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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 915 and 944**

[Doc. No. AMS-FV-14-0051; FV14-915-1 IR]

**Avocados Grown in South Florida and Imported Avocados;**

**Change in Maturity Requirements**

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

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

**SUMMARY:** This rule changes the maturity requirements currently prescribed under the Florida avocado marketing order (order). The order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). The corresponding change in the avocado import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. This rule changes the maturity shipping schedule to allow certain sizes and weights of the Choquette avocado variety to be shipped to the fresh market earlier. With this change, the maturity schedule will better reflect the current maturity rate for the Choquette variety, facilitating the shipment of this variety as it matures.

**DATES:** Effective September 19, 2014; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] 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 and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA;

Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail:  
Doris.Jamieson@ams.usda.gov or  
Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutny@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 121 and Marketing 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."

This interim rule is also issued under section 8e of the Act (7 U.S.C. 608e), 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 domestically produced commodities.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 rule changes the maturity requirements prescribed under the order. This rule changes the maturity shipping schedule to allow certain sizes and weights of the Choquette avocado variety to be shipped to the fresh market earlier. With this change, the maturity schedule will better reflect the current maturity rate for the Choquette variety, facilitating the shipment of this variety as it matures. This rule was unanimously recommended by the Committee at its April 9, 2014, meeting.

Section 915.51 of the order provides, in part, authority to issue regulations establishing specific maturity requirements for avocados. Section 915.52 of the order provides authority for the modification, suspension, or termination of established regulations. The maturity requirements for avocados grown in Florida are specified in § 915.332 of the order's rules and regulations. These requirements specify minimum weights and diameters to delineate specific shipping time frames for avocados. Maturity requirements for avocados imported into the United States are currently in effect under § 944.31.

The maturity requirements are designed to prevent the shipment of immature avocados. This helps to provide buyer confidence and consumer satisfaction essential for the successful marketing of the crop. The maturity schedule is

usually divided into A, B, C, and D dates reflecting when a particular variety matures. Larger fruit within a variety mature earlier, while smaller-sized fruit take longer to mature. Consequently, the A dates are established so only the largest, most mature fruit are available for market for each variety early in its season. The D date marks the end of a variety's season when all fruit should be mature and releases all sizes and weights. The maturity requirements for the various varieties of avocados are different, as each variety has different growing and maturation characteristics. These dates are established based on a testing procedure developed in conjunction with USDA.

At the request of the Committee, Committee staff began pulling samples of the Choquette variety and testing the level of maturity. The Committee believed that due to cultural practices the variety might be maturing earlier, and the current B, C, and D dates might need to be adjusted. Following three years of testing, a maturity subcommittee reviewed the sample testing on the Choquette variety. Based on their review of the data, the subcommittee agreed that some weights and sizes were maturing earlier, and recommended to the full Committee that the B, C, and D dates for Choquettes each be moved up one week, respectively. The subcommittee concluded that these revised dates will better

reflect the current maturity rate for Choquettes. The Committee agreed the changes will help facilitate the shipment of this variety as it matures, and will continue to ensure that the consumer will receive a quality avocado. Consequently, the Committee unanimously approved the change in dates.

This rule changes the B date for Choquettes listed on the maturity schedule from October 17 to October 10. This rule also changes the C date for Choquettes from October 31 to October 24, and the D date from November 14 to November 7. The corresponding sizes and weights associated with these dates remain unchanged. The dates on the maturity schedule are the basis for calculating the actual shipping dates (A, B, C, D dates) for each individual season. The actual shipping dates for an individual year are established as the Monday nearest to the date specified in the maturity schedule as specified in § 915.332.

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 changes the maturity requirements under the domestic handling

regulations for avocados, a corresponding change to the import regulations must also be considered.

Maturity requirements for avocados imported into the United States are currently in effect under § 944.31. The same revisions of maturity dates will be made to § 944.31 as are being made to § 915.332. The Hass, Fuerte, Zutano, and Edranol varieties of avocados currently are exempt from the maturity schedule, and continue to be exempt under this rule. However, these varieties are not exempt from the import grade regulation, which is not being changed by this action. As it is the only marketing order covering avocados, import requirements are based on the marketing order for avocados grown in South Florida.

The revised shipping dates for Choquette variety avocados better reflect the current maturity rate for Choquettes and will help facilitate moving mature fruit to the fresh market. This change benefits importers as well as domestic growers and handlers.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 businesses 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. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 30 handlers of Florida avocados subject to regulation under the order and approximately 300 producers of avocados in the production area. There are approximately 70 importers of West Indian and Guatemalan type avocado varieties like those grown in Florida. Small agricultural service firms, which include avocado handlers and importers, are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those having annual receipts less than \$750,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service, the average price for Florida avocados during the 2011-12 season was approximately \$20.79 per 55-pound bushel container and total

shipments were slightly higher than 1.2 million 55-pound bushels. Using the average price and shipment information, the majority of avocado handlers could be considered small businesses under SBA's definition. In addition, based on avocado production, producer prices, and the total number of Florida avocado producers, the average annual producer revenue is less than \$750,000. Information from the Foreign Agricultural Service, USDA, indicates that the dollar value of imported West Indian and Guatemalan type avocados was \$15.5 million in 2013. Using these values, most importers would have annual receipts of less than \$7,000,000 for avocados. Consequently, the majority of avocado handlers, producers, and importers may be classified as small entities.

The Dominican Republic, Peru, and Costa Rica, are the major production areas of avocado varieties other than Hass exporting avocados to the United States. In 2013, shipments of these type avocados imported into the United States totaled around 14,500 metric tons. Of that amount, 14,400 metric tons were imported from the Dominican Republic, 63 metric tons were imported from Peru, and 21 metric tons arrived from Costa Rica. Mexico, Chile, and Peru are the major Hass type avocado producing countries exporting avocados to the United States. In 2013, shipments of Hass

type avocados imported into the United States totaled around 548,000 metric tons. Mexico accounted for 500,000 metric tons, with 23,400 metric tons from Chile, and 21,500 metric tons from Peru.

This rule changes the maturity requirements prescribed under the order's rules and regulations. This rule changes the maturity shipping schedule to allow certain sizes and weights of the Choquette avocado variety to be shipped to the fresh market earlier and makes a corresponding change to the avocado import regulation. With this change, the maturity schedule will better reflect the current maturity rate for the Choquette variety, facilitating the shipment of this variety as it matures. Authority for this change is provided in §§ 915.51 and 915.52. This rule amends the provisions in §§ 915.332 and 944.31. This rule was unanimously recommended by the Committee at its April 9, 2014, meeting. The change in the import regulation is required under section 8e of the Act.

This action is not expected to increase the costs associated with the order's requirements or the avocado import regulation. Rather, it is anticipated that this action will have a beneficial impact. Based on several seasons of maturity testing, the Committee recommended moving the B, C, and D dates on the maturity schedule

forward one week, respectively, for the Choquette variety allowing the associated sizes and weights to be shipped to the fresh market earlier. The revised dates better reflect the current maturity rate for Choquettes, and will facilitate the shipment of this variety as it matures, while continuing to ensure that only mature fruit is shipped to the fresh market. The benefits of this rule are expected to be equally available to all fresh avocado growers, handlers, and importers, regardless of their size.

Regarding alternatives to this action, the Committee considered making no change to the requirements or waiting for additional testing. However, they determined that there was sufficient data to warrant making these changes. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0189, (Generic Fruit Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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.

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.

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

Further, 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. Like all Committee meetings, the April 9, 2014, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Board. The Committee's maturity subcommittee met on April 4, 2014, and discussed this issue in detail. That meeting was also a public meeting and both

large and small entities were able to participate and express their views. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the maturity requirements currently prescribed under the Florida avocado marketing order and avocado import requirements. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) these changes relax current requirements for the Choquette variety, allowing some fruit to ship earlier; (2) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this 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 in the preamble, 7 CFR parts 915 and 944 are 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. In § 915.332, Table I, the entry for "Choquette" is revised to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) \* \* \*

(2) \* \* \*

TABLE I

VARIETY	A DATE	MIN. WT.	MIN. DIAM.	B DATE	MIN. WT.	MIN. DIAM.	C DATE	MIN. WT.	MIN. DIAM.	D DATE
*	*	*	*	*	*	*				
Choquette	9-26	28	4 4/16	10-10	24	4 1/16	10-24	20	3 14/16	11-7
*	*	*	*	*	*	*				

\* \* \* \* \*

PART 944 - FRUITS; IMPORT REGULATIONS

3. The authority citation for 7 CFR part 944 continues to read as follows:

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

4. In § 944.31, Table I, the entry for "Choquette" is revised to read as follows:

§ 944.31 Avocado import maturity regulation.

(a) \* \* \*

(2) \* \* \*

TABLE I

VARIETY	A DATE	MIN. WT.	MIN. DIAM.	B DATE	MIN. WT.	MIN. DIAM.	C DATE	MIN. WT.	MIN. DIAM.	D DATE
*	*	*	*	*	*	*				
Choquette	9-26	28	4 4/16	10-10	24	4 1/16	10-24	20	3 14/16	11-7
*	*	*	*	*	*	*				

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Dated: September 11, 2014

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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