



## **Agricultural Marketing Service**

### **7 CFR Parts 915 and 944**

**[Doc. No. AMS-SC-23-0084]**

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the Avocado Administrative Committee (Committee) to change the maturity requirements under the marketing order for avocados grown in South Florida. This action updates the avocado maturity shipping schedule to allow certain sizes and weights of the Beta avocado variety to be shipped earlier than is currently allowed. This action also makes a corresponding change to the avocado import regulation, as required under the Agricultural Marketing Agreement Act of 1937.

**DATES:** *Effective* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). 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. Part 915 (the Order) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the

Act). The Committee locally administers the Order and is comprised of growers and handlers of avocados operating within the production area, and a public member.

This final rule is also issued under section 8e of the Act (7 U.S.C. 608e-1), 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.

This action is exempt from the Office of Management and Budget (OMB) review process required by Executive Order 12866. This rule amends existing Marketing Order No. 915, as amended (7 CFR part 915), Avocados Grown in South Florida, and is necessary for the continued operation of Marketing Order No. 915. Additionally, this action is exempt from the requirements of Executive Order 14192, “Unleashing Prosperity Through Deregulation,” pursuant to section 5(c).

This final rule has been reviewed under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This final 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 requesting 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.

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

This final rule changes the maturity requirements prescribed under the Order. This action updates the avocado maturity shipping schedule to allow certain sizes and weights of the Beta avocado variety to be shipped to the fresh market earlier than previously allowable. With this change, the maturity schedule better reflects the current maturity rate for the Beta variety, facilitating the shipment of this variety as it matures. This action was unanimously recommended by the Committee at its August 9, 2023, meeting.

Section 915.51 of the Order provides, in part, authority to establish maturity requirements for avocados. Section 915.52 of the Order provides authority for the modification, suspension, or termination of established regulations. Section 915.332 of the Order's rules and regulations establishes the maturity requirements for avocados grown in Florida. These requirements are specified in table I of § 915.332(a) and establish minimum weights and diameters to delineate specific shipping time frames for avocados shipped under the Order. 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 and to include the annual shipping schedule to help ensure only mature fruit

reaches the market. This helps to provide buyer confidence and consumer satisfaction, essential for the successful marketing of the crop. Avocado varieties mature at different times, and varieties can vary considerably in terms of size and weight. The maturity requirements for the various varieties of avocados are different, as each variety has different growing and maturation characteristics. These maturity dates and requirements are established based on a testing procedure developed in conjunction with USDA.

The shipping schedule in table I specifies the individual maturity requirements for the numerous avocado varieties shipped each season. As larger fruit within a variety matures earliest, the schedule makes the larger sized fruit available for market first, followed by other dates to incrementally release smaller sizes for shipment as they mature. As such, the maturity schedule is usually divided into A, B, C, and D dates, which are associated with specific weights and sizes reflecting when a particular variety matures.

Avocados may not be shipped until the earliest date, the A date, specified for that variety on the shipping schedule so that only mature fruits 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 of that variety should be mature and releases all sizes and weights for shipment.

The Committee staff regularly tests the maturity level of different varieties based on reported changes in maturity. The Committee also has a maturity subcommittee that reviews this, other information, and trends in maturity. Using this information, this subcommittee recommends which varieties may need to be tested to see if adjustments need to be made to the dates on the maturity schedule. The subcommittee heard from growers that the Beta variety was maturing ahead of the established schedule and recommended to the full Committee that the Beta variety be tested for changes in maturity. At the direction of the Committee, Committee staff began sampling the Beta variety across different farms and testing the level of maturity.

After three years of testing, the Committee staff provided the subcommittee with the maturity data they had collected. Based on their review of the data, the subcommittee agreed the fruit was maturing before the current shipping dates. They reported to the full Committee that due to changes in growing conditions and practices the Beta variety was maturing earlier than the dates in the schedule.

The Committee met on August 9, 2023, and reviewed the report from the subcommittee. The subcommittee recommended, and the full Committee agreed, that the A, B, C, and D dates for the Beta variety should each be moved up two weeks. The Committee concluded these revised dates would better reflect the current maturity rate for the Beta variety. The Committee believes this change will allow growers to send mature quality fruit of this variety to the market earlier. It should also reduce limb breakage and fruit loss by enabling timely harvesting, allowing the larger, heavier fruit to be removed from the tree sooner. Consequently, the Committee unanimously approved this recommendation.

This final rule changes the A date for the Beta variety listed on the maturity schedule from August 8 to July 25, the B date from August 15 to August 1, the C date from August 29 to August 15, and the D date from September 5 to August 22. The corresponding sizes and weights associated with these dates will 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 listed in the maturity schedule as specified in § 915.332.

Section 8e of the Act (7 U.S.C. 608e-1) 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. Maturity requirements for avocados imported into the United

States are currently in effect under § 944.31. As this rule revises the maturity requirements for the Beta variety under the domestic handling regulations, a corresponding change to the import regulations is also being made.

This action updates the avocado maturity shipping schedule to allow certain sizes and weights of the Beta avocado variety to be shipped to the fresh market up to two weeks earlier than presently allowed. This change should facilitate moving mature fruit to the market, benefiting domestic growers and handlers as well as importers. This change only impacts the maturity requirements under the Order and the import regulation and makes no change to the current grade requirements.

The Hass, Fuerte, Zutano, and Edranol varieties of avocados are currently exempt from the maturity requirements under the Order and the import regulation and continue to be exempt under this rule. However, these varieties are not exempt from the grade regulations specified under the Order and import regulation, which are not being changed by this action.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 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 201 growers of Florida avocados in the production area and 21 handlers subject to regulation under the Order. The Small Business Administration (SBA) defines small agricultural growers as those having annual receipts of no more than \$3,500,000 for

Other Noncitrus Fruit Farming (NAICS code 111339), and small agricultural service firms, including handlers, are defined as those whose annual receipts are no more than \$34,000,000 for Postharvest Crop Activities (NAICS code 115114) (13 CFR 121.201).

According to the National Agricultural Statistical Service (NASS), the average grower price paid for Florida avocados in 2022 was \$22.00 per 55-pound bushel container. Utilized production was equivalent to 648,727 55-pound bushels for a total value of \$14,272,000 (\$22.00 multiplied by 648,727 55-pound bushels equals \$14,272,000). Dividing the crop value by the estimated number of growers yields an estimated average receipt per grower of \$71,005 (\$14,272,000 divided by 201), so the majority of growers would have annual receipts of less than \$3,500,000.

USDA Market News reported average shipping point prices for green skinned avocados were \$57.29 per 55-pound bushel equivalent in October of 2022. Using this price and the total utilization, the total 2022 handler crop value is estimated at \$37,165,570 (\$57.29 multiplied by 648,727 55-pound bushels equals \$37,165,570). Dividing this figure by the number of handlers yields estimated average annual handler receipts of \$1,769,790 (\$37,165,570 divided by 21), which is below the SBA threshold for small agricultural service firms.

In 2022, the Dominican Republic, Peru, Columbia, Mexico, and Jamaica were the major countries exporting avocado varieties other than Hass to the United States. In 2020, shipments of these types of avocados imported into the United States totaled around 33,454 metric tons. Of that amount, about 33,075 metric tons were imported from the Dominican Republic. Information from USDA's Global Agricultural Trade System database indicates the dollar value of these avocados to be approximately \$48,386,000. There are approximately 20 importers of green skin avocados. Using the total value and the number of importers, the average importer would have annual receipts of less than \$34 million.

Based on these estimates, the majority of Florida avocado producers and handlers, and importers may be classified as small entities.

This rule updates the avocado maturity shipping schedule in § 915.332 to allow certain sizes and weights of the Beta avocado variety to be shipped to the fresh market up to two weeks earlier than is presently allowed. With this change, the maturity schedule will better reflect the current maturity rate for the Beta variety, facilitating the shipment of this variety as it matures, which should benefit growers, handlers, importers, and consumers. The change is authorized by section 8c(17)(E) of the Act (7 U.S.C. 608c(17)(E)) and §§ 915.51 and 915.52 of the Order. This rule also makes a corresponding change to § 944.31 of the import regulations, as required by section 8e of the Act (7 U.S.C. 608e-1). This rule does not make any changes to the current grade requirements.

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 three seasons of maturity testing, the Committee recommended moving the A, B, C, and D dates on the maturity schedule forward two weeks for the Beta 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 the Beta variety 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. It will also help reduce limb breakage and fruit loss and their associated costs by enabling timely harvesting, allowing the bigger, heavier fruit to be removed from the tree sooner. The benefits of this rule are expected to be equally available to all fresh avocado growers, handlers, and importers, regardless of their size.

One alternative to this action would be to maintain the current maturity requirements for the Beta variety. However, the Committee recognized that growing

conditions and practices have changed over the years and the data indicates this fruit is maturing ahead of the current dates on the schedule. The Committee believes establishing the changes in this rule, rather than the alternative, will reflect current maturation and help ensure a quality product reaches consumers. Therefore, the Committee rejected this alternative.

The Committee's meetings are widely publicized throughout the Florida avocado industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the August 9, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on the proposed rulemaking, including the regulatory impacts of this action on small businesses.

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 OMB and assigned OMB No. 0581-0189, "Fruit Crops." No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

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.

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.

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

A proposed rulemaking concerning this action was published in the *Federal Register* on September 20, 2024 (89 FR 77037). Copies of the proposed rulemaking were sent via mail or email to avocado industry members. The proposal was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending November 19, 2024, was provided for interested persons to respond to the proposal.

AMS received a total of seven comments during the comment period. Six comments supported the proposed change to the maturity requirements and one did not address the merits of the rule, while still being neutral on the change itself.

Two comments in support of the change to the maturity dates noted that the change will be beneficial to consumers. Four agreed that updating the schedule will provide flexibility to the industry to meet market demand. Two stated that holding avocados past maturity could increase spoilage, resulting in fewer avocados available and potentially raising prices.

One comment failed to address the merits of the proposed rule by suggesting an alternative method for determining all maturity dates: a recursive model based on weather factors. This comment did not state a position on the proposed changes to the Beta variety dates. Accordingly, AMS made no changes to the rule based on the comments received.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule is consistent with and will effectuate the purposes of the Act.

In accordance with section 8e of the Act (7 U.S.C. 608e-1), the United States Trade Representative has concurred with the issuance 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, Plums, Prunes.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR parts 915 and 944 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, in paragraph (a)(2), table I is amended by revising the entry for “Beta” 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
*	*	*	*	*	*	*				
Beta	7-25	18	38/16	8-01	16	35/16	8-15	14	33/16	8-22
*	*	*	*	*	*	*				

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**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, in paragraph (a)(2), table I is amended by revising the entry for “Beta” to read as follows:

**§ 944.31 Avocado import maturity regulation.**

(a) \* \* \*

(2) \* \* \*

TABLE I

VARI ETY	A DATE	MI N. WT.	MIN. DIAM .	B DAT E	MI N. WT.	MIN. DIAM .	C DAT E	MI N. WT.	MIN. DIA M.	D DAT E
*	*	*	*	*	*	*				
Beta	7-25	18	3 8/16	8-01	16	35/16	8-15	14	33/16	8-22
*	*	*	*	*	*	*				

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**Erin Morris,**  
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*Agricultural Marketing Service.*

[FR Doc. 2026-04584 Filed: 3/6/2026 8:45 am; Publication Date: 3/9/2026]