

# Rules and Regulations

Federal Register

Vol. 65, No. 56

Wednesday, March 22, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD

### 4 CFR Parts 27 and 28

#### Procedural Rules

**AGENCY:** General Accounting Office Personnel Appeals Board.

**ACTION:** Final rule.

**SUMMARY:** The General Accounting Office Personnel Appeals Board (PAB) has authority with respect to employment practices within the General Accounting Office (GAO or agency), pursuant to the General Accounting Office Personnel Act of 1980 (GAOPA). The PAB hereby finalizes its regulations to explain that a quorum of three members of the Board may exercise all the powers of the Board, and that a majority of a quorum may act in any matter requiring consideration by the full Board.

**DATES:** These regulations are effective March 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Beth Don, Executive Director, 202-512-6137.

**SUPPLEMENTARY INFORMATION:** The General Accounting Office Personnel Appeals Board on Tuesday, March 30, 1999, published an interim rule with request for comments by June 1, 1999, amending the PAB regulations. The interim rule conformed the regulations to Board policy recognizing that a quorum of three members of the Board may exercise all the powers of the Board, and that a majority of a quorum may act in any matter requiring consideration by the full Board. No comments on the interim rule were received by the Board.

### List of Subjects in 4 CFR Parts 27 and 28

Administrative practice and procedures, Equal employment opportunity, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the General Accounting Office Personnel Appeals Board amends 4 CFR Chapter I, Subchapter B as follows:

## PARTS 27 AND 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

The interim rule amending 4 CFR parts 27 and 28 which was published at 64 FR 15125 on March 30, 1999, is adopted as a final rule without change.

**Michael Wolf,**

*Chair, Personnel Appeals Board, U.S. General Accounting Office.*

[FR Doc. 00-7128 Filed 3-21-00; 8:45 am]

**BILLING CODE 1610-02-M**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 915

[Docket No. FV00-915-1 FIR]

### Avocados Grown in South Florida; Relaxation of Container and Pack Requirements

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, with minor editorial changes, the provisions of an interim final rule changing the container and pack requirements prescribed under the Florida avocado marketing order (order). The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). This rule continues in effect the removal of the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. This change will provide greater flexibility in avocado packing operations.

**EFFECTIVE DATE:** April 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299-4770, Fax: (863) 299-5169; or Anne Dec, Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The marketing agreement and order 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the terms of the order, fresh market shipments of Florida avocados are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. Pack and container requirements outline the designated net weight of the containers used to pack avocados and the minimum weight of the avocados packed in the containers.

This rule continues in effect the removal of the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. This change provides greater flexibility in avocado packing operations. The Committee met on September 8, 1999, and unanimously recommended this change.

Section 915.51 of the order provides authority to issue regulations establishing specific pack and container requirements. Section 915.52 further authorizes the Committee to make recommendations to the Secretary to modify, suspend, or terminate regulations, including pack and container requirements. The pack and container requirements are specified under sections 915.305 and 915.306. These sections specify, in part, container weight and other applicable requirements, including the minimum weight of the avocados packed in the containers. Current regulations authorize the use of 33-pound, 31-pound, 24-pound, and 12-pound containers, and 8.5-pound containers for export shipments only.

Before the interim final rule became effective, the requirements of section 915.305(a)(1) specified that avocados packed in 33-pound containers must weigh at least 16 ounces. Avocados weighing less than 16 ounces were to be packed in smaller containers. The Committee has determined that retailers prefer shipments of avocados packed in larger containers. The size of the fruit is not a concern to retailers. By allowing smaller fruit to be packed in the larger containers, the retailer is able to offer avocados to the consumer in a variety of sizes. The larger containers are ideal for displaying the fruit. Upon receipt of the avocado shipment, the retailer can remove the lid from the larger container. Without removing the fruit from the box, fruit can be offered for consumers to purchase. This is time saving for retailers.

Removing the requirement that avocados packed in 33-pound containers weigh at least 16 ounces

gives handlers the flexibility to pack both large and small avocados in one container. California avocado handlers have already adopted the practice of shipping smaller avocados in larger containers with a great deal of success. Florida avocado handlers would like to remain competitive with other avocado growing areas. In order to meet the needs of the customer and remain competitive with other avocado handlers, this rule continues the removal of the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements of the marketing order, including maturity requirements.

In addition, the flexibility to pack both large and small avocados in one container allows handlers to use the smaller avocados to create a tighter pack with less open space inside the containers. The tighter pack restricts movement of the avocados during shipment which prevents damage to the fruit. This improves the quality of the fruit reaching the consumer, saves handling costs, and provides greater returns to the grower.

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. This rule changes the pack and container requirements currently in effect which do not apply to imports. Therefore, no change is necessary in the avocado import regulations.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 141 avocado producers in the production area and approximately 49 avocado handlers subject to regulation under the marketing order. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual

receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

The average price for fresh avocados during the 1998–99 season was \$17.90 per 55-pound bushel box equivalent for all domestic shipments and the total shipments were 890,859 bushels. Many avocado handlers ship other tropical fruit and vegetable products which are not included in the Committee's data but would contribute further to handler receipts. Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado producers and handlers may be classified as small entities.

Under sections 915.51 and 915.52 of the marketing order for avocados grown in South Florida, the Committee has the authority to recommend to the Secretary changes to the pack and container requirements for avocados handled under the order. Current pack and container requirements outline the designated net weight of the containers used to pack avocados and the minimum weight of the avocados packed in the containers. Current regulations authorize the use of 33-pound, 31-pound, 24-pound, and 12-pound containers, and 8.5-pound containers for export shipments only.

This rule continues to change section 915.305(a)(1) of the rules and regulations concerning the pack and container requirements for avocados. This rule continues to remove the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements, including maturity requirements. This change will continue to provide greater flexibility in avocado packing operations.

This rule will have a positive impact on affected entities. The change was recommended to provide additional flexibility in packing avocados. None of the changes are expected to increase costs associated with the pack and container requirements. This rule may, in fact, reduce costs associated with the pack and container requirements.

The Committee believes this change will benefit both large and small packing operations. It is particularly beneficial to small handlers since a single container can be used to ship avocados to retail customers. This reduces the need to maintain a large inventory of smaller containers. Further, the Committee has determined that retailers prefer the larger containers; the size of the fruit in those containers is of lesser concern to the retailer. By allowing smaller fruit to be packed in

the larger containers, the retailer is able to offer avocados to the consumer in a variety of sizes. The larger containers are ideal for displaying the fruit. Upon receipt of the avocado shipment, the retailer can remove the lid from the larger container and, without removing the fruit from the box, fruit can be offered for consumers to purchase. This is time saving for retailers.

Removing the requirement that avocados packed in 33-pound containers weigh at least 16 ounces will continue to give handlers the flexibility to pack both large and small avocados in one container. Florida avocado handlers would like to continue to remain competitive with other avocado growing areas. For example, California avocado handlers have already adopted the practice of shipping smaller avocados in larger containers with a great deal of success. In order to meet the needs of the customer and remain competitive with other avocado handlers, this rule continues to remove the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements of the marketing order, including maturity requirements.

In addition, the flexibility to pack both large and small avocados in one container allows handlers to use the smaller avocados to create a tighter pack with less open space inside the containers. The tighter pack restricts movement of the avocados during shipment which prevents damage to the fruit. This continues to save handling costs and provides greater returns to the grower.

Other alternatives to the action were considered by the Committee prior to making the recommendation. One alternative discussed by the Committee was to continue to require that avocados packed in 33-pound containers weigh at least 16 ounces. The Committee believed that this alternative provided little benefit and would still limit flexibility.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the avocado industry and all interested persons were invited to attend the meeting and participate in Committee

deliberations. Like all Committee meetings, the September 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 10 members, of which 5 are growers, 4 are handlers, and one is a public member. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small business.

An interim final rule concerning this action was published in the Federal Register on December 13, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and avocado handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended February 11, 2000. No comments were received.

Changes to the interim final rule have been made to correct some typographical errors. Editorial changes have also been made to make the language easier to understand.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, with changes, as published in the **Federal Register** (64 FR 69380, December 13, 1999) will tend to effectuate the declared policy of the Act.

#### List of Subjects 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 64 FR 69380 on December 13, 1999, is adopted as a final rule with the following changes:

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

1. The authority citation for part 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In Sec. 915.305, paragraph (a)(1) is revised to read as follows:

#### §915.305 Florida Avocado Container Regulation 5.

(a) \* \* \*

(1) Containers shall not contain less than 33 pounds net weight of avocados, except that for avocados of unnamed varieties, which are avocados that have not been given varietal names, and for Booth 1, Fuchs, and Trapp varieties, such weight shall be not less than 31 pounds. Not more than 10 percent, by count, of the individual containers in any lot may fail to meet the applicable specified weight. No container in any lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight; or

\* \* \* \* \*

Dated: March 16, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–7085 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 916 and 917

[Docket No. FV00–916–1 IFR]

#### Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

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

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

**SUMMARY:** This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container marking requirements for fresh shipments of these fruits, beginning with 2000 season shipments. This rule also modifies the requirements for placement of Federal-State Inspection Service lot stamps for the 2000 season only. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

**DATES:** Effective April 1, 2000; comments received by May 22, 2000, will be considered prior to issuance of any final rule.