

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915 and 944

[Docket No. AMS-FV-07-0054; FV07-915-2 FR]

Avocados Grown in South Florida and Imported Avocados;

Revision of the Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the maturity requirements currently prescribed for avocados grown in South Florida and for avocados imported into the United States that are shipped to the fresh market. The Avocado Administrative Committee (Committee) which locally administers the marketing order for avocados grown in South Florida recommended the change for Florida avocados. A corresponding change in the import regulation is also required under section 8e of the Agricultural Marketing Agreement Act of 1937. This rule requires that avocados which fail the maturity requirements and are reworked and presented for reinspection must meet the maturity requirements which correspond to the date of the original inspection. This rule will help ensure only mature avocados are shipped to the fresh market.

EFFECTIVE DATE: [Insert date 1 day after the date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: William.Pimental@usda.gov or Christian.Nissen@usda.gov.

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 final rule is issued under Marketing Order No. 915, 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."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including avocados, are regulated under a Federal marketing order, imports of these commodities into the United States

are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final 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 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. A 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This final rule revises the maturity requirements currently prescribed under the order for avocados grown in South Florida. This rule requires that avocados which fail the maturity requirements and are reworked and presented for reinspection must meet the maturity requirements which correspond to the date of the original inspection. This action, unanimously recommended by the Committee, will help ensure that only mature avocados are shipped to the fresh market.

Section 915.51 of the order provides the authority to issue regulations establishing specific maturity requirements for avocados grown in South Florida. Section 915.332 of the order's rules and regulations establishes the requisite maturity requirements for avocados. The maturity requirements specify minimum weights, diameters, and shipping dates for approximately 60 different varieties of avocados. These dates and requirements are reflected in the avocado maturity schedule as it appears in Table I of § 915.332(a)(2).

Under the terms of the marketing order, fresh market shipments of Florida avocados are required to be inspected and are subject to grade, pack, container, and maturity requirements. The maturity requirements are intended to prevent the shipment of immature avocados to the fresh market. This helps to improve buyer confidence in the marketplace, and fosters increased consumption.

This rule changes the way the maturity requirements are applied. Specifically, this rule requires avocados which fail maturity requirements and are reworked and presented for reinspection to meet the maturity requirements which correspond to the date of the original inspection.

The maturity requirements for avocados are expressed in terms of minimum weights and diameters in conjunction with specific dates during the shipping season. Each regulated variety has its own set of dates and requirements on the maturity schedule. The maturity requirements for the various varieties are different because each variety has its own growing season and stages when the fruit is mature and ready to be harvested.

With avocados, the level of maturity is determined by when the avocado is harvested. Because the maturity process ceases once the fruit is severed from the tree, an avocado needs to remain on the tree until it is mature. According

to Paul Harding, a plant physiologist for the Agricultural Marketing Service, USDA, the stage of maturity of the fruit when harvested is directly related to its palatability and is the most important factor that influences eating quality¹. Avocados which are not mature at the time of harvest will not ripen properly. Avocados that do not ripen properly can have an unpleasant taste and consistency which negatively affects customer satisfaction. Consequently, the dates on the maturity schedule have been carefully established based on years of testing to ensure avocados shipped using the schedule are mature enough to complete the ripening process.

The maturity schedule is divided into A, B, C, and D dates which reflect the different stages of maturity associated with an individual variety. Larger sized fruit within a variety matures earlier, while smaller fruit needs to remain on the tree longer to reach maturity. Consequently, A dates are associated with larger sizes and are established early in the variety's shipping season. For a majority of varieties, the schedule also includes B and C dates that fall somewhere in between the A and D dates for the particular variety. These dates proceed in stages as the season advances, allowing for the shipment of

¹ Harding, Paul L. "The Relation of Maturity to Quality in Florida Avocados." Proceedings of the Florida State Horticultural Society 67 (1954):276-280.

progressively smaller sizes and weights as a variety matures. The D date marks the end of a variety's marketing season and releases all remaining sizes for shipment to the fresh market. This gradual shift in the maturity standards from the beginning of the season to its end helps ensure that all sizes remain on the tree long enough to reach maturity.

As an example, consider the Simmons variety. The A date for the Simmons is the Monday nearest June 20, and requires a minimum weight of 16 ounces or a minimum diameter of $3 \frac{9}{16}$ inches for fruit shipped to the fresh market. The corresponding B date is the Monday nearest July 4, and reduces the minimum weight to 14 ounces or a minimum diameter of $3 \frac{7}{16}$ inches. The C date is the Monday nearest to July 18, and further reduces the minimum weight and size requirements to 12 ounces or $3 \frac{1}{16}$ inches, and the requirements end with a scheduled D date of the Monday nearest to August 1 when all remaining fruit of this variety can be shipped.

Over the years, the maturity schedule has been determined to be the best indicator of maturity for the different varieties of avocados grown in Florida, and growers and handlers rely on the schedule in making harvesting, packing, and shipping decisions. The maturity

schedule facilitates the shipment of the different varieties of avocados as they mature, and helps ensure that only mature fruit is shipped to the fresh market. This in turn helps promote consumer satisfaction which is essential for the successful marketing of the crop.

Florida avocados are inspected for compliance with the rules and regulations established under the order, including the maturity requirements, by the Federal or Federal State Inspection Service. When a lot of avocados fails inspection, the handler has the opportunity to rework the lot to remove the fruit that caused the lot to fail. This usually entails removing any damaged or undersized fruit from the lot. Once the lot has been reworked, the lot is presented for reinspection.

However, the Committee has discovered that in some cases where lots fail for maturity, handlers are only holding the avocados until the next date under the maturity schedule and then presenting them for reinspection to benefit from the reduced size and weight requirements rather than reworking the lots to remove undersized fruit. The Committee agreed this practice undermines the purpose of the maturity requirements and results in immature fruit being shipped to the fresh market.

Committee members stated the maturity requirements were established to ensure that only mature avocados reach the fresh market. By allowing a handler to just hold the fruit until the next date on the maturity schedule, the overall maturity of the lot is not improved. Because the maturity process ends once the fruit is picked, fruit that fails to meet the maturity standards at the time of inspection will not develop in maturity while being held in the box. The only way to increase the overall maturity of the lot is to remove the fruit which caused the lot to fail at the time of inspection.

The Committee believes allowing fruit that failed maturity requirements to be held until the next date on the maturity schedule without being reworked to remove undersized fruit permits immature fruit to be shipped to the fresh market. A lot that fails inspection for maturity can contain a significant amount of avocados which are undersized or underweight. Based on the schedule, this fruit was picked too soon, and most likely did not spend enough time on the tree to reach the proper level of maturity. Because this fruit is immature, it will frequently not ripen properly, and it would have a negative impact on the market and will likely result in the loss of future avocado sales.

The requirements associated with the initial inspection correlate more closely with the time of picking and as such remain the best measure of the maturity of the lot. Consequently, the Committee agreed the maturity requirements specified on the schedule at the time of the original inspection should be the requirements applied when the avocados are presented for reinspection.

With this change, when avocados fail inspection for maturity, the handler will continue to be allowed to immediately rework the lot to remove undersized and/or underweight fruit and present the lot for reinspection or hold the lot to rework it later. However, the reinspection will be conducted using the maturity requirements for the date the lot was originally presented for inspection regardless of when it is presented for reinspection. Even if a lot is held until the next date on the schedule, the requirements specified for the original inspection will still apply, and the avocados that caused the lot to fail will have to be removed before the lot will pass under a reinspection. This change makes sure undersized and underweight fruit have to be removed before a lot can meet the necessary requirements which in turn should help further ensure that only mature fruit is being shipped to the fresh market.

This change also makes the reinspection procedures for maturity requirements more consistent with those applied for grade requirements. The current grade requirement for avocados is a U.S. No. 2 and is constant throughout the year. The only way for a lot that fails for grade to meet the grade requirement is to have the fruit which caused the lot to fail removed. The Committee believes the process for handling avocados which fail the maturity requirements should be the same. Because the maturity level does not improve by just holding the avocados, the maturity requirements applied to that lot should remain constant as it does with grade. This change ensures that undersized and underweight fruit are removed prior to reinspection, maintaining the benefits of the maturity schedule.

Prior to this final rule, when a lot of avocados failed inspection, the handler had the option to rework the lot, hold the fruit to be reworked at a later date, dump or destroy the fruit, send the fruit for processing, or donate it to charity. With this change, the handler has the same options. However, fruit to be reworked for maturity will be segregated and placed under the supervision of the Federal or Federal-State Inspection Service using their Positive Lot Identification (PLI) program to ensure the lot is reworked to meet the minimum maturity requirements specified at the

time of the initial inspection. Once the lot, or any portion thereof, is reworked, the Federal or Federal-State Inspection Service will reinspect the avocados applying the maturity requirements for the date of the original inspection. Also, all fruit in the lot will need to be accounted for under this process. Therefore, only fruit meeting the initial maturity requirements will be allowed to be shipped to the fresh market.

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. Since this rule modifies maturity requirements under the domestic handling regulations, a corresponding change to the avocado import maturity regulations must also be established.

Minimum grade, quality, and maturity requirements for avocados imported into the United States are currently in effect under § 944.31 (7 CFR 944.31). The maturity requirements are specified in § 944.31(a)(2). The Hass, Fuerte, Zutano, and Edranol varieties of avocados are exempt from the maturity schedule, and continue to be exempt under this rule. However, these varieties must meet the minimum

grade requirement of a U.S. No. 2 for imported avocados, which is not be changed by this action.

This rule requires that imported avocados which fail the maturity requirements and are reworked and presented for reinspection must meet the maturity requirements which correspond to the date of the original inspection. With this change, fruit to be reworked for maturity will be segregated and placed under the supervision of the Federal or Federal-State Inspection Service using their PLI program to ensure the lot is reworked to meet the minimum maturity requirements specified at the time of the initial inspection.

Once the lot of avocados, or any portion thereof, is reworked, the Federal or Federal-State Inspection Service will reinspect the lot applying the maturity requirements for the date of the original inspection. In addition, all fruit in the lot will need to be accounted for under this process. This will help ensure only mature fruit that will ripen properly is shipped to the fresh market. Consumers prefer fruit that ripens properly. Thus, importers will also benefit from this change in maturity requirements.

Import data for calendar years 2002 through 2006 reveals the major exporters of green-skin avocados to the United States are Mexico, Chile, and the Dominican Republic.

Imports of green-skin avocados totaled approximately 10,163 metric tons in 2002, 13,770 metric tons in 2003, 8,729 metric tons in 2004, 12,411 metric tons in 2005, and 10,389 metric tons in 2006. The Dominican Republic is the largest supplier of green-skin avocados, accounting for approximately 98 percent of imports.

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 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 300 producers of avocados in the production area and approximately 35 handlers subject to regulation under the order. There are approximately 65

importers of the type of avocados that are regulated under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms, which include avocado handlers and importers, are defined as those whose annual receipts are less than \$6,500,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service and Committee data, the average price for Florida avocados during the 2005-06 season was around \$46.75 per 55-pound bushel container, and total shipments were near 470,000 55-pound bushel equivalents. Using the average price and shipment information provided by the Committee, the majority of avocado handlers have annual receipts of less than \$6,500,000. In addition, based on avocado production, grower prices, and the total number of Florida avocado growers, the average annual grower revenue is less than \$750,000. Based on information from the Foreign Agricultural Service, USDA, the dollar value of imported avocados ranged from around \$156.7 million in 2003 to \$337.5 million in 2005. Using these numbers, the majority of avocado importers have annual receipts of less than \$6,500,000. Consequently, the majority of avocado

producers, handlers, and importers may be classified as small entities.

This rule, recommended by the Committee, revises the maturity requirements currently prescribed for avocados grown in South Florida and for avocados imported into the United States that are shipped to the fresh market. This rule requires that avocados which fail the maturity requirements and are reworked and presented for reinspection must meet the maturity requirements which correspond to the date of the original inspection. This rule will help ensure that only mature avocados are shipped to the fresh market. This rule revises § 915.332, which specifies the requisite maturity requirements. Authority for this action is provided in § 915.51 of the order. This rule also revises § 944.31, which specifies the maturity requirements for imported avocados. The change in the import regulation is required under section 8e of the Act.

This rule could result in some additional costs for handlers and importers. These costs would be associated primarily with the cost to rework the lot and the added inspection costs associated with having Federal or Federal-State Inspection Service supervision of lots that fail for maturity. However, these costs are expected to be minimal

and should apply to no more than a few shipments each year as only a very small percentage of lots fail for maturity.

The vast majority of handlers and importers are already reworking lots that fail for maturity to remove the undersized and underweight avocados that caused the lot to fail. Consequently, reworking lots which fail for maturity is already a standard practice for most of the industry, and as such does not represent an additional cost for most handlers and importers.

In addition, this rule could encourage more careful spot picking to ensure that the avocados are of the proper size or weight to meet the requirements of the maturity schedule. However, spot picking is a standard industry practice, so this should not result in any additional cost.

Therefore, in most cases, any additional costs resulting from this change would be from the added inspection costs associated with the Federal or Federal-State Inspection Service supervision of failing lots. Based on information provided by the Federal or Federal-State Inspection Service, the added cost will be based on the time it takes to apply the PLI program. For most handlers and importers, this should be accomplished in an hour or less. Consequently, the added cost will be based on the standard hourly rate charged by the Federal or Federal-State

Inspection Service. These costs could range from as low as \$22.00 per hour to \$64.00 per hour for a lot of avocados. In situations where a lot is reworked immediately, the handler or importer may not even accrue any additional charges.

With average lot sizes ranging from approximately 100 55-pound cartons of avocados for a small lot to large lots containing approximately 800 55-pound cartons, and with avocados selling for a season average of around \$46.75 per 55-pound container, the cost of inspection is a small percentage of the total value of the lot. Consequently, considering the possible added costs associated with this change, and the small number of lots affected, the overall costs associated with this rule are expected to be minimal.

Florida avocado producers and handlers have found that the maturity requirements have been beneficial in the successful marketing of their avocado crop. Experience has shown when immature avocados are found in market channels, they tend to have a price depressing effect on the market and negatively affect repeat purchases. Preventing the shipment of immature avocados improves buyer confidence in the marketplace, and fosters increased consumption. This change is expected to provide added assurance that the avocados marketed are of satisfactory maturity and will

ripen properly which is expected to further promote customer satisfaction.

This rule is expected to similarly impact importers of avocados. Non-exempt varieties of imported avocados have met the minimum weight or diameter maturity requirements in past seasons, and this is expected to continue. Thus, USDA believes this change will not limit the quantity of imported avocados or place an undue burden on exporters, or importers of avocados. The marketplace price and quality benefits expected for Florida growers and handlers as a result of this rule will also benefit exporters and importers of avocados.

As most handlers and importers are already reworking lots which fail for maturity to remove undersized and underweight fruit, this change is not expected to impact the total number of avocado shipments. It is, however, expected to have a positive effect in the marketplace by helping to ensure only mature avocados are reaching the market which in turn should provide a strong price base for the industry.

This rule may impose some additional costs on producers, handlers, and importers. However, the costs are expected to be minimal, and will be offset by the benefits of this rule. This action benefits consumers, producers, handlers, and importers by providing consumers with a

better, more mature piece of fruit. The costs and benefits of this rule are not expected to be disproportionately greater or less significant for small entities than for large entities.

One alternative to this action considered was to make no change. However, the Committee believes this was not an acceptable alternative as it could result in immature avocados reaching the fresh market. The Committee agreed that allowing immature avocados to reach the fresh market would be detrimental to the industry as a whole. Therefore, this alternative was rejected.

This final rule revises the maturity requirements under the Florida avocado marketing order. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large date 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.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. Further, the public comment received concerning the proposal did not address the initial regulatory flexibility analysis.

In addition, 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 meeting where this action was recommended was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on December 10, 2007 (72 FR 69624). Copies of the 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 60-day comment period ending February 8, 2008, was provided to allow interested persons to respond to the proposal.

One comment was received during the comment period in response to the proposal. The commenter was in favor of the proposal. The commenter stated that they handle both imported and domestically grown avocados. The commenter

stated that if fruit is picked in an immature state prior to the date stated on the maturity schedule, the fruit will never ripen. The commenter stated support for the proposed rule because this rule closes a loophole in the system that could allow immature avocados to enter the market.

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.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

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.

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** (5 U.S.C. 553) because this rule needs to be in place prior to the start of

the 2008-09 season. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

List of Subjects

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth above, 7 CFR parts 915 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 915 and 944 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 915 - AVOCADOS GROWN IN SOUTH FLORIDA

2. A new paragraph (a) (3) is added to § 915.332 to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(3) Avocados which fail to meet the maturity requirements specified in this section must be maintained under the supervision of the Federal or Federal-State

Inspection Service using the Positive Lot Identification program, and when presented for reinspection, must meet the maturity requirements which correspond to the date of the original inspection.

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PART 944 - Fruits; Import Regulations

3. A new paragraph (a)(3) is added to § 944.31 to read as follows:

§ 944.31 Avocado import maturity regulation.

(a) * * *

(3) Avocados which fail to meet the maturity requirements specified in this section must be maintained under the supervision of the Federal or Federal-State Inspection Service using the Positive Lot Identification program, and when presented for reinspection, must meet the maturity requirements which correspond to the date of the original inspection.

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Dated: May 6, 2008

Lloyd C. Day
Administrator
Agricultural Marketing Service

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