

§ 401.135 Malting barley option.

The provisions of the Malting Barley Option for the 1989 through 1994 crop years are as follows:

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PART 406—[AMENDED]

19. The authority citation for 7 CFR part 406 is revised to read as follows:

Authority: 7 U.S.C. 1506(l).

20. Section 406.7 is amended by revising the introductory text of paragraph (d) of the Nursery Crop Insurance Regulations to read as follows:

§ 406.7 The application and policy.

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(d) The application for the 1989 through 1995 crop years is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Nursery Crop Insurance Policy for the 1989 through 1995 crop years are as follows:

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Done in Washington, DC, on November 2, 1995.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 95-27875 Filed 11-9-95; 8:45 am]

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Agricultural Marketing Service**7 CFR Part 915**

[Docket No. FV95-915-1FIR]

Avocados Grown in South Florida; Revision of Grade Requirements for Certain Florida Avocados

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule without change, the provisions of an interim final rule which revised grade requirements for fresh Florida avocados shipped in certain containers to destinations within the production area in Florida. The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Florida Avocado Administrative Committee (committee). This rule enables Florida growers and handlers to market a larger percentage of their crop in the production area, in response to demand.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Aleck Jonas, Marketing Specialist,

Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883-2276; telephone: 813-299-4770; or Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-8139.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 915 (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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This 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 a 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 the 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 action 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 65 handlers of avocados who are subject to regulation under the marketing order and approximately 95 producers of avocados in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of handlers and producers of South Florida avocados may be classified as small entities.

An interim final rule was issued on August 11, 1995, and published in the Federal Register (60 FR 42770, August 17, 1995), with an effective date of August 17, 1995. That rule provided a 30-day comment period which ended September 18, 1995. No comments were received.

This rule finalizes an interim final rule which revised the order's rules and regulations by removing all grade requirements for fresh avocados shipped to destinations within the production area in Florida packed in containers other than those authorized under § 915.305. The committee met July 12, 1995, and unanimously recommended this action.

Sections 915.50 and 915.52 provide the authority for the committee to recommend various regulations and modifications, suspension, or termination of regulations to the Secretary. Section 915.306 of the regulations specifies grade, pack, and container marking regulations for fresh shipments of avocados grown in Florida. Currently § 915.306 of the order specifies that all fresh Florida avocados must grade at least U.S. No. 2, when shipped in any container.

This rule revises § 915.306 by removing all grade requirements for fresh avocados shipped to destinations within the Florida production area packed in containers other than those authorized under § 915.305. Section 915.306 was amended through a proposed rule published at 56 FR 4953 on February 7, 1991, and finalized at 56 FR 36079 on July 31, 1991. That amendment established a minimum grade requirement of U.S. No. 2 and container marking and sealing requirements for Florida avocados handled to points within the production area (South Florida). This rule was established prior to Hurricane Andrew when avocados were plentiful. Shipments of poorer quality avocados to the markets within the production area

depressed prices for better quality avocados and resulted in lower overall returns to producers. Plentiful supplies of avocados had allowed for higher quality avocados to be offered at a relatively lower cost, encouraging consumption by presenting a higher quality product.

However, Hurricane Andrew, in August of 1992, reduced production acreage from approximately 9,000 acres to less than 6,000 acres with many non-producing trees in the remaining acreage. Production in the 1991-92 season was 1,110,105 bushels. In the 1992-93 season, production fell to 283,666 bushels and in the 1993-94 season it was at 174,712 bushels. In response to this reduced production the committee requested and was granted a temporary suspension of grade requirements for fresh avocados shipped in certain containers to destinations within the production area in Florida. The relaxation for the 1993-94 season was published as a final rule at 58 FR 34684, on June 29, 1993, and for the 1994-95 season by a final rule published at 59 FR 33417 on June 29, 1994. These temporary relaxations were requested and granted under the assumption that production would return to pre-Hurricane Andrew levels.

Although the 1994-95 season recovered to 778,951 bushels, it is still well below the levels reached prior to the hurricane. Also, changing economic and environmental priorities of the South Florida area are capping the growth on Florida avocado production. Future production is expected to remain flat at approximately 700,000 bushels annually, or to increase only slightly. The committee considers production levels set prior to Hurricane Andrew as unattainable.

The temporary grade relaxations of the last two seasons were successful in making additional supplies of fruit available to meet consumer needs consistent with crop and market conditions. The relaxations demonstrated that there is a market for lower quality avocados in the production area. Also, better quality avocados did not suffer depressed prices due to the availability of the lower quality fruit.

The container and marking requirements clearly identify graded avocados from non-graded avocados. Those avocados sold in the production area which are not subject to grade cannot be packed in regulated containers. This allows customers to readily identify graded versus those not meeting grade.

This continued relaxation provides Florida avocado growers and handlers

with an opportunity to sell, in the production area, fresh avocados which would otherwise be culled during the packing process, thus making additional avocados available to consumers. This rule is expected to facilitate the movement of fresh market avocados sold within the production area.

This relaxation only applies to Florida avocados shipped to destinations within the production area. Thus, the U.S. No 2 grade requirement will continue to apply unchanged to avocados shipped to destinations outside the production area, as well as to all avocados shipped to any destination in those containers whose size and type are specified in § 915.305. Also unchanged by this action are current maturity, container, pack, and inspection requirements for all fresh Florida avocado shipments under the avocado marketing order.

Avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 (7 CFR 944.28). Since this rule does not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area, there is no need to change the avocado import regulation. Section 8e of the Act (7 U.S.C. 608e-1) requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

This rule reflects the committee's and the Department's appraisal of the need to relax the grade requirements for certain avocados grown in Florida. The Department's view is that this action will have a beneficial impact on producers and handlers since it will permit avocado handlers to make additional supplies of fruit available to meet consumer needs consistent with crop and market conditions.

Based on these considerations, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that finalizing the interim final rule, without change, as published in the Federal Register (60 FR 42769, August 17, 1995), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, 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

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 60 FR 42769 on August 17, 1995, is adopted as a final rule without change.

Dated: November 3, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-27813 Filed 11-9-95; 8:45 am]

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 287

[INS No. 1717-95]

RIN 1115-AE15

Subpoena Issuance Authority

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends existing Immigration and Naturalization Service (Service) regulations by adding the Assistant Chief Patrol Agency Officer position to the lists of those immigration officers who may issue and designate service of subpoenas under this section. These changes will reduce unnecessary delay in the processing of criminal and civil investigations by reducing the need to transfer case files between offices for signatures. These changes will allow the Service to maximize its use of personnel and resources. The rule is in keeping with current organizational command structure and program responsibility within a Border Patrol sector.

EFFECTIVE DATE: December 13, 1995.

FOR FURTHER INFORMATION CONTACT: Alan R. Conroy, Assistant Chief Border Patrol, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536, Telephone: (202) 514-3073.

SUPPLEMENTARY INFORMATION: The Service is modifying section 287.4(a)(1) and 287.4 (c) of its existing regulations to add Assistant Chief Patrol Agent positions to those immigration officials authorized to issue and designate service of subpoenas. One of the Service