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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02-096-5]

Oriental Fruit Fly

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rules as final rule.

SUMMARY: We are adopting as a final rule, without change, two interim rules regarding Oriental fruit fly. The first interim rule designated a portion of Orange County, CA, as a quarantined area and provided for the use of spinosad bait spray as an alternative treatment for premises. The second interim rule removed the quarantine on that portion of Orange County, CA, and thus removed the restrictions on the interstate movement of regulated articles from that area. The first interim rule was necessary to prevent the spread of Oriental fruit fly to noninfested areas of the United States, and to provide an alternative to malathion bait spray to treat premises that produce regulated articles within the quarantined area. The second interim rule was necessary to reflect our determination that the Oriental fruit fly had been eradicated from Orange County, CA.

DATES: *Effective Date:* The interim rules became effective on September 14, 2004, and March 2, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Burnett, National Fruit Fly Program Manager, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1236; (301) 734-4387.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective September 14, 2004, and published in the **Federal**

Register on September 20, 2004 (69 FR 56157-56159, Docket No. 02-096-3), we amended the Oriental fruit fly regulations in § 301.93-3(c) by designating a portion of Orange County, CA, as a quarantined area because of an infestation of Oriental fruit fly and restricted the interstate movement of regulated articles from the quarantined area. We also amended § 301.93-10(b) to allow the use of spinosad bait spray as an alternative chemical treatment for premises. In a second interim rule effective on March 2, 2005, and published in the **Federal Register** on March 8, 2005 (70 FR 11111-11112, Docket No. 02-096-4), we amended the regulations by removing the portion of Orange County, CA, from the list of quarantined areas and removing restrictions on the interstate movement of regulated articles from that area based on our determination that the Oriental fruit fly had been eradicated from that area. Upon the effective date of our March 2005 interim rule, there were no longer any areas in the continental United States quarantined for the Oriental fruit fly.

Comments on each interim rule were required to be received on or before 60 days after the date of its publication in the **Federal Register**. We did not receive any comments on either of the interim rules. Therefore, for the reasons given in the interim rules, we are adopting the interim rules as a final rule.

This action also affirms the information contained in the interim rules concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 69 FR 56157-56159 on September 20, 2004, as amended by the interim rule published at 70 FR 11111-11112 on March 8, 2005.

Done in Washington, DC, this 21st day of June 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05-12643 Filed 6-24-05; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV05-915-1 FR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2005-06 and subsequent fiscal years from \$0.20 to \$0.27 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began April 1 and ends March 31. The assessment rate remains in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 28, 2005.

FOR FURTHER INFORMATION CONTACT:

William G. Pimental, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Southeast Marketing Field Office, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; Telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation 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.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and 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 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 herein is applicable to all assessable avocados beginning on April 1, 2005, and will continue until amended, suspended, or terminated. 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 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 2005-06 and subsequent fiscal years from \$0.20 to \$0.27 per 55-pound bushel container or equivalent of avocados.

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 2002-03 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year 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 February 17, 2005, and recommended with a vote of nine in favor and one abstention, 2005-06 expenditures of \$211,038 and an assessment rate of \$0.27 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were \$241,568. The assessment rate of \$0.27 is \$0.07 more than the previous rate. The Committee recommended the \$0.07 increase to rebuild its reserves which have been reduced in recent years. In 2003-04, the Committee estimated assessable production at one million containers but only harvested 660,000, causing the Committee to use its reserves to cover necessary expenses. In 2004-05, there was another shortfall of approximately 100,000 containers. Thus, 2004-05 assessments were reduced by approximately \$20,000 and the Committee again had to use reserves to cover its expenses. The Committee reserves were estimated to be approximately \$110,000 at the start of the new fiscal year that began April 1, 2005. The Committee expects 900,000 55-pound bushel containers to be harvested during the 2005-06 fiscal year. This is expected to result in approximately \$32,000 in excess assessment income, which would increase the Committee's reserves to around \$142,000.

The major expenditures recommended by the Committee for the 2005-06 year include \$90,235 for salaries, \$24,203 for insurance and bonds, \$22,730 for employee benefits, \$15,000 for research, and \$10,000 for local and national enforcement. Budgeted expenses for these items in 2004-05 were \$79,800, \$26,093, \$23,643, \$21,000, and \$43,135,

respectively. The budget item local and national enforcement was reduced for 2005-06 because the compliance officer was hired as Committee manager and this person performs both compliance and managerial functions. The budget item for salaries reflects these function changes.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses and increase in reserves by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 900,000 bushels which should provide \$243,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve should be adequate to cover budgeted expenses. Funds in the reserve (estimated to be about \$110,000 on April 1, 2005) will be kept within the maximum permitted by the order (approximately three fiscal years' expenses).

The assessment rate established in this rule continues 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 would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year 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 2005-06 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

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 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 150 producers of avocados in the production area and approximately 33 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000.

According to the National Agricultural Statistics Service and data provided by the Committee, the average Florida grower price for fresh avocados during the 2003–04 season was equivalent to \$22.22 per 55-pound bushel container and total shipments were around 660,000 55-pound bushels. Approximately 11 percent of all handlers handled 76 percent of Florida avocado shipments. Using the average price and information provided by the Committee, nearly all avocado handlers could be considered small businesses under the SBA definition. In addition, based on production and grower prices, and the total number of Florida avocado growers, the average annual grower revenue is approximately \$98,000. Thus, the majority of Florida avocado producers may also be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2005–06 and subsequent fiscal years from \$0.20 to \$0.27 per 55-pound bushel of avocados. The Committee recommended 2005–06 expenditures of \$211,038 and an assessment rate of \$0.27 per 55-pound bushel of avocados. The assessment rate of \$0.27 is \$0.07 higher than the 2004–05 rate. The quantity of assessable avocados for the 2005–06 fiscal year is estimated at 900,000 55-pound bushels. Thus, the \$0.27 rate should provide \$243,000 in assessment income and be adequate to meet expenses.

The major expenditures recommended by the Committee for the 2005–06 year include \$90,235 for salaries, \$24,203 for insurance and bonds, \$22,730 for employee benefits, \$15,000 for research, and \$10,000 for local and national enforcement. Budgeted expenses for these items in 2004–05 were \$79,800, \$26,093, \$23,643, \$21,000, and \$43,135, respectively. The budget item local and national enforcement was reduced for

2005–06 because the compliance officer was hired as Committee manager and this person performs both compliance and managerial functions. The budget item salaries, reflects these function changes.

The Committee recommended the increase in the assessment rate to rebuild its reserves which have been reduced in recent years. In 2003–04, the Committee estimated assessable production at one million containers, but only harvested 660,000, causing the Committee to use its reserves to cover necessary expenses. For the 2004–05 season, production was approximately 100,000 containers below the Committee's estimate. Thus, 2004–2005 assessments were about \$20,000 less than expected and the Committee had to use its reserves to cover expenses.

The Committee reserves were approximately \$110,000 as the new fiscal year started on April 1, 2005. The Committee estimates 900,000 55-pound bushel containers will be harvested during the 2005–06 fiscal year. This is expected to result in \$32,000 in excess assessment income, which would increase the Committee's reserves to around \$142,000.

The Committee reviewed and recommended 2005–06 expenditures of \$211,038 which included increases in administrative and office salaries, and insurance and bond programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Several alternative assessment and expenditure levels were discussed by these groups based on at what level to fund a research project and on how much they wanted to add to reserves. The assessment rate of \$0.27 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget, including the increase in reserves, by the quantity of assessable avocados, estimated at 900,000 55-pound bushel containers or equivalents for the 2005–06 fiscal year. This is approximately \$32,000 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average Florida grower price for the 2005–06 marketing season could range between around \$15.00 and \$22.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2005–06 fiscal year as a percentage of total grower revenue could range between 1.2 and 1.8 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 avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 17, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule 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.

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

A proposed rule concerning this action was published in the **Federal Register** on April 27, 2005 (70 FR 21682). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and avocado handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending May 27, 2005, was provided to allow interested persons to respond to the proposal. No comments were received.

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/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 matter 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 further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2005–06 crop avocados from growers, and the fiscal

year began on April 1, 2005, and the assessment rate applies to all avocados received during the 2005–06 and subsequent seasons. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

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

■ 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, 2005, an assessment rate of \$0.27 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: June 20, 2005.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 05–12617 Filed 6–24–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Docket No. FV05–922–1 IFR]

Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2005–2006 and subsequent fiscal periods from \$2.50 per ton to \$1.00 per ton of fresh apricots handled. The Committee locally administers the marketing order which regulates the handling of apricots grown in designated counties in Washington. Authorization to assess apricot handlers enables the Committee to incur expenses that are reasonable

and necessary to administer 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 June 28, 2005.

Comments received by August 26, 2005, 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; E-mail:

moab.docketclerk@usda.gov; or Internet: *http://www.regulations.gov*. 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, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation 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*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR 922) regulating the handling of apricots grown in designated counties in Washington, 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, handlers in designated counties in Washington 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 Washington apricots beginning April 1, 2005, and continue until amended, suspended, or terminated. 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 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 decreases the assessment rate established for the Committee for the 2005–2006 and subsequent fiscal periods from \$2.50 per ton to \$1.00 per ton of fresh Washington apricots handled under the order.

The 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 Washington apricots. 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 at a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2004–2005 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$2.50 per ton of apricots handled. This assessment rate would continue in effect from fiscal period to fiscal period unless modified,