

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 Parts 911 and 915

[Docket No. FV98-911-1 PR]

Limes and Avocados Grown in Florida; Establishment of a Continuing Assessment Rate for Limes and a Decrease in the Continuing Assessment Rate for Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish an assessment rate for the Lime Administrative Committee (LAC) under Marketing Order No. 911 for the 1998-99 and subsequent fiscal years and decrease the assessment rate established for the Avocado Administrative Committee (AAC) under Marketing Order No. 915 for the 1998-99 and subsequent fiscal years. The Lime and Avocado Administrative Committees (Committees) are responsible for local administration of the marketing orders which regulate the handling of limes and avocados grown in Florida. Authorization to assess lime and avocado handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal years begin April 1 and end March 31. The assessment rates would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by March 12, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 205-6632. 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:

Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (941) 299-4770, Fax: (941) 299-5169; or George Kelhart, Technical Advisor, 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) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, 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) 205-6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 126 and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida, and Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in Florida, hereinafter referred to as the "orders." The marketing 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, Florida lime and avocado handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein would be applicable to all assessable limes and avocados beginning April 1, 1998, and continue until amended, suspended, or terminated. This rule would 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. Such 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.

This rule would establish an assessment rate for the LAC for the 1998-99 and subsequent fiscal years of \$0.16 per bushel container. This rule would also decrease the assessment rate established for the AAC for the 1998-99 and subsequent fiscal years from \$0.16 per bushel container to \$0.08 per bushel container.

The Florida lime and avocado marketing orders provide authority for the Committees, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the Committees are producers and handlers of Florida limes and avocados. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97 and subsequent fiscal years, the AAC recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary. The LAC has not assessed handlers since the 1995-96 fiscal year. It has

used reserve funds to cover authorized expenses.

The Committees met on December 10, 1997, and the LAC unanimously recommended 1998–99 expenditures of \$130,785 and an assessment rate of \$0.16 per bushel container of limes. The AAC also met on December 10, 1997, and unanimously recommended 1998–99 expenditures of \$166,844 and an assessment rate of \$0.08 per bushel container of avocados.

In comparison, last year's budgeted expenditures were \$101,630 for the LAC and \$123,000 for the AAC. The assessment rate for the LAC of \$0.16 is the same as the rate established for the 1995–96 fiscal year, the last year handlers were assessed. The assessment rate for the AAC of \$0.08 is \$0.08 lower than the rate currently in effect.

In an effort to reduce industry costs and assist with the recovery from Hurricane Andrew which hit southern Florida in August of 1992, the LAC has been operating from its reserve funds for the past two years. With the lime industry beginning to recover and reserve funds reduced, the LAC voted to establish an assessment rate to cover operating expenses.

The AAC has excess reserve funds. They voted to decrease the assessment rate and use reserve funds to cover operating expenses and reduce reserve levels.

The major expenditures recommended by the LAC for the 1998–99 year include \$46,000 for salaries, \$25,000 for local and national enforcement, \$9,448 for employee benefits, \$9,000 for research, \$8,287 for insurance and bonds, and \$4,500 for travel. The LAC budgeted expenses for these items in 1997–98 were \$40,000, \$15,595, \$5,500, \$5,000, \$0, and \$3,000, respectively.

The major expenditures recommended by the AAC for the 1998–99 year include \$46,000 for salaries, \$34,000 for research, \$32,000 for local and national enforcement, \$9,778 for employee benefits, \$8,516 for insurance and bonds, and \$7,000 for travel. The AAC budget expenses for these items in 1997–98 were \$40,000, \$7,000, \$26,595, \$6,380, \$7,937, and \$7,000, respectively.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of Florida limes and avocados. Lime shipments for the year are estimated at 600,000 bushel containers which should provide \$96,000 in assessment income. Avocado shipments for the year are estimated at 90,000 bushel containers which should provide \$72,000 in assessment income. Income derived from handler

assessments, along with interest income and funds from the Committees' authorized reserves, would be adequate to cover budgeted expenses. Funds in the reserves would be kept within the maximum permitted by the orders. (\$911.42 and 915.42—three fiscal years' operational expenses). Reserves for limes are currently around \$100,000, and reserves for avocados stand at around \$250,000.

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committees or other available information.

Although these assessment rates are effective for an indefinite period, the Committees will continue to meet prior to or during each fiscal year to recommend budgets of expenses and consider recommendations for modification of the assessment rates. The dates and times of Committee meetings are available from the Committees or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rates are needed. Further rulemaking will be undertaken as necessary. The Committees' 1998–99 budgets and those for subsequent fiscal years will be reviewed and, as appropriate, approved by the Department.

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

There are approximately 111 producers of limes and 141 producers of avocados in the production area and approximately 33 lime handlers and 49 avocado handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as

those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on the Florida Agricultural Statistical Service and Committee data, the average price for fresh limes during the 1995–96 season was \$8.05 per 88 pound box equivalent and total shipments were 371,413 bushels. Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments. The average price for fresh avocados during the 1996–97 season was \$13.20 per 55 pound bushel box equivalent for all domestic shipments and the total shipments were 917,861 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many lime and avocado handlers ship other tropical fruit and vegetable products which are not included in the committee data but would contribute further to handler receipts.

Using the average prices, about 90 percent of lime and avocado handlers could be considered small businesses under the SBA definition and about 10 percent of the handlers could be considered large businesses. The majority of Florida lime and avocado producers and handlers may be classified as small entities.

This rule would establish an assessment rate for the LAC and collected from handlers for the 1998–99 and subsequent fiscal years of \$0.16 per bushel container. The LAC unanimously recommended 1998–99 expenditures of \$130,785 and an assessment rate of \$0.16 per bushel container for 1998–99 and subsequent fiscal years. The assessment rate of \$0.16 is the same as the rate established for the 1995–96 fiscal year, the last year handlers were assessed. The quantity of assessable limes for the 1998–99 fiscal year is estimated at 600,000 containers. Thus, the \$0.16 rate for limes should provide \$96,000 in assessment income. The assessment income, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for 1998–99.

This rule would also decrease the assessment rate established for the AAC and collected from handlers for the 1998–99 and subsequent fiscal years from \$0.16 per bushel container to \$0.08 per bushel container. The AAC unanimously recommended 1998–99 expenditures of \$166,844 and an assessment rate of \$0.08 per bushel container of avocados. The assessment rate of \$0.08 is \$0.08 lower than the 1997–98 rate. The quantity of assessable avocados for the 1998–99 fiscal year is estimated at 900,000 containers. Thus,

the \$0.08 rate for avocados should provide \$72,000 in assessment income. The assessment income, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

Due to the devastation of Hurricane Andrew in August of 1992, the LAC has been operating from its reserve funds for the past two years. The industry has now adequately recovered from the loss. In order not to deplete reserve funds further, the LAC voted to establish an assessment rate for 1998-99 and subsequent fiscal years. The assessments, along with interest income and reserves, would cover committee operating expenses.

The AAC has a surplus in its reserve fund. The AAC voted to decrease the assessment rate and use funds from the reserves. The assessments, along with interest income and reserves, would cover committee operating expenses.

The LAC reviewed and unanimously recommended 1998-99 expenditures of \$130,785 which include increases in salaries, office space, aerial photo/tree count, and office equipment. The AAC reviewed and unanimously recommended 1998-99 expenditures of \$166,844 which include increases in salaries, office space, and aerial photo/tree count. Prior to arriving at this budget, the Committees considered information from various sources, such as the Committees' Budget Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the lime and avocado industries. The LAC budgeted \$9,000 and the AAC budgeted \$34,000 for research.

The assessment rate of \$0.16 per bushel container of assessable limes was then determined by dividing the total recommended budget by the quantity of assessable limes, estimated at 600,000 bushel containers for the 1998-99 fiscal year. This is approximately \$35,000 below the anticipated expenses, which the LAC determined to be acceptable. The assessment rate of \$0.08 per bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 900,000 bushel containers for the 1998-99 fiscal year. This is approximately \$171,000 below the anticipated expenses, which the AAC determined to be acceptable.

A review of historical information indicates that the grower price for the 1998-99 season could range between \$4.16 and \$9.50 per container of limes.

Therefore, the estimated assessment revenue for the 1998-99 crop year as a percentage of total grower revenue could range between 1.6 and 3.8 percent.

A review of historical information indicates that the grower price for the 1998-99 season could range between \$13.20 and \$14.90 per container of avocados. Therefore, the estimated assessment revenue for the 1998-99 crop year as a percentage of total grower revenue could range between .5 and .6 percent.

This action would increase the assessment obligation imposed on lime handlers and decrease the assessment obligation imposed on avocado 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 would be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Florida lime and avocado industries and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all LAC and AAC meetings, the December 10, 1997, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida lime and 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.

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

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committees need to have sufficient funds to pay expenses which are incurred on a continuous basis; (2) the 1998-99 fiscal years begin on April 1, 1998, and the orders require that the rates of assessment for each fiscal year apply to all assessable limes and avocados handled during such fiscal years; and (3) handlers are aware of this

action which was unanimously recommended by the Committees at a public meeting and is similar to other assessment rate actions issued in past years.

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 proposed to be 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.

PART 911—LIMES GROWN IN FLORIDA

2. A new subpart titled "Assessment Rates" and a new § 911.234 are proposed to be added to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 911.234 Assessment rate.

On and after April 1, 1998, an assessment rate of \$0.16 per bushel container is established for Florida limes.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

3. A new subpart titled "Assessment Rates" is proposed to be added and § 915.235 is proposed to be revised to read as follows:

Note: This section will appear in the Code of Federal Regulations.

Subpart—Assessment Rates

§ 915.235 Assessment rate.

On and after April 1, 1998, as assessment rate of \$0.08 per bushel container is established for South Florida avocados.

Dated: February 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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