 2007, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by April 30, 2007. That document also announced AMS's intent to request approval of new information collection requirements to implement the program. Written exceptions on the proposed information collection requirements were due by May 29, 2007. None were filed.

#### Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), 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 so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than \$6,500,000.

#### Avocado Industry Background and Overview

The record indicates that there are an estimated 352 producers of avocados in the production area and 32 handlers subject to regulation under the order.

According to the National Agricultural Statistics Service (NASS) 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 equivalent. Using this average price and shipment information, 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.

The NASS reported that in 2005, total Florida avocado bearing acres were 5,300 and the average yield per acre was 2.26 tons. The total Florida production reported in 2005 was 12,000 tons, with growers receiving an average (farm gate) price of \$940/ton. The estimated total value of 2005 Florida avocado production was \$11.28 million.

Over the past 30 years the U.S. avocado industry has seen many changes. According to NASS, the total U.S. production acres for avocados have decreased by 13 percent, from 78,000 acres in 1982 to 67,600 acres in 2005. Prices have trended upward from 1959 to 2005, although there has been significant variability in prices from year to year. The average grower price for the U.S. in 1959 was \$109 per ton and in 2005 the average grower price was \$1,280 per ton. The total value of U.S. avocado production has increased dramatically since 1959, reaching a peak of \$394 million in 2003. The per capita consumption of fresh avocados has risen significantly since 1970. Between 1970 and 2004, per capita consumption increased almost five-fold to 2.9 pounds per person in 2004. According to the hearing record, one of the factors that may be contributing to this increase is the new year-round availability of avocados due to the volume of imported avocados in addition to domestically produced avocados.

Comparatively, Florida's avocado industry has seen similar trends. According to NASS, the production acreage has decreased by 53 percent over the last three decades. According to record evidence, the rapid decrease in Florida production acreage compared to that of U.S. acreage can be directly associated with crop damage resulting from recent hurricanes. Florida's production trended upward to 34,700 tons in the early 1980's and has shown great variability since. Production in 2005 was at a 10 year low of 12,000 tons. After Hurricane Andrew, which affected the value of production in 1992 and 1993, the value of Florida's production has ranged from a high of \$17.2 million in 2003 to a low of \$11.3 million in 2005.

#### Material Issues

The amendments included in this decision would: Add authority for the Committee to borrow funds; revise

voting requirements for changing the assessment rate; allow for District 1 nominations to be conducted by mail; and add authority for the Committee to accept voluntary contributions.

The proposals set forth in this Decision would streamline program organization, but are not expected to result in a significant change in industry production, handling or distribution activities. In discussing the impacts of the proposed amendments on growers and handlers, record evidence indicates that the changes are expected to be positive because the administration of the programs would be more efficient, and therefore more effective, in executing Committee duties and responsibilities. There would be no significant cost impact on either small or large growers or handlers.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments to the order on small entities. In addition, the Recommended Decision invited exceptions from interested persons on the information collection burden. None were received. The record evidence is that the amendments are designed to increase efficiency in the functioning of the order.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the order to benefit the South Florida avocado industry.

#### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is seeking approval from OMB for a new information collection request for Avocados Grown in South Florida, Marketing Order No. 915, under OMB No. 0581-NEW. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581-0189, "Generic OMB Fruit Crops."

*Title:* Avocados Grown in South Florida, Marketing Order No. 915.  
*OMB No.:* 0581-NEW.

*Expiration Date of Approval:* Three years from OMB date of approval.

*Type of Request:* New collection.

*Abstract:* The information collection requirement in this request is essential to provide growers and handlers with ballots so that nominations for the Committee can be conducted by mail.

This information collected is used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs regional and

headquarters' staff, and authorized employees and agents of the Committee. Authorized Committee employees, agents, and the industry are the primary users of the information and AMS is the secondary user.

#### Grower Ballot To Nominate Members and Alternate Members for District 1 or District 2

Avocado growers would use this ballot to nominate members and alternative members, either for District 1 or District 2 (whichever is applicable), to serve on the Committee. The ballot would be used when voting by mail.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.083 hour per response.

*Respondents:* Avocado growers.

*Estimated Number of Respondents:* 352.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 29 hours.

#### Handler Ballot To Nominate Members and Alternate Members for District 1 or District 2

Avocado handlers would use this ballot to nominate members and alternate members for either District 1 or District 2 (whichever is applicable), to serve on the Committee. This ballot would be used when voting by mail.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.083 hour per response.

*Respondents:* Avocado handlers.

*Estimated Number of Respondents:* 32.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 3 hours.

The Committee recommended amending the nomination process to allow for District 1 nominations to be conducted by mail.

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 Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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.

### Civil Justice Reform

The amendments to Marketing Order 915 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

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 no later than 20 days after the date of the entry of the ruling.

### Findings and Conclusions

The findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the March 30, 2007 issue of the **Federal Register** are hereby approved and adopted.

### Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Avocados Grown in Florida." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

*It is hereby ordered*, That this entire decision be published in the **Federal Register**.

### Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the annexed order amending the order regulating the handling of avocados grown in Florida is approved or favored by growers, as defined under the terms of the order,

who during the representative period were engaged in the production of avocados in the production area.

The representative period for the conduct of such referendum is hereby determined to be April 1, 2006, through March 31, 2007.

The agents of the Secretary to conduct such referendum are hereby designated to be William G. Pimental and Christian D. Nissen, 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](mailto:William.Pimental@usda.gov) or [Christian.Nissen@usda.gov](mailto:Christian.Nissen@usda.gov), respectively.

### List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

Dated: July 9, 2007.

**Lloyd C. Day**,

*Administrator, Agricultural Marketing Service.*

### Order Amending the Order Regulating the Handling of Avocados Grown in Florida<sup>1</sup>

#### *Findings and Determinations*

The findings and determinations hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement No. 121 and Order No. 915 (7 CFR part 915), regulating the handling of avocados grown in Florida. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all

<sup>1</sup> This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceeding to formulate marketing agreements and marketing orders have been met.

of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of avocados grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited to their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of avocados grown in the production area; and

(5) All handling of avocados grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

### Order Relative to Handling

*It is therefore ordered*, That on and after the effective date hereof, all handling of avocados grown in Florida shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Recommended Decision issued by the Administrator on March 23, 2007, and published in the **Federal Register** (72 FR 15056) on March 30, 2007, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

### 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 § 915.11, paragraphs (a) and (b) are revised to read as follows:

**§ 915.11 District.**

\* \* \* \* \*

(a) *District 1* shall include Miami-Dade County.

(b) *District 2* shall include all of the production area except Miami-Dade County.

3. In § 915.22, paragraph (b)(1) is revised to read as follows:

**§ 915.22 Nomination.**

(a) \* \* \*

(b) *Successor members.* (1) The Committee shall hold or cause to be held a meeting or meetings of growers and handlers in each district to designate nominees for successor members and alternate members of the Committee; or the Committee may conduct nominations in Districts 1 and 2 by mail in a manner recommended by the Committee and approved by the Secretary. Such nominations shall be submitted to the Secretary by the Committee not later than March 1 of each year. The Committee shall prescribe procedural rules, not inconsistent with the provisions of this section, for the conduct of nomination.

\* \* \* \* \*

4. In § 915.30, paragraph (c) is revised to read as follows:

**§ 915.30 Procedure.**

\* \* \* \* \*

(c) For any recommendation of the Committee for an assessment rate change, a quorum of seven Committee members and a two-thirds majority vote of approval of those in attendance is required.

5. In § 915.41, paragraph (b) is revised to read as follows:

**§ 915.41 Assessments.**

\* \* \* \* \*

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment, in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the Committee may accept the payment of assessments in advance, or borrow money on an emergency short-term basis. The authority of the Committee to borrow money is subject to approval of the Secretary and may be used only to meet financial obligations as the obligations occur or to allow the

Committee to adjust its reserve funds to meet such obligations.

6. Add a new § 915.43 to read as follows:

**§ 915.43 Contributions.**

The Committee may accept voluntary contributions. Such contributions shall be free from any encumbrances by the donor and the Committee shall retain complete control of their use.

7. Revise § 915.45 to read as follows:

**§ 915.45 Production research, marketing research and development.**

The committee may, with the approval of the Secretary, establish or provide for the establishment of production research, marketing research and development projects designed to assist, improve or promote the marketing, distribution, and consumption or efficient production of avocados. Such products may provide for any form of marketing promotion, including paid advertising. The expenses of such projects shall be paid from funds collected pursuant to the applicable provisions of § 915.41, or from such other funds as approved by the USDA.

[FR Doc. 07-3408 Filed 7-9-07; 4:32 pm]

BILLING CODE 3410-02-P

**NUCLEAR REGULATORY COMMISSION****10 CFR Part 50****[Docket No. PRM-50-87]****Raymond A. Crandall; Receipt of Petition for Rulemaking****AGENCY:** Nuclear Regulatory Commission.**ACTION:** Petition for rulemaking; notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated May 17, 2007, filed by Raymond A. Crandall (petitioner). The petition was docketed by the NRC and has been assigned Docket No. PRM-50-87. The petitioner is requesting that the NRC amend the regulations that govern domestic licensing of production and utilization facilities to eliminate the specific criteria related to the radiological doses for control room habitability at nuclear power plants. The petitioner believes that the current deterministic radiological dose requirements for control room habitability have resulted in several negative safety consequences,

including an increased risk to public safety.

**DATES:** Submit comments by September 25, 2007. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include the following number (PRM-50-87) in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birth dates in your submission.

*Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

*E-mail comments to:* [SECY@nrc.gov](mailto:SECY@nrc.gov). If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking website at <http://ruleforum.llnl.gov>. Address comments about our rulemaking website to Carol Gallagher, (301) 415-5905; (e-mail [cag@nrc.gov](mailto:cag@nrc.gov)). Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are