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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 FIR]

**Avocados Grown in South Florida and Imported Avocados;
Change in Maturity Requirements**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that changed the maturity requirements prescribed under the Florida avocado marketing order (order) and avocado import regulation. The interim rule changed 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 better reflects the current maturity rate for the Choquette variety, facilitating the shipment of this variety as it matures.

DATES: Effective [INSERT DATE 3 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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) 291-8614, or E-mail: Doris.Jamieson@ams.usda.gov or Christian.Nissen@ams.usda.gov.

Small businesses may request information on complying with this and other marketing order and agreement regulations by viewing a guide at the following website: <http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide>; or 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 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 Orders 12866, 13563, and 13175.

The handling of avocados grown in South Florida is regulated by 7 CFR part 915. Prior to this change, the B date for the Choquette variety listed on the maturity schedule was October 17, the C date was October 31, and the D date was November 14. Three years of testing by Avocado Administrative Committee (Committee) staff indicated that some weights and sizes were maturing earlier, prompting the Committee to recommend moving the B, C, and D dates each up one week, respectively. Therefore, this rule continues in effect the rule that changed the B date for Choquettes listed on the maturity schedule from October 17 to October 10, the C date 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.

Imported avocados are subject to regulations specified in 7 CFR part 944. Under those regulations, imported avocados must meet the same minimum size requirements as specified for domestic avocados under the order.

Therefore, the B date for Choquette variety listed on the maturity schedule was also changed from October 17 to October 10, the C date changed from October 31 to October 24, and the D date changed from November 14 to November 7.

In an interim rule published in the **Federal Register** on September 16, 2014, and effective on September 19, 2014, (79 FR 55351, Doc. No. AMS-FV-14-0051, FV14-915-1 IR), §§ 915.332 and 944.31 were amended by changing the B date for the Choquette variety listed on the maturity schedule from October 17 to October 10, the C date from October 31 to October 24, and the D date from November 14 to November 7.

Final 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 final 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.

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 exporting avocado varieties other than Hass to the United States. In 2013, shipments of

these type of 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 were imported from Costa Rica. Mexico, Chile, and Peru are the major countries producing and exporting Hass-type 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 continues in effect the action that changed the maturity requirements prescribed under the order's rules and regulations. This rule changed the maturity shipping schedule to allow certain sizes and weights of the Choquette avocado variety to be shipped to the fresh market earlier and made a corresponding change to the avocado import regulation. With this change, the maturity schedule better reflects 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. 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 this size.

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. 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.

Comments on the interim rule were required to be received on or before November 17, 2014. Two comments were received.

One comment expressed support for the change. The second commenter asked if there were health risks to the consumer if these avocados are consumed too early. The

avocado maturity schedule is designed to ensure only mature avocados that will ripen properly are shipped to consumers. Immaturity can negatively affect the taste and quality of the fruit. Accordingly, no changes will be made to the rule based on the comments received, and we are adopting the interim rule as a final rule, without change for the reasons given in the interim rule.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-14-0051-0001>

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13563, and 13175; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

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

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (79 FR 55351, September 16, 2014) will tend to effectuate the declared policy of the Act.

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

PARTS 915 and 944 - [AMENDED]

Accordingly, the interim rule that amended 7 CFR parts 915 and 944 and that was published at 79 FR 55351 on September 16, 2014, is adopted as a final rule, without change.

Dated: April 16, 2015.

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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