

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 911 and 915

[FV95-911-1IFR]

#### Expenses and Assessment Rates for Marketing Orders Covering Limes and Avocados Grown in Florida

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

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

**SUMMARY:** This interim final rule authorizes expenses and establishes assessment rates for the Florida Lime Administrative Committee and the Avocado Administrative Committee (Committees) under Marketing Orders 911 and 915 for the 1995-96 fiscal year. The Committees are responsible for local administration of the marketing orders which regulate the handling of Florida limes and avocados. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

**DATES:** Effective beginning April 1, 1995, through March 31, 1996. Comments received by March 17, 1995, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, Fax # (202) 720-5698. 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:** Britthany Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone (202) 720-5331; or Aleck Jonas, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883, telephone (813) 299-4770.

**SUPPLEMENTARY INFORMATION:** This interim final rule is issued under Marketing Agreement and Order No. 911 [7 CFR Part 911], as amended, regulating the handling of limes grown in Florida; and Marketing Agreement and Order No. 915 [7 CFR Part 915] regulating the handling of avocados grown in Florida. These 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 interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, limes and avocados grown in Florida are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Florida limes and avocados handled during the 1995-96 fiscal year, beginning April 1, 1995, through March 31, 1996. This interim 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 his or her 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 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 rule 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 45 handlers of limes grown in Florida, and approximately 40 producers in the regulated area. Also, there are approximately 65 handlers of avocados grown in Florida, and approximately 95 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of lime and avocado producers and handlers may be classified as small entities.

The lime and avocado marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable limes and avocados handled from the beginning of such year. Annual budgets of expenses are prepared by the Committees, the agencies responsible for local administration of their respective marketing orders, and submitted to the Department for approval. Each Committee consists of producers, handlers and a non-industry public member. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate appropriate budgets. The Committees' budgets are formulated and discussed in public meetings. Thus, all directly affected