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**AGRICULTURE AND RURAL DEVELOPMENT TECHNICAL SERVICES PROJECT**  
AID/LAC/DR/RD, CHEMONICS INTERNATIONAL, U.S. DEPT. OF AGRICULTURE

# **An Overview of the United States Avocado Market**

By

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**The Inter-American Investment Corporation**  
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## **Preface**

This report was submitted in response to a request for information on the U.S. avocado market by the Inter-American Investment Corporation. Several information resources, both public and private, were used in attempting a comprehensive assessment of the market as it exists today. I would like to especially thank the following whose prompt actions made it possible to submit this report in a relatively short time period: Scott Miller of Market News, Agricultural Marketing Service (USDA), Diane Bertelsen of the Economic Research Service (USDA), Lola Van Gilst and Leigh Ann Betters of Produce Marketing Association, Jim Cunningham and Phil Montgomery in the Miami and New York terminal markets, respectively and the California Avocado Commission. I would like to specially thank Ken Weiss, microenterprise development advisor at LACTECH, who brought this request to my attention, part of his ongoing efforts to enable me to maximize my potential. I am, however, solely responsible for any oversights or shortcomings in the report.

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## Introduction

Prospects for the avocado market seem promising in the U.S. According to one industry specialist, "the avocado has a long way to reach its full potential in North America". Not surprisingly, one multinational fruit producer has recently expanded its product line to include avocados<sup>1</sup>.

Entry into the avocado market is, however, not without impediments. The general year-to-year variation in supply has been an obstacle in the effort to make the product more popular in the United States.

Prices, while greatly affected by the such variations, is further affected by factors such as location, variety, market segment, etc --- issues that most fruits and vegetables are not exposed to.

Additionally, there are clear winners and loser regions for avocado sales in the U.S. Similarly, the popularity of a variety may be limited to select regions, as is size preference. A potential exporter must examine the industry in some detail before entering the market.

This market study examines the salient characteristics of the avocado industry from the perspective of potential market entrants. While the study explores historical patterns of supply and demand, and relevant price structures, an attempt has been made to capture all recent developments that may affect, or assist, a potential market entrant.

## Market Segments

Much of the growth of the avocado industry

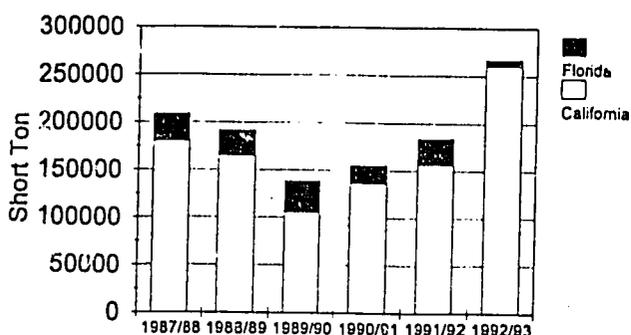
is fueled by the Hispanic population, whose growth rate is on average five times that of the general population in the U.S. Fresh avocados are a staple commodity in Hispanic households. Regional sales of avocados are, as a result, directly linked to demographic patterns: most of the top 10 markets for avocado sales have a large Hispanic population. According to one article in *Supermarket Business*<sup>2</sup>, 70 percent of avocado sales take place in Texas and California. The top ten markets by volume include San Francisco, Los Angeles, Houston and Dallas. Other good markets include New York, Chicago, Seattle, Boston, Baltimore/Washington D.C. area, Denver and Atlanta. The worst markets, according to the U.S. Department of Agriculture<sup>3</sup>, are Pittsburgh, Buffalo, St.Louis and Philadelphia. Growth in sales in the non-Hispanic market has not been as fast, although efforts are underway through increased retail promotion and the initiation of consumer-education campaigns. A recent study revealing the beneficial effect of avocados on cholesterol is certain to appeal to the changing lifestyle of Americans which places great emphasis on a healthy diet<sup>4</sup>.

## Production

California, where about 80 percent of the avocado crop is produced, most of it in Southern California, is responsible for the variation in crop volume from one year to another. California mostly produces the Hass variety, the thick, dark skinned strain which dominates the U.S. market. The thin-skinned light green Fuerte is a distant second in volume, since its availability is not as consistent as that of the Hass

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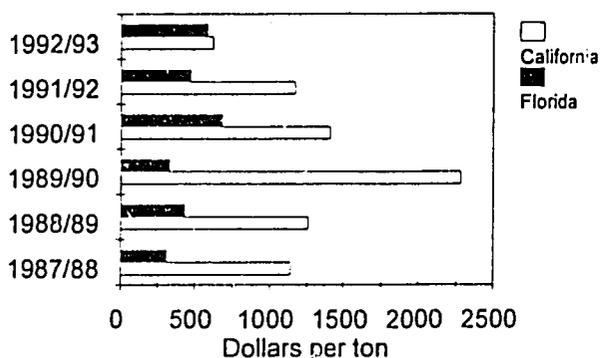
### U.S. Production of Avocados, 1987-93



Source: National Agricultural Statistics Service, USDA. Data excludes Hawaii, an insignificant producer

avocado. Another variety of avocado from California, called Pinkerson, has emerged in recent years and has shown great promise as an excellent tasting, easily transportable avocado with a consistent production pattern. Most California varieties originally came from Mexico and are popular with the Mexican-American community.

### Unit Value Comparison California & Florida



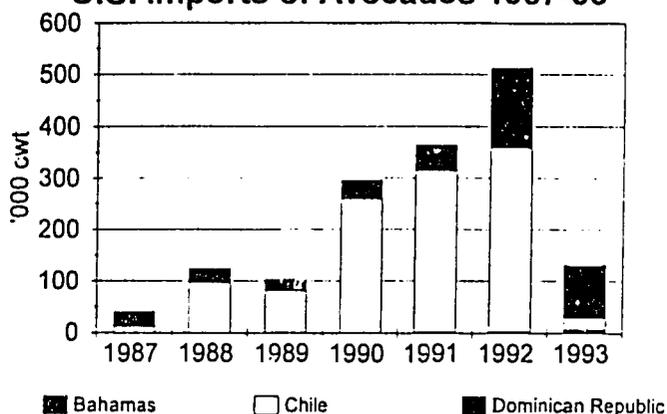
Source: National Agricultural Statistics Service, USDA

Florida is the second largest producer. Its volume accounts for about 10 to 15 percent of overall consumption. Most of the Florida varieties are the traditional

Caribbean types -- thin skinned, light green and much larger than its California counterparts. There is considerable difference in the variety, taste and caloric content of the greenskin between avocados from Florida and California. While the California variety has a richer flavor and a higher nutritional content, Florida strains have the unique characteristics of lower oil content and hence fewer calories per serving. California produces the McArthur variety of greenskin while Florida produces varieties such as Waitors, Hardens and Lulus.

### Imports

#### U.S. Imports of Avocados 1987-93



Source: Agricultural Marketing Service, USDA, Calendar Year

Imports supplement domestic production during the off-season in the U.S., and continue to play a critical role as a contingent source of supply during periods when domestic production is low while demand in established markets remains unchanged.

Since 1987, U.S. imports of avocados have

grown positively, from 4.1 million pounds in 1987 to 51.3 million pounds in 1992. During the 1993 season, however, imports fell to their lowest in four years to 13.2 million pounds, the result of a record level of domestic production. Imports are expected to surpass such low levels in 1994, since production in both California and Florida has been low. Imports of avocado from Mexico are expected to increase in 1994, a result of a recent ruling by the U.S. government to allow shipments of avocado from Mexico, whose entry was previously restricted. Mexico is however, allowed to ship to Alaska only<sup>5</sup>.

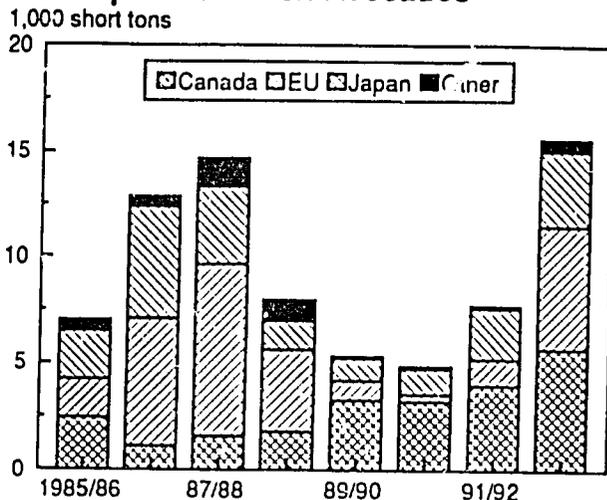
Chile is traditionally the largest import supplier of avocados to the U.S. Chile's shipments of Hass avocados are among the most popular, and command the highest of any import supply. The Dominican Republic's mostly produces the greenskin, which is usually smaller and of a lower quality. It nevertheless has its market -- the price-conscious Hispanic community which often prefers the smaller varieties. In Texas, the smaller variety is actually preferred over the larger ones. The Dominican Republic's greenskin variety competes directly with Florida's greenskin.

Chile was formerly a large supplier to the east coast of the U.S, its product arrives mostly into Miami. In recent years, however, it has shifted its attention to California in order to capitalize on the high prices it receives for its Hass.

### Exports

The U.S. is a net exporter of avocados.

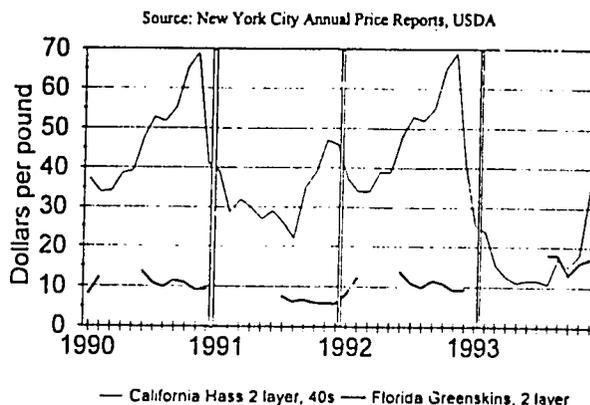
### U.S. Exports of Fresh Avocados



Exporting, however, takes place during the peak growing season only. In 1994, exports are expected to be lower as domestic production falls.

### Prices

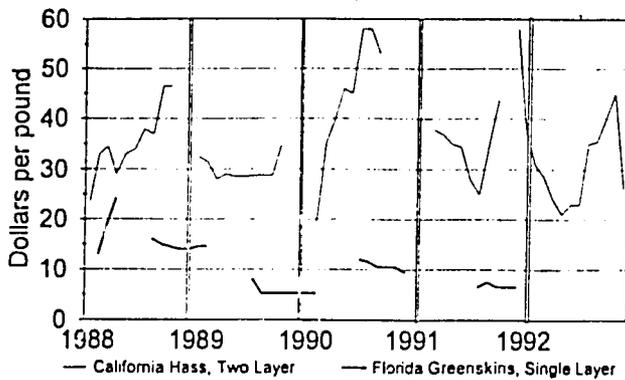
#### Avocado Wholesale Market Prices New York 1990-93



Prices for California avocados are generally higher than avocados grown in Florida, as the diagram on 'Unit Value Comparison' indicates. It should be noted, however, that returns on investment vary according to the variety grown. In 1993, for instance,

### Avocado Wholesale Market Prices Miami 1988-92

Source: Miami Market Annual Price Reports, USDA

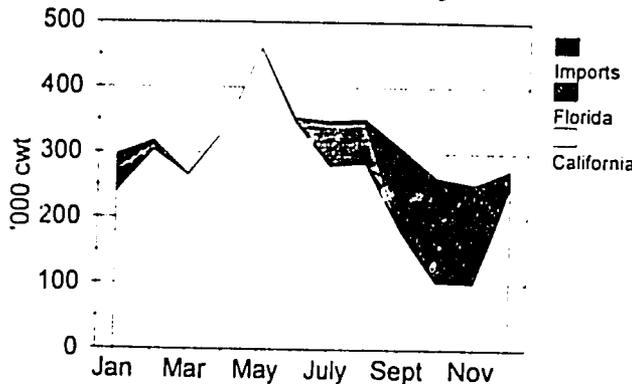


growers in California received on average \$0.21/lb for Hass, \$0.16/lb for Fuerte and \$0.12/lb for all other varieties.

Prices vary according to the variety, size and quality of the avocado and, to a lesser extent, the area where it is sold. Prices also vary according to grafted and ungrafted types (ungrafted avocados are cheaper).

### Market Windows

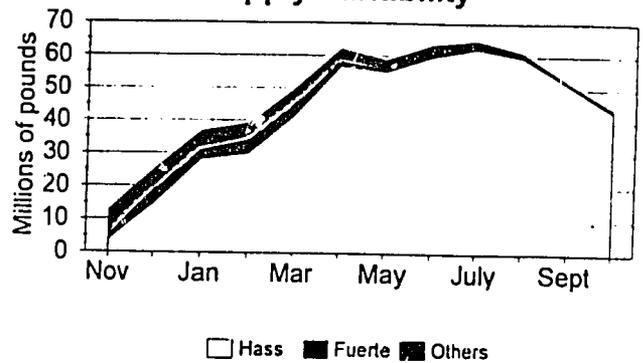
#### Avocado Supply Variability in the U.S.



Source: Agricultural Marketing Service, USDA, 1992  
Note: 1 Cwt=100 pounds

California is a year round producer of avocados, its season lasting from November 1 to November 30 of the following year. Peak shipping months for the state are March through August. Florida is a seasonal supplier. Its season begins June 20 and ends February 20 of the following year, and its peak shipping months are August through December.

#### California Avocados Supply Variability



Source: California Avocado Commission. Illustrative year is 1993.

Chile fills in during October, November and December. The Dominican Republic, too, ships during the winter months, mostly to Florida. Florida is the leading supplier as well as an entry point for avocado imports on the east coast region of the U.S.

### Market Update

#### California Prices Plummet In 1993

Ample avocado supplies in 1993 pushed domestic and export shipments well ahead of the previous year. Grower prices for California avocados dropped by two-thirds from the prior year, to average \$400 a ton. Lower prices brought the value of California

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avocado production down 38 percent to \$113.6 million in 1992/93. Prices are expected to rise in 1994 with tighter avocado supplies.

According to the California Avocado Commission, the State's 1993/94 avocado production (November through October) is expected to be 150,000 short tons, down sharply from a record-large crop of 284,000 tons in 1992/93. California avocado shipments from November 1993 to March 1994 totaled 50,500 tons, down 15 percent from the same period the prior year. However, anticipation of lower output brought early-season prices up. In December 1993 and January 1994, prices of Hass avocados averaged 50-80 percent higher than the year earlier.

#### Meager Florida Avocado Crop Anticipated

Florida's 19/93 avocado crop was the smallest in more than 20 years as production dropped 74 percent from the prior year. Hurricane Andrew destroyed most of the unharvested fruit in Dade County on August 24, 1992, and did extensive tree damage, reducing avocado acreage in Florida by 27 percent. Growers successfully rehabilitated some damaged trees, but resetting in established groves has been limited by a shortage of nursery stock.

A high quality but very limited avocado crop of less 5,000 tons was harvested in 1993/94 (June-March). The bloom was reduced by severe pruning following the hurricane as well another storm with strong winds in March 1993. Rehabilitated trees are in excellent condition and Florida is expected to produce 10,000-15,000 tons of avocados in 1994/95.

#### Low Prices Boost Avocado Exports in 1992/93

More ample California avocado supplies and lower prices boosted exports in 1992/93. Canada, Japan, and the European Union (EU, formerly referred to as the European Community, EC or EC-12) remain the top three markets for U.S. avocados. Total U.S. avocado exports more than doubled and exports to Europe were five times as high in 1992/93 as in the prior year. A smaller U.S. crop will dampen avocado exports in 1994. Early in March 1994, season-to-date California avocado exports were barely 10 percent of the year earlier.

Pest and disease restrictions on imports of Mexican avocados to the United States remain in place after the passage of NAFTA. Mexican avocados have been banned from the United States since 1918 to protect California groves from infestation of the seed weevil, which has been known to inhabit Mexican groves. Early last year, importers were allowed to apply for permits to ship avocados from Mexico to but not to other States. Mexico exports avocados to Canada and Japan in competition with California avocados for part of the season.

#### **Conclusions & Market Recommendations**

- 1994 offers an excellent opportunity for avocado exporters in the LAC region. They can enter the market and capitalize on the low domestic production expected this year. Most imports may maximize their benefit by entering the market between November and March for
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California, and anytime before July for Florida.

placed on a healthy diet.

- Florida's diminished production as a result of Hurricane Andrew has received attention from several importing countries, hoping to fill this market window. Even Chile, a former supplier to the U.S. east coast (via Miami), has reentered the Florida market .
  - A vital step in supplying to the U.S. is identifying whether admissibility barriers exist currently in exporting to the U.S. It is equally important to know why selected shipments, if any, were detained.
  - Contacts in the market are essential to the success of any operation. It may be best to approach an importer and/or broker who has former experience in the exporting country.
  - Certain varieties vary in supply. The exporter must time his entry in context of the availability of his product in the U.S. market. For instance, Florida has a limited supply of greenskin avocado between January and June. California has a limited supply of many strains between November and March of the following year.
  - A popular variety, good packing and good quality is the essence of commanding high prices in the U.S. market. Preferences for sizes may vary by region and market segment; preferences for quality do not. Most imports currently meet the U.S. #2 standards, thereby receiving a lower price.
  - If the grower's variety has a lower oil content, it is in his interest to point this out. Such aspects are well received at a time when an increased emphasis has been
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## ENDNOTES

1. See "Chiquita expands into Avocados," Produce News 12/4/93.
2. See "The Avocado - Delicious, Versatile Yet Unappreciated", Supermarket Business, 9/1/92.
3. Figures are obtained from USDA's Agricultural Marketing Service data on arrivals of avocados in various
4. See "California Foods", 5/30/93
5. See the related section in the Federal Register, attached in Appendix B.

# **Appendix A**

## **Market Standards for Florida avocado**

PART II

FLORIDA AVOCADOS

PRODUCTS INSPECTED AND DISTINGUISHING MARKS

(121) Under this heading the following factors shall be reported:

1. Type or Variety.
2. Type of Container.
3. Identifying Marks.
4. Quantity Inspected.

(122) 1. Type or Variety. Three general groups of avocados are grown commercially in Florida. They are the West Indian, Guatemalan and hybrid varieties.

(123) Most hybrid varieties are shipped during fall and winter months; West Indian varieties mature earlier than those of hybrid varieties and are shipped mostly during July, August and September. Shipments of the Guatemalan varieties are made during fall and winter months.

(124) The following list of Florida avocado varieties are classified as to types:

<u>West Indian</u>	<u>Hybrid</u>	<u>Guatemalan</u>
Arue	Pinelli	Taylor
Fuchs	Tonnage - Dist. I	Linda
Hardee	Tonnage - Dist. II	Wagner
Pollock	Booth 8	Schmidt
Simmonds	Fairchild	Itzamna
Nadir	Nirody	
Dr. DuPuis	Black Prince	
Katherine	Blair	
Trapp	Collinson	
Waldin	Monroe	
Peterson	Rue	
	Booth 5	
	Hickson	
	Simpson	
	Vaca	
	Sherman	
	Marcus	
	Booth 10	
	Booth 7	
	Avon	
	Booth 11	
	Winslowson	
	Nelson	
	Catalina	
	Hall	
	Lula	
	Choquette	
	Herman	
	Chica	
	Murphy	
	Ajax (B-7B)	
	Booth 1	
	Booth 3	
	Leona	
	Dunedin	
	Byars	
	Nabal	

Lula is the leading variety and accounts for 1/4 to 1/3 of the total commercial production. From 70 to 85 percent of the total production is accounted for by Lula and nine other varieties, namely Booth 7, Booth 8, Booth 1, Booth 3, Waldin, Pollock, Hickson, Taylor and Trapp. (125)

Avocado varieties differ according to shape, size and color of fruit. Fruit of the Pollock variety when mature may exceed 60 ounces in weight, while mature Booth 8 fruit may weigh less than 6 ounces. Size of seed cavity and looseness of seed in the cavity are among other characteristics. In comparison to the size of fruit, Waldin and Booth I have large seed cavities while Booth 7 and Monroe have small seed cavities. Mature fruit of most varieties have green skin color with the exception of a few purple-skinned varieties such as Hardee and Linda. (126)

For a more detailed description of Florida avocado varieties refer to the Florida Agricultural Experiment Station Bulletin 602 "The Florida Avocado Industry". (127)

2. Type of Container. Florida avocados are now packed in containers which fall into two general types: (1) the lug or flat holding a single layer of fruit, and (2) the carton or box holding several layers of fruit. The latter is used for avocados weighing at least 16 ounces and may be of wood, fiberboard or any other material. Avocado flats have inside dimensions of 13-1/2 x 16-1/2 inches, but may be 3-1/4, 3-3/4 or 4-1/2 inches in depth. The larger two flats may be of fiberboard or wood; the smaller one is of fiberboard. The trend at present is toward the use of wooden containers. Flats hold approximately 13-1/2 pounds net weight. (128)

The type of container shall always be mentioned under this heading without giving too much detail, except in the case of odd sizes which should be described in detail. (129)

3. Identifying Marks. The certificate shall always show identifying brands, labels, growers' or shippers' names and addresses, size, lot marks, weight, grades and variety when shown. (130)

4. Quantity Inspected. The number of containers must be shown on the certificate, either as a statement on authority of the inspector, or as "checker's count", "applicant's count" or "manifested as". (131)

CONDITION OF PACK

(132) When packing avocados in wooden flats and cartons, layers of slightly moistened excelsior or wood-wool are placed on the inside surfaces of the package as well as between the fruits, so that each fruit is nested. Soft paper dividers are used in some packing houses to separate layers of fruit in boxes. In carton flats excelsior usually is placed only on the bottom and sides of the containers.

(133) Pack specifications under the Florida avocado marketing order requires all shipments to meet the Standard Pack requirements as set forth in the U. S. Standards for Florida Avocados.

(134) Standard Pack. The standards have defined the term "Standard Pack". It is satisfactory to certify on the basis of "Standard Pack" as well as on the U. S. Grades. A lot may meet the requirements of the U. S. Grades and not meet the requirements of "Standard Pack", or vice versa.

(135) The actual certification of Standard Pack shall be made under the Grade heading in connection with the grade statement but the tightness of pack, and sizing which are part of the requirements of Standard Pack shall be shown under the headings Pack and Size. As a general policy, Standard Pack certification will be made only on specific request.

(136) DESCRIPTION OF PACK

The following terms shall be used to describe the tightness of pack:

(137) Very Tight - meaning that the pack is too tight and tends to cause injury.

(138) Tight - meaning that both pack and bulge are satisfactory.

(139) Fairly Tight - meaning the condition between "tight" and "slack" that is, tight enough to prevent the specimens from moving within the container.

Containers which are to be certified as meeting Standard Pack must be at least fairly tight. (140)

SIZE

A knowledge of the manifest of a lot of avocados is essential to a satisfactory size inspection. Size generally will not be in question unless the fruit is irregular in appearance. (141)

Describing Size. Avocados are sized on the basis of weight. In describing size use the term "fairly uniform", when the fruit meets the requirements. Report as "irregular" when the requirements are not met. The term "uniform" shall not be used. (142)

"Fairly uniform" means that not more than 5%, by count, of the avocados in any container weigh less than 75% of the weight of the largest fruit: Provided, That no fruit in any container shall weigh less than 60% of the weight of the largest fruit in the container. (143)

For example: if the weight of the largest fruit is 16 ounces, each fruit weighing less than 12 ounces would be scored against the 5% tolerance permitted for fruit which fail to meet the "fairly uniform" requirement. (144)

"Irregular" - When it is necessary to report a size or lot as "irregular", the percentage which fails to meet the requirement of "fairly uniform" shall be shown to justify the use of the term "irregular". (145)

Conform to count marked. The inspector should familiarize himself with the arrangement of the various count packs in order to determine whether they conform to the marked count. When the pack does not conform to marked count it shall be described under the Size heading. (146)

(147)

SUMMARY OF TOLERANCES FOR FLORIDA AVOCADOS

	<u>No. 1</u>	<u>Comb.</u>	<u>1/</u>	<u>No. 2</u>	<u>No. 3</u>
A. <u>Total Defects</u>	10%	10%	2/	10%	10%
1. Serious damage by anthracnose, decay. (included in total "A")	5%	5%		5%	--
2. Decay (included in 1).	1%	1%		1%	2%

(148)

APPLICATION OF TOLERANCES

Package containing more than 20 avocados:

10% tolerances - not more than 1-1/2 times tolerance

Less than 10% tolerance - not more than double tolerance except, at least 1 defective and 1 off-size specimen may be permitted in any package.

Packages containing 20 avocados or less:

Individual packages shall have not more than double tolerance, except at least 1 defective and 1 off-size specimen may be permitted in any package.

1/ No part of any tolerance shall be allowed to reduce for the lot as a whole the percentage of U. S. No. 1 required or specified in the combination. Individual containers may have not more than 10 percent less than the percentage of U. S. No. 1 required or specified.

2/ By count, of the fruit in any lot may fail to meet the requirements of the U. S. No. 2 grade.

REPORTING PERCENTAGES

(149) In describing the quality and condition of avocados there are certain factors that must be determined in terms of definite percentages and other factors that may be described in general terms. Refer to General Shipping Point and Market Inspection Instructions.

(150) Reporting defects: Due to the small number of specimens packed in containers, it is not practicable to report the percentage of defects per container. Rather the range of the number of defective avocados in the different samples examined shall be shown and the average percentage reported. However, the inspector must determine if any samples exceed the tolerance in percentage in order that he may know when the terms "within tolerance" or "average within tolerance" are applicable.

(151) Example: "In most flats 1 to 3 avocados, in some none, average 12% grade defects, mostly scars, some misshapen."

QUALITY AND CONDITION

(152) Report the following factors under this heading: (Factors marked with an asterisk (\*) shall be reported as quality in the market)

- (1) Similar varietal characteristics.\*
- (2) Maturity.\*
- (3) Shape.\*
- (4) Trimming.\*
- (5) Color.\*
- (6) Firmness.
- (7) Defects.\*
- (8) Decay.

(153) (1) Similar varietal characteristics.\* The standards require that avocados be of similar varietal characteristics for all grades. Similar varietal characteristics is defined to mean that the avocados in any container are similar in shape, texture, color of skin and flesh.

(154) (2) Maturity.\* This factor is extremely difficult to determine. The standards require that avocados be mature to meet the requirements for all grades. Mature is defined to mean that the avocado has reached a stage of growth which will insure a

proper completion of the ripening process.

The avocado industry in Florida each year establishes picking and shipping dates by variety for avocados and this regulation controls the shipment of immature fruit. Maturity is judged by weight, diameters, color of flesh and skin. The inspectors should become familiar with the maturity regulations and shipping dates issued for the particular season. (155)

(3) Shape.\* The normal shape for the variety must be considered in determining the correct term or terms in describing shape: (156)

"Well formed" - means having the normal shape characteristic of the variety. (157)

"Fairly well formed" - means slightly abnormal in shape. (158)

"Misshapen" - means abnormal in shape to the extent that it detracts seriously from the appearance. (159)

"Badly misshapen" - means that the avocado is so badly curved, constricted, pointed or otherwise deformed that the appearance is very seriously affected. (160)

(4) Trimming.\* The standards require that avocados be well trimmed for the U.S. No. 1, U.S. Combination and U.S. No. 2 grades. Well trimmed is defined to mean that the stem is cut off fairly smooth at a point not more than 1/4 inch beyond the shoulder of the avocado. (161)

(5) Color.\* Fruit of avocado varieties differ according to color of skin. Mature fruit of most varieties have green skin color with the exception of a few purple-skinned varieties such as Hardee and Linda. The normal color for the variety must be considered in determining the correct term or terms in describing color. The following terms form the standards shall be used in describing color: (1) Well colored; and, (2) Fairly well colored. (162)

(6) Firmness shall be reported in conformity with the ripening terms. Inspectors should become familiar with these terms, and use the proper term or terms to accurately describe firmness. (163)

The ripening terms for avocados are as follows: (164)

"Hard" means the avocado does not yield to moderate pressure.

15

"Firm" means the avocado yields very slightly to moderate pressure.

(165

"Firm ripe" means the avocado yields slightly to moderate pressure and shows softening at the stem end. The flesh is fairly palatable, but has not reached prime eating condition.

(166

"Ripe" means the avocado yields readily to moderate pressure. At this stage of maturity it has reached the best eating condition.

(167

"Overripe" means that the avocado is dead ripe with flesh soft or discolored and past commercial use. At this stage of maturity, the avocado has very little resistance to slight pressure, the skin is usually discolored and the flesh is often bruised, dark and definitely unattractive in appearance.

(168

The standards require that avocados be mature but not overripe for all grades. Fruit that is overripe shall be scored against the 10% tolerance for avocados which fail to meet the requirements of the grade.

(169

Reporting firmness terms of fruit affected by decay.

In describing firmness of avocados, all decay shall be considered in determining the quantitative term or terms to be used. All stages of decay shall be considered as affecting the firmness, provided that the fruit not affected by decay meets one of the firmness terms.

(170

(7) Defects.

- (a) Bruises.
- (b) Cercospora spot.
- (c) Cuts or other skin breaks. (\* - healed)
- (d) Freezing injury.
- (e) Pulled stems.\*
- (f) Russeting or similar discoloration\*
- (g) Scars or scab.\*
- (h) Sunburn.\*

(171

-34-

2) (a) Bruises. Bruises are a common defect of avocados. When present, they normally predominate on firm ripe or ripe fruit. Small surface bruises incident to good commercial handling and packing practices should be disregarded unless excessively numerous. Score bruises under the general definition of damage, serious damage and very serious damage.

3) \*\*\*\* (b) Cercospora spot. Cercospora spot is caused by a fungus which is able to infect previously uninjured fruit and leaves. On fruits cercospora spots generally are 1/4 inch or less in diameter, light to dark brown, irregular in shape and slightly sunken. The surface usually becomes cracked or fissured with the grayish spore bearing tufts present during or immediately after moist periods. The fungus is confined to the rind tissue. The dead, cracked tissue on the surface of the spots afford means of entrance for anthracnose and other decay organisms.

) In the U.S. No. 1 grade any cercospora spot shall be scored as damage. The U.S. No. 2 grade requires fruit to be free from serious damage by cercospora spot. Any spot exceeding the area of a circle 1/4 inch in diameter, or more than 3 spots each of which exceeds the area of a circle 3/16 inch in diameter, or the aggregate area of all spots exceeding the area of a circle 1 inch in diameter shall be scored as serious damage.

a) The U.S. No. 3 grade requires fruit to be free from very serious damage by cercospora spot. Any spot exceeding the area of a circle 1/2 inch in diameter, or when more than 3 spots each of which exceeds the area of a circle 3/8 inch in diameter, or when the aggregate area of all spots exceeds the area of a circle 1-1/2 inches in diameter shall be scored as very serious damage. \*\*\*\*

) (c) Cuts or other skin breaks. \* Any cuts or skin breaks that penetrate beneath the epidermis or into the flesh of the avocado shall be scored against all grades. As a guide in scoring cuts or skin breaks, the following chart shows the maximum amount permitted:

Grade	Maximum aggregate area rectangle	Healed Cuts
U.S. No. 1	1 x 1/8 inch	Materially affected
U.S. No. 2	1 x 1/4 inch	Seriously affected
U.S. No. 3	any skin break	very Seriously affecting the appearance.

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- (176) (d) Freezing Injury. Fruits of some varieties on the tree during a period of greatest frost hazard may show freeze injury. Varieties differ in the degree to which the fruit withstands low temperatures. The flesh of the fruit may show frozen areas which turn gray to brown, develop undesirable flavors and fail to ripen normally after the fruit is harvested.
- (177) In U. S. No. 1 and U. S. No. 2 grades avocados must be free from freezing injury. The U. S. No. 3 grade specifies free from very serious damage by freezing injury.
- (178) (3) Pulled stems.\* In scoring pulled stems, refer to the definitions of damage, serious damage and very serious damage.
- "Damage" - when the exposed stem cavity is excessively deep, or when skin surrounding the stem cavity is more than slightly torn.
- "Serious damage" - when the skin surrounding the exposed stem cavity is torn more than an aggregate area of a circle 1/4 inch in diameter, or when the flesh is torn.
- "Very serious damage" - when the skin surrounding the exposed stem cavity is torn more than an aggregate area of a circle 1/2 inch in diameter, or when the flesh is torn.
- (179) (f) Russeting or similar discoloration.\* Russeting or similar discoloration is defined in the standards and is based on the aggregate area of russeting of a light brown color. Discoloration of a lighter shade of color may be permitted on a greater area and darker shades of color shall be restricted to a lesser area, provided, that no discoloration shall be permitted which affects the appearance to a greater extent than the specified area of light brown surface discoloration.
- (180) In determining whether russeting or similar discoloration is severe enough to affect the grade in question, refer to the definitions of damage, serious damage and very serious damage in the standards.
- (181) (g) Scars or scab.\* Scars on avocados range in color from white or gray to brown or black; they may be slightly sunken and may be checked or cracked. These scars result from various causes.
- (182) Avocado scab is caused by a fungus, which is carried over from one season to the next on leaf and stem lesions. On fruits

the spots are at first raised, circular to oval and dark brown to purplish brown. They are scattered or may coalesce to form irregular extended areas, sometimes involving practically the entire surface of the fruit. Eating quality of the mature fruit is not impaired by the disease, but its appearance is very unattractive and in severe cases the fruit may be deformed or dwarfed. The black spot fungus may gain access to the flesh through cracks in scab blemishes.

Scars and scab are treated the same way in the standards. They are scored against the U. S. No. 1 grade when the appearance of the avocado is affected to a greater extent than that on an avocado which has light brown, superficial, fairly smooth scars aggregating 10% of the fruit surface. (183)

The U. S. No. 2 grade is required to be free from serious damage by scars or scab. Serious damage means that more than 25% of the fruit surface in the aggregate is affected. (184)

(h) Sunburn.\* In scoring sunburn refer to the definitions of damage, serious damage and very serious damage as follows: (185)

"Damage" when the appearance of the avocado is affected to a greater extent than that of a avocado which has greenish-yellow colored areas aggregating 10% of the fruit surface.

"Serious damage" - when the greenish-yellow sunburn area aggregates more than 25% of the fruit surface.

"Very serious damage" - when the greenish-yellow sunburn area aggregates more than 50% of the fruit surface.

(8) Decay. Decays are progressive, and seriously affect the shipping quality. They should be recorded separately on the note sheet, and shall be reported separately under the Condition heading of the certificate. In all cases, a definite decay statement shall be made on all certificates. (186)

If decay exceeds the 1% tolerance provided in the standards, the range and average must be reported. Inspectors should attempt to become familiar with the most common decays of avocados which are listed below. (187)

- (188)            Anthracnose. Anthracnose is caused by a common fungus. Anthracnose infections are slightly sunken and nearly circular in outline, are dark brown to black, and vary from tiny spots to 1/2 inch or more in diameter. As the fruit ripens the infection spreads rapidly into the flesh, causing a greenish-black, fairly firm decay which eventually involves a large portion to all of the fruit. The surface of the lesion may develop radial cracks and during moist periods will show pinkish spore masses of the fungus.
- (189)            In the U. S. No. 1 grade the avocados must be free from anthracnose. A 5% tolerance is provided for avocados affected by anthracnose.
- (190)            The U. S. No. 2 and U. S. No. 3 grades require avocados to be free from serious damage by anthracnose. Serious damage by anthracnose means that when any spot exceeds the area of a circle 1/4 inch in diameter, or when more than 3 spots each of which exceeds the area of a circle 3/16 inch in diameter.
- (191)            Cercospora Spot (Refer to pars. 173 - 174).
- (192)            Rhizopus Rot. Rhizopus rot is the most rapidly developing decay of ripe avocados at room temperature. It is not found on the fruit until it begins to soften but is fairly common on roughly handled fruit ripened at high temperatures. The decayed area is extensive, dark brown and if the atmosphere is moist, is covered with coarse white to gray mycelium. If the atmosphere is dry, little mold growth will occur and the spore will be borne on short tufts in depressions or breaks in the skin. Decayed tissue is collapsed and watery but is held together by the tough mycelial threads of the fungus. Affected fruits usually become cracked and exude an amber - colored liquid.
- (193)            For descriptions of other minor and physiological diseases, refer to University of Florida Bulletin 602, The Florida Avocado Industry and Miscellaneous Publication 398, Market Diseases of Fruits and Vegetables, Citrus and Other Subtropical Fruits.

GRADE

- (194)            Refer to General Shipping Point and Market Inspection Instructions.
- (195)            Under the grade heading on the certificate a clear statement must be made to indicate whether the lot meets or fails to meet the

requirements of the grade on which it was inspected. If the lot fails to grade, a percentage of grade quality may be reported. The grade statement must be based on the facts in the preceding Quality and Condition headings on the certificate.

Reporting Grade on Combination Grade. (Refer to par. 116 ). (196)

When Other Percentages of U. S. No. 1 Quality are Specified in Combination Grade. (Refer to pars. 117 - 118 ). (197)

REMARKS

Refer to General Shipping Point and Market Inspection Instructions. (198)

GENERAL EXAMPLES FOR MARKET CERTIFICATION (199)

The following general examples of avocado certification covers only the Size, Quality Condition, and Grade statements. Instructions in the General Market Inspection handbook give examples under the other headings.

(1) Size: Fairly uniform

Quality: Mature, clean, generally well formed, well trimmed, and well colored. Grade defects average 3% mostly scars and misshapen.

Condition: Mostly firm to firm ripe, some ripe. From 1 to 8 avocados per flat (10 to 64%), average 15% soft and show dark brown to black discoloration of skin affecting 1/4 to entire surface. Decay ranges from 1 to 4 avocados per flat (3 to 20%), average 9% Anthracnose Rot in all stages.

Grade: Meets quality requirements but fails to grade U. S. No. 1 only account condition.

(2) Size: Irregular sizing. From 1 to 4 avocados per flat (3 to 20%) average 10% weighing less than, 75% of the weight of the largest avocado.

Quality: Mature, clean, well formed, well trimmed and well colored. Grade defects range from 1 to 8 avocados per carton (7 to 57%) average 15% scars, sunburn and russeting.

Condition: Mostly hard, some firm. Decay ranges in most samples from 1 to 4 avocados per flat (3 to 20%), many none, average 9% Anthracnose Rot mostly in advanced stages.

Grade: Fails to grade U. S. No. 1 account of grade defects.

(3) Size: Fairly uniform

Quality: Mature, clean, mostly well formed, some fairly well trimmed, mostly well colored, many fairly well colored. Grade defects affecting U. S. No. 2 grade average 8% mostly scars, russeting and sunburn.

Condition: Mostly hard, some firm, few firm ripe. From 1 to 4 avocados per carton (3 to 20%), average 10% serious damage by Cercospora Spot. Less than 1% decay.

Grade: Meets quality requirements but fails to grade U. S. Combination only account condition.

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UNITED STATES STANDARDS FOR GRADES OF  
FLORIDA AVOCADOS<sup>1</sup>

SOURCE: 22 FR 6205, Aug. 3, 1957, unless otherwise noted. Redesignated at 42 FR 32514, June 27, 1977, and at 46 FR 63203, Dec. 31, 1981.

Effective September 3, 1957

Sec.	GRADES	
51.3050	U. S. No. 1.	and handling, not more than a total of 10 percent, by count, of the avocados in any lot may fail to meet the requirements of this grade: <i>Provided</i> , That not more than one-half of this amount, or 5 percent, shall be allowed for avocados affected by decay or anthracnose, including therein not more than 1 percent for avocados affected by decay. (See §§ 51.3055 and 51.3056.)
51.3051	U. S. Combination.	
51.3052	U. S. No. 2.	
51.3053	U. S. No. 3.	
	UNCLASSIFIED	
51.3054	Unclassified.	§ 51.3051 <i>U. S. Combination</i> . "U. S. Combination" consists of a combination of U. S. No. 1 and U. S. No. 2 avocados: <i>Provided</i> , That at least 60 percent, by count, of the avocados in each container meet the requirements of the U. S. No. 1 grade. (a) <i>Tolerances</i> . In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent, by count, of the avocados in any lot may fail to meet the requirements of the U. S. No. 2 grade: <i>Provided</i> , That not more than one-half of this amount, or 5 percent, shall be allowed for avocados affected by decay or seriously damaged by anthracnose, including therein not more than 1 percent for avocados affected by decay. No part of any tolerance shall be allowed to reduce for the lot as a whole the percentage of U. S. No. 1 fruit required or specified in the combination, but individual containers may have not more than 10 percent less than the percentage of U. S. No. 1 fruit required or specified. (See §§ 51.3055 and 51.3056.)
	STANDARD PACK	
51.3055	Standard pack.	§ 51.3052 <i>U. S. No. 2</i> . "U. S. No. 2" consists of avocados of similar varietal characteristics which are mature but not overripe, fairly well formed, clean, fairly well colored, well trimmed and which are free from decay and freezing injury and are free from serious damage caused by anthracnose, bruises, cuts or other skin breaks, pulled stems, russeting or similar discoloration, scars or scab, sunburn, sunscald or sprayburn, cercospora spot, other disease, insects, or mechanical or other means. (a) <i>Tolerances</i> . In order to allow for variations incident to proper grading
	APPLICATION OF TOLERANCES	
51.3056	Application of tolerances.	§ 51.3050 <i>U. S. No. 1</i> . "U. S. No. 1" consists of avocados of similar varietal characteristics which are mature but not overripe, well formed, clean, well colored, well trimmed and which are free from decay, anthracnose, and freezing injury and are free from damage caused by bruises, cuts or other skin breaks, pulled stems, russeting or similar discoloration, scars or scab, sunburn, sunscald or sprayburn, cercospora spot, other disease, insects, or mechanical or other means. (a) <i>Tolerances</i> . In order to allow for variations incident to proper grading
	DEFINITIONS	
51.3057	Similar varietal characteristics.	
51.3058	Mature.	
51.3059	Overripe.	
51.3060	Well formed.	
51.3061	Clean.	
51.3062	Well colored.	
51.3063	Well trimmed.	
51.3064	Damage.	
51.3065	Fairly well formed.	
51.3066	Fairly well colored.	
51.3067	Serious damage.	
51.3068	Badly misshapen.	
51.3069	Very serious damage.	

AUTHORITY: §§ 51.3050 to 51.3069 issued under sec. 205, 60 Stat. 1090, as amended; 7 U. S. C. 1624.

GRADES

§ 51.3050 *U. S. No. 1*. "U. S. No. 1" consists of avocados of similar varietal characteristics which are mature but not overripe, well formed, clean, well colored, well trimmed and which are free from decay, anthracnose, and freezing injury and are free from damage caused by bruises, cuts or other skin breaks, pulled stems, russeting or similar discoloration, scars or scab, sunburn, sunscald or sprayburn, cercospora spot, other disease, insects, or mechanical or other means.

(a) *Tolerances*. In order to allow for variations incident to proper grading

<sup>1</sup> Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug and Cosmetic Act, or with applicable State laws and regulations.

(a) *Tolerances.* In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent, by count, of the avocados in any lot may fail to meet the requirements of this grade: *Provided*, That not more than one-half of this amount, or 5 percent, shall be allowed for avocados affected by decay or seriously damaged by anthracnose, including therein not more than 1 percent for avocados affected by decay. (See §§ 51.3055 and 51.3056.)

§ 51.3053 *U. S. No. 3.* "U. S. No. 3" consists of avocados of similar varietal characteristics which are mature but not overripe, which are not badly misshapen, and which are free from decay and are free from serious damage caused by anthracnose and are free from very serious damage caused by freezing injury, bruises, cuts or other skin breaks, pulled stems, russeting or similar discoloration, scars or scab, sunburn, sunscald or sprayburn, cercospora spot, other disease, insects, dirt or mechanical or other means.

(a) *Tolerances.* In order to allow for variations incident to proper grading and handling, not more than a total of 10 percent, by count, of the avocados in any lot may fail to meet the requirements of this grade, including therein not more than 2 percent for avocados affected by decay. (See §§ 51.3055 and 51.3056.)

#### UNCLASSIFIED

§ 51.3054 *Unclassified.* "Unclassified" consists of avocados which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot.

#### STANDARD PACK

§ 51.3055 *Standard pack.* (a) The avocados shall be packed in accordance with good commercial practice and the pack shall be at least fairly tight. The weight of the smallest fruit in any container shall be not less than 75 percent of the weight of the largest fruit in the container. Size of the avocados may be specified by count.

(b) In order to allow for variations incident to proper sizing and packing, not more than 5 percent, by count, of the avocados in any container may weigh less than 75 percent of the weight of the largest fruit: *Provided*, That no fruit

in any container shall weigh less than 60 percent of the weight of the largest fruit in the container. In addition, not more than 5 percent of the containers in any lot may fail to meet the requirement as to tightness of pack.

#### APPLICATION OF TOLERANCES

§ 51.3056 *Application of tolerances.*

(a) The contents of individual packages in the lot, based on sample inspection, are subject to the following limitations: *Provided*, That the averages for the entire lot are within the tolerances specified for the grade:

(1) For packages which contain more than 20 avocados and a tolerance of 10 percent or more is provided, individual packages in any lot shall have not more than one and one-half times the tolerance specified. For packages which contain more than 20 avocados and a tolerance of less than 10 percent is provided, individual packages in any lot shall have not more than double the tolerance specified, except that at least one defective and one off-size specimen may be permitted in any package; and,

(2) For packages which contain 20 avocados or less, individual packages shall have not more than double the tolerance specified, except that at least one defective and one off-size specimen may be permitted in any package.

#### DEFINITIONS

§ 51.3057 *Similar varietal characteristics.* "Similar varietal characteristics" means that the avocados in any container are similar in shape, texture and color of skin and flesh.

§ 51.3058 *Mature.* "Mature" means that the avocado has reached a stage of growth which will insure a proper completion of the ripening process.

§ 51.3059 *Overripe.* "Overripe" means that the avocado is dead ripe with flesh soft or discolored and past commercial use.

§ 51.3060 *Well formed.* "Well formed" means that the avocado has the normal shape characteristic of the variety.

§ 51.3061 *Clean.* "Clean" means that the avocado is practically free from dirt, staining or other foreign material.

§ 51.3062 *Well colored.* "Well colored" means that the avocado has the color characteristic of the variety.

§ 51.3063 *Well trimmed.* "Well trimmed" means that the stem, when present, is cut off fairly smoothly at a point not more than one-fourth inch beyond the shoulder of the avocado.

§ 51.3064 *Damage.* "Damage" means any defect which materially affects the appearance, or the edible or shipping quality of the individual fruit, or the general appearance of the avocados in the container. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as damage:

(a) Cuts or other skin breaks when not healed and penetrating beneath the epidermis or the aggregate area exceeds that of a rectangle 1 inch in length and one-eighth inch in width, or when healed and the appearance is materially affected;

(b) Pulled stems when the exposed stem cavity is excessively deep, or when skin surrounding the stem cavity is more than slightly torn;

(c) Russeting or similar discoloration when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown surface discoloration aggregating 10 percent of the fruit surface;

(d) Scars or scab when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown superficial, fairly smooth scars aggregating 10 percent of the fruit surface;

(e) Sunburn when the appearance of the avocado is affected to a greater extent than that of an avocado which has greenish-yellow colored sunburn aggregating 10 percent of the fruit surface; and,

(f) Sunscald or sprayburn when not well healed, or when soft, or when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown, superficial scars aggregating 10 percent of the fruit surface.

§ 51.3065 *Fairly well formed.* "Fairly well formed" means that the avocado may be slightly abnormal in shape but not to the extent that the appearance is seriously affected.

§ 51.3066 *Fairly well colored.* "Fairly well colored" means that the avocado shows a shade of color which is fairly characteristic of the variety.

§ 51.3067 *Serious damage.* "Serious damage" means any defect which seriously affects the appearance, or the edible or shipping quality of the individual fruit, or the general appearance of the avocados in the container. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as serious damage:

(a) Anthracnose when any spot exceeds the area of a circle one-fourth inch in diameter, or when more than 3 spots each of which exceeds the area of a circle three-sixteenths inch in diameter;

(b) Cuts or other skin breaks when not healed and penetrating into the flesh of the fruit, or the aggregate area exceeds that of a rectangle 1 inch in length and one-fourth inch in width, or when healed and the appearance is seriously affected;

(c) Pulled stems when the skin surrounding the exposed stem cavity is torn more than an aggregate area of a circle one-fourth inch in diameter, or when the flesh is torn;

(d) Russeting or similar discoloration when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown surface discoloration aggregating 25 percent of the fruit surface;

(e) Scars or scab when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown superficial fairly smooth scars aggregating 25 percent of the fruit surface;

(f) Sunburn when the appearance of the avocado is affected to a greater extent than that of an avocado which has greenish-yellow colored sunburn aggregating 25 percent of the fruit surface;

(g) Sunscald or sprayburn when not well healed, or when soft, or when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown superficial, fairly smooth scars aggregating 25 percent of the fruit surface; and,

(h) Cercospora spot when any spot exceeds the area of a circle one-fourth inch in diameter, or when more than 3 spots each of which exceeds the area of a circle three-sixteenths inch in diameter, or when the aggregate area of all spots exceeds the area of a circle 1 inch in diameter.

§ 51.3068 *Badly misshapen.* "Badly misshapen" means that the avocado is so badly curved, constricted, pointed or otherwise deformed that the appearance is very seriously affected.

§ 51.3069 *Very serious damage.* "Very serious damage" means any defect which very seriously affects the appearance, or the edible or shipping quality of the avocado. Any one of the following defects, or any combination of defects the seriousness of which exceeds the maximum allowed for any one defect, shall be considered as very serious damage:

(a) Cuts or other skin breaks when not healed and penetrating into the flesh of the fruit, or any skin break very seriously affecting the appearance, or the edible or shipping quality;

(b) Pulled stems when the skin surrounding the exposed stem cavity is torn more than an aggregate area of a circle one-half inch in diameter, or when the flesh is torn;

(c) Russeting or similar discoloration when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown surface discoloration aggregating 50 percent of the fruit surface;

(d) Scars or scab when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown superficial, fairly smooth scars aggregating 50 percent of the fruit surface;

(e) Sunburn when the appearance of the avocado is affected to a greater extent than that of an avocado which has greenish-yellow colored sunburn aggregating 50 percent of the fruit surface; and,

(f) Sunscald or sprayburn when not well healed, or when the appearance of the avocado is affected to a greater extent than that of an avocado which has light brown superficial, fairly smooth scars aggregating 50 percent of the fruit surface.

Dated: July 31, 1957.

[SEAL] FRANK E. BLOOD,  
Acting Deputy Administrator,  
Marketing Services.

[F. R. Doc. 57-6382; Filed, Aug. 2, 1957;  
8:52 a. m.]

BEST AVAILABLE DOCUMENT

## **Appendix B**

**Federal Register regulation 7 CFR Part 19  
affecting Mexican avocado exports to the U.S.**

# Rules and Regulations

Federal Register

Vol. 58, No. 142

Tuesday, July 27, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 7 CFR Part 319

[Docket No. 92-111-3]

#### Hass Avocados From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

**SUMMARY:** We are amending the regulations governing the importation of fruits and vegetables to allow Hass avocados from Mexico to be imported into the State of Alaska, subject to certain conditions. This action is warranted because the climatic conditions in Alaska ensure that pests of avocados do not present a threat to agriculture in that State. This action relieves some restrictions on the importation into the United States of avocados from Mexico without presenting a significant risk of introducing injurious insects into the United States.

**EFFECTIVE DATE:** July 27, 1993.

**FOR FURTHER INFORMATION CONTACT:** Mr. Victor Harabin, Head, Permit Unit, Port Operations, PPQ, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8645.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 through 319.56-8 (referred to below as the regulations), prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Prior to the effective date of this final rule, the regulations in § 319.56 did not provide for the importation of avocados from Mexico. Certain species of fruit flies (*Anastrepha ludens*, *A. serpentina*, and *A. striata*) and certain species of seed weevils are known to attack avocados in Mexico. These pests would present a significant pest risk to many U.S. crops, particularly in the southeastern and western United States.

Sanidad Vegetal, the plant protection branch of the Mexican Ministry of Agriculture and Water Resources, requested that we consider allowing the importation of Hass avocados from Mexico into any destination in the United States. In a document published in the Federal Register on October 19, 1992 (57 FR 47573-47576, Docket No. 92-111-1), we proposed to amend the regulations to allow Hass avocados from Mexico to be imported into the State of Alaska only, subject to certain conditions. We proposed that the avocados be allowed only into Alaska because, as stated above, pests that attack avocados in Mexico could threaten crops in the southeastern and western United States. However, none of the pests that attack avocados in Mexico could become established in Alaska because the pests could not survive that State's cold winters. We added further conditions to the proposal to address the slight risk that some Mexican Hass avocados might eventually move from Alaska to other States.

We solicited comments on the proposed rule for a 30-day period ending on November 18, 1992. In a document published in the Federal Register on November 25, 1992 (57 FR 55473, Docket No. 92-111-2), in response to a request, we reopened and extended the comment period for an additional 30 days, ending the comment period on December 18, 1992. We received 312 comments by the closing date. The commenters included State departments of agriculture, fruit growers associations, agricultural marketing and trade associations, a university professor of botany, fruit growers and shippers, and several congresspersons. A small number of commenters expressed support for the proposed rule. The remaining commenters either opposed the proposed rule or had specific concerns regarding the provisions of the proposal. Most of the commenters

shared the same or similar concerns, and we address them below.

#### Discussion of Comments

**Comment:** Even though this proposal allows avocados from Mexico into Alaska only, some of the avocados will eventually end up in the lower 48 States—either by being rerouted en route to Alaska or by being brought from Alaska to the lower 48 States.

**Response:** This was the greatest concern commenters had regarding the proposed rule. They seemed to feel the proposed rule is basically sound, but that in practice, some shippers will not comply with all the rule's provisions. Almost all the commenters cited as their primary example an interim rule concerning Unshu oranges from Japan, which we published in the Federal Register on September 3, 1985 (50 FR 35533, Docket No. 85-354). Unshu oranges from Japan may carry citrus canker. Prior to this interim rule, Unshu oranges were allowed to be imported without further restriction into the State of Alaska. The interim rule added restrictions because inspection found that Unshu oranges were being moved from Alaska to other places in the United States.

While it is certainly true that the illegal movement did occur, it should be explained that there were factors connected with the importation of Unshu oranges that gave shippers great incentive to violate the regulations by shipping their fruit to the lower 48 States. These incentives would not be applicable to the importation of Hass avocados from Mexico. Specifically:

(1) Unshu oranges are not grown in the United States. Fresh Unshu oranges are imported for sale in the United States exclusively from Japan, and are not readily available in all markets because of strict restrictions on their importation. Unshu oranges are an expensive specialty fruit, often given as a gift during winter holidays. The demand for these oranges may not have been met by the heavily restricted (and therefore, expensive) imports into the lower 48 States. For these reasons, there was a definite market for Unshu oranges transshipped illegally from Alaska to other parts of the United States.

In contrast, avocados grown in the United States are readily available in U.S. markets and are relatively inexpensive, especially in the western and southeastern States where they are

grown. Furthermore, the particular variety in question, the Hass avocado, is the same variety grown in almost all California avocado orchards (approximately 86 percent of U.S. avocados are grown in California).

(2) According to the regulations in 7 CFR 319.28, "Subpart—Citrus Fruit," Unshu oranges are permitted to enter only certain States, and only if they pass strict preclearance inspections in Japan. To be precleared, the oranges, among other things, must be given a USDA-prescribed surface sterilization, and must be wrapped in specially stamped tissue paper and specially stamped boxes, both of which specify the States into which the Unshu oranges may be imported and from which they are prohibited removal under a Federal plant quarantine. The oranges must also be accompanied by a certificate from the Japanese Plant Protection Service certifying that the fruit is apparently free of citrus canker. Previously, Unshu oranges imported into Alaska were permitted to enter Alaska without meeting any of the preclearance requirements. There is extra cost and effort involved in preparing the oranges to meet the preclearance requirements. Therefore, it benefitted shippers economically to import the Unshu oranges into Alaska, bypassing the preclearance, and then ship them illegally to the lower 48 States.

This would not be the case with Hass avocados from Mexico. Moving the avocados from Alaska to the lower 48 States would not benefit shippers economically, as that practice did for shippers of Unshu oranges. One commenter stated that, after being shipped to Alaska, "(the avocados) could possibly be repackaged or relabeled and shipped into any other State including California or possibly Florida." The likelihood of this happening is minimal because such relabeling and reshipping would significantly increase the shippers' packaging and shipping costs, offsetting any price advantage over California growers; and, since the U.S. demand for Hass avocados is already being met by California and Florida growers, there is no real incentive for shippers to violate the regulations in this way.

For these reasons, we do not believe that our experience with the Unshu orange regulations supports the commenters' argument that Mexican Hass avocados will be moved from Alaska into the lower 48 States.

There are other reasons, as well, why we believe that shippers will not divert the avocados from their destination of Alaska. The regulations require that the avocados be moved through the United

States under Customs bond. The value of the bond is normally equal to the value of the shipment. According to current procedure, if a shipper is found in violation of the regulations, the entire bond must be forfeited. In addition, the shipper may be subject to civil penalties, which could involve considerable fines. Finally, under the regulations in § 319.56–5(b), an import permit may be revoked and future permits may be denied if the quarantine is violated. These provisions provide further incentive for compliance with the regulations.

In regard to comments that Mexican avocados will be diverted en route to Alaska, these same avocados have been moving through the United States to Canada for the past 30 years without incident. This is the best assurance the Animal and Plant Health Inspection Service (APHIS) has that Hass avocados from Mexico will not end up in the lower 48 States. As stated in the proposed rule, the regulations in 7 CFR 352.29 allow avocados from Mexico to be moved through the United States to destinations outside the United States. The regulations in 7 CFR 352.29 require that the avocados be moved: (1) Only through certain ports in the United States, which are staffed by APHIS inspectors; (2) only through that corridor of the United States specified in the regulations, which does not include the western and southeastern regions of the United States; and (3) only by air or in a refrigerated truck, refrigerated rail car, or refrigerated containers on a truck or railcar. The containers or the truck or railcar must also be sealed with serially numbered seals by APHIS inspectors at the port of arrival.

We have adopted these provisions for the importation of Hass avocados into Alaska because these provisions have proven to be adequate safeguards in preventing avocados moving from Mexico to Canada from being diverted en route. The inspection staffs at Canadian ports of entry are sometimes small, particularly in more remote areas on the western U.S./Canadian border. However, APHIS has closely monitored these ports over the past 30 years, sometimes conducting unannounced inspections, and has found no violations of the regulations concerning avocados from Mexico.

In addition, it is standard operating procedure for APHIS inspectors at the U.S./Mexican border to notify personnel at the port of arrival on the U.S./Canadian border that a shipment of avocados from Mexico is en route, and of the estimated date of arrival in Canada for the shipment. The same

operating procedure will be followed for Hass avocados moving to Alaska, with APHIS staff on the U.S./Mexican border notifying staff at the port of arrival in Alaska of the scheduled arrival in Alaska for each shipment of Hass avocados. Communication between the ports will allow APHIS to know if Mexican avocados are being diverted en route to Alaska, in which case we will consider terminating the program immediately.

APHIS has also considered the suggestion by some commenters that Mexican avocados may be moved inadvertently from Alaska to the lower 48 States by tourists or business travellers who would carry them in their pocket or handbag. It is our belief that this is not likely to occur. Avocados are not generally eaten in travel, like an apple or banana, because they usually require some preparation, such as for use in a salad or dip. Also, avocados are expected to be more expensive in Alaska than in California or other southwestern States, so a business traveller would not likely buy his or her avocados in Alaska if he or she is returning to one of those States.

*Comment:* Reliance on Sanidad Vegetal's avocado export program inspection is not an adequate precaution against pests being carried by the fruit.

*Response:* As stated in the proposed rule, we expect that the Sanidad Vegetal program will minimize the risk that Hass avocados infested with seed weevils and other pests would be exported to the United States. The Sanidad Vegetal avocado export program is not intended to be a preclearance program. Its inclusion in the rule is only one of several safeguards in the proposal. The basis for APHIS' assessment that the rule will pose no significant threat to U.S. agriculture is the fact that the fruit is moving only to the State of Alaska and that the pests of concern cannot survive there because of Alaska's climate. The shipping requirements and restrictions have already been discussed. In addition, under this rule, the avocados are subject to APHIS inspection at the U.S./Mexican border, at any stops in the United States en route to Alaska, and at the port of arrival in Alaska. If any pests are found on the fruit during these inspections, entry or further movement of the fruit will be denied. Some commenters expressed concern that APHIS does not have enough inspectors to adequately monitor movement of the avocados from Mexico to Alaska. Especially since this is a new program, we want to assure all concerned that APHIS will give priority to strict monitoring of avocado shipments to

ensure that shippers of these avocados do not violate the conditions of the regulations.

*Comment:* Sharwil avocados from Hawaii were found to be infested with Trifly larvae, even after being inspected and approved for shipment to the mainland by APHIS inspectors. If a USDA program regulating interstate movement of avocados between our own States did not work, how can we expect this program to be successful?

*Response:* Although not considered to be the preferred host of Trifly (three species of fruit flies in Hawaii that attack fruit, and that are collectively referred to as Trifly), Sharwil avocados are known to become infested with Trifly. Trifly is not present in the continental United States, and could seriously threaten U.S. agriculture. Originally, the Sharwil avocado program (7 CFR 318.13) only allowed the movement of untreated Sharwil avocados from Hawaii to the State of Alaska. As with this rule, shipment into the State of Alaska was considered to carry no significant risk because the pests of concern could not survive that State's cold winters. The program proved successful, in that the importation of avocados into Alaska did not result in Trifly occurring anywhere in the United States.

In a document published in the Federal Register on September 4, 1990 (55 FR 38975-38980, Docket No. 89-121), the regulations in § 318.13 were amended to allow the movement of untreated Sharwil avocados from Hawaii to any destination in the United States. Research performed by the Agricultural Research Service (ARS) from 1985-1987 indicated that unblemished avocados on the tree are not subject to infestation by fruit flies. Repeated inspection of avocados moving from Hawaii to Alaska supported ARS' conclusions, as the Sharwil avocados shipped to Alaska were not infested with Trifly. Therefore, it was thought that shipping the avocados to other States would not pose any significant risk of spreading Trifly to the mainland.

However, on February 25, 1992, fruit fly larvae were discovered in an unblemished Sharwil avocado picked by an APHIS inspector from a tree in an orchard that shipped Sharwil avocados to the mainland United States. Soon after, a significant fruit fly infestation was discovered in the Kona area of Hawaii. This infestation affected some Sharwil avocados that could have been shipped to the mainland. For these reasons, the program to allow untreated Sharwil avocados from Hawaii into the United States was suspended by APHIS

on February 26, 1992, and was removed completely in an interim rule published in the Federal Register on July 15, 1992 (57 FR 31301-31307, Docket No. 92-081-1).

The situation presented risk to U.S. agriculture only because, at the time the infestation was discovered, APHIS was allowing Sharwil avocados to move untreated to the mainland. It would not have presented any significant risk had the fruit been moving only to the State of Alaska, as was previously the case, and as will be the case with Hass avocados from Mexico. During the time that Sharwil avocados were moved only to the State of Alaska, we had no evidence of any infestations of Trifly. However, even if an infestation had been present in Hawaii, Trifly would not have become established in Alaska because of Alaska's freezing winters. Again, the basis for our proposal to allow Hass avocados into Alaska is that climatic conditions in Alaska would not allow for the establishment of pests of avocado in the United States. Because Hass avocados will not be imported into the lower 48 States and will not move through the southeastern and western States, our experience with the Sharwil avocado does not affect our decision to allow Hass avocados from Mexico into Alaska.

*Comment:* Since Alaska does not experience freezing temperatures all the time, pests of avocado could survive there during certain months of the year.

*Response:* A few commenters were concerned that any pests which may be carried by the avocados could become established during Alaska's warmer summer months. Our experience with fruit fly infestations as far south as the Rio Grande valley of Texas show that, at the first sign of frost, the infestation is completely eliminated. Alaska has a subarctic climate, with freezing temperatures throughout most of the year. Since fruit flies can take up to a year to establish themselves, even in more conducive climates, the short summer in Alaska is not enough time to allow an infestation to develop.

For example, for over 30 years APHIS has allowed large quantities of mangoes from Mexico, which are prohibited entry into the United States, to be transhipped through the United States to Canada. Unlike avocados, mangoes are a preferred host of the Mexican fruit fly, and it is certain that Mexican mangoes imported into Canada carry these flies. Canada, however, has never reported an infestation of fruit flies. Further, Canada produces apples and pears that are permitted unrestricted entry into the United States; but APHIS has never found fruit flies on any

Canadian produce shipped to the United States. This indicates to us that the climate in Canada, similar to that in Alaska, does not allow fruit flies to become established.

In addition to fruit flies, avocados can also be infested with seed weevils. However, like the fruit flies that attack avocados, seed weevils exist only in tropical or subtropical climates, and would not survive in colder temperatures. Additionally, seed weevils attack only avocados, and since no avocados are grown in Alaska, the pests would have no hosts there.

*Comment:* The packing requirements are not adequate.

*Response:* One commenter specifically was concerned about the sealed containers, saying that the seals could rupture or be broken. However, APHIS inspectors will be looking to see if any ruptures or breaks are present and will reject any container that is not properly sealed.

Another commenter felt that our allowance that the fruit may be covered with a tarpaulin, as opposed to moving in an enclosed vehicle, while in transit through Mexico is not an adequate precaution against fruit flies. As a result of discussions with representatives of the Mexican government and experience with other Mexican commodities, it is our understanding that nearly all the avocados would be moving through Mexico in enclosed refrigerated trucks, in order to keep the fruit fresh during transit. However, if some of the fruit does move in an open vehicle under tarpaulin cover, our experience indicates that it would still be adequately protected from fruit flies.

*Comment:* There is no sense in risking infestation of U.S. fruit industries for the token benefit to Mexico's avocado industry in light of the relatively small amount of avocados that they will be shipping to Alaska.

*Response:* As discussed, we do not believe that allowing Mexico to import Hass avocados into Alaska presents a significant risk of infesting U.S. fruit.

*Comment:* APHIS should require the establishment of pest-free zones in Mexico and the development of more extensive preclearance programs in Mexico before going ahead with this rule.

*Response:* Decisions to establish pest-free zones and preclearance programs are decisions that must be made by the government of Mexico. If the Mexican government should decide to establish pest-free zones, APHIS will give as much assistance as possible. If the Mexican government should decide to establish preclearance programs, APHIS would work with the Mexican

government to implement those programs. However, without these programs in Mexico, it is still the agency's belief that the importation of Hass avocados into the State of Alaska under the stated conditions will not present a significant threat to agriculture in the United States.

#### Miscellaneous

We have made a minor editorial change. The section designation of this provision has been changed from the proposed "\$ 319.56-2x" to "\$ 319.56-2bb" because of final rules on fruits and vegetables for which treatment is required (§ 319.56-2x), cantaloupe from Ecuador (§ 319.56-2y), cherimoyas from Chile (§ 319.56-2z), and honeydew melons from Brazil (§ 319.56-2aa) that were published in the interim.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal as a final rule without change. Effective Date

This is a substantive rule that relieves restrictions, and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the Federal Register. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of APHIS has determined that this rule should be effective upon publication in the Federal Register.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 601 *et seq.*, we have prepared a Final Regulatory Flexibility Analysis, as follows, for this final rule.

Mexico is the largest producer of avocados in the world, accounting for about 45 percent of worldwide avocado production. Approximately 77 percent

of Mexican avocados are produced in the State of Michoacan, with the Hass variety accounting for 95 percent of Michoacan's avocado production. Because of large domestic demand, exports of Mexican avocados remain small, accounting for only about 3 percent of production.

In the United States, over 99 percent of avocados come from California and Florida, with California accounting for approximately 86 percent of production. In recent years, Hawaii has produced a small amount, as well. In Florida and Hawaii, varieties of avocado other than Hass are predominant, while in California the Hass variety accounts for approximately 85 percent of the total production.

This rule allows the importation into the United States of Hass avocados from Mexico, subject to certain conditions. This rule will mainly affect avocado growers in California, who supply almost all of Alaska's current domestic purchases of Hass avocados. According to the most current information available to us, there were 7,300 avocado growers in California in 1990. Of these, approximately 6,730 are considered to be small entities. We do not have information on whether any small entities growing avocados in California depend extensively or primarily on sales to Alaska for their income. In the proposed rule, we invited comments on this subject, and received no comments. In 1990, California produced approximately 125,000 tons of avocados. The total annual demand for avocados in Alaska is approximately 375 tons; thus, total sales in Alaska consume less than one-half of one percent of California's total available avocado supply.

This rule change will benefit small United States specialized transport companies and brokerage houses, since the current Interstate Commerce Commission regulations forbid Mexican carriers from hauling this product beyond the U.S./Mexico border. At present, the cost of transporting a truck load (40,000 lb) of avocados from Michoacan to the U.S. border at El Paso is \$1,200. This includes the margin for truckers and brokerage houses. The total revenue will depend upon the volume of export from Michoacan to Alaska.

We considered alternatives to this rule, such as requiring the avocados to be treated before they may enter the United States, in order to minimize the impact on small entities. We rejected requiring treatment, as there is currently no approved treatment for seed weevils that can be used on avocados. We also considered taking no action and continuing the prohibition on the

importation of avocados from Mexico. We rejected this alternative because it would retain an unnecessary restriction, as it appears that this rule will allow the importation of Hass avocados from Mexico while preventing the introduction of injurious insects into the United States.

This rule change will encourage transactions between Mexico and the United States, without increasing the risk of disease to U.S. agriculture. Economic theory indicates that the potential increase in transactions will likely stabilize prices and stimulate economic growth in both countries. Facilitating export opportunities for the Mexican avocado industry may provide incentives for Mexico's continued efforts to eradicate seed weevils and other related plant pests and diseases in Mexico. Consumers in Alaska will be affected in a positive manner by the increased competition and expanded choice that will be induced by this rule. For the United States, employment and investment could be affected in a positive manner by this rule.

#### Executive Order 12778

This rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This rule allows Hass avocados to be imported into the United States from the Mexican State of Michoacan. State and local laws and regulations regarding Hass avocados imported under this rule will be preempted while the fruit is in foreign commerce. Fresh avocados are generally imported for immediate distribution and sale to the consuming public, and will remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court to challenge the provisions of the rule or to challenge the application of these provisions.

#### Paperwork Reduction Act

This document contains no new information or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, 7 CFR part 319 is amended as follows:

**PART 319—FOREIGN QUARANTINE NOTICES**

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151-167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In Subpart—Fruits and Vegetables, a new § 319.56-2bb is added to read as follows:

**§ 319.56-2bb Administrative instructions governing movement of Hass avocados from Mexico to Alaska.**

Hass avocados may be imported from Mexico into the United States for distribution in Alaska only under a permit issued in accordance with § 319.56-4, and only under the following conditions:

(a) *Commercial shipments.* The avocados may be imported in commercial shipments only.

(b) *Safeguards in Mexico.* The avocados must have been grown in the Mexican State of Michoacan by a participant in the avocado export program administered by Sanidad Vegetal. Upon request, Sanidad Vegetal will provide APHIS with a list of all participants. Under the supervision of Sanidad Vegetal personnel:

(1) The avocados must have been inspected during growing, harvesting, and packing and must have been found free from seed weevils and other pests;

(2) The avocados must have been sealed in boxes after inspection at the packing house with a seal that will be broken when the box is opened; and

(3) The avocados must be packed in an enclosed container or vehicle or under a tarpaulin cover while in transit through Mexico to prevent exposure of the fruit to fruit flies.

(c) *Certification.* All shipments of avocados must be accompanied by a document issued by Sanidad Vegetal certifying that the conditions specified in paragraph (b) of this section have been met.

(d) *Marking requirements.* The boxes of avocados must be clearly marked with the statement "Distribution limited to the State of Alaska."

(e) *Ports.* The avocados may enter the United States only at the following ports: Galveston or Houston, Texas; the border ports at Nogales, Arizona; Brownsville, Eagle Pass, El Paso, Hidalgo, or Laredo, Texas; any port in Alaska; or other ports within that area of the United States specified in paragraph (f) of this section.

(f) *Shipping areas.* Except as explained below for avocados that enter the United States at Nogales, Arizona, avocados moved by truck or rail car may

transit only that area of the United States bounded on the west and south by a line extending from El Paso, Texas, to Salt Lake City, Utah, to Portland, Oregon, and due west from Portland; and on the east and south by a line extending from Brownsville, Texas, to Galveston, Texas, to Kinder, Louisiana, to Memphis, Tennessee, to Louisville, Kentucky, and due east from Louisville. All cities on these boundary lines are included in this area. If the avocados are moved by air, the aircraft may not land outside this area. Avocados that enter the United States at Nogales, Arizona, must be moved to El Paso, Texas, by the route specified on the permit, and then must remain within the shipping area described above.

(g) *Shipping requirements.* The avocados must be moved through the United States either by air or in a refrigerated truck or refrigerated rail car or in refrigerated containers on a truck or rail car. If the avocados are moved in refrigerated containers on a truck or rail car, an inspector must seal the containers with a serially numbered seal at the port of first arrival in the United States. If the avocados are moved in a refrigerated truck or a refrigerated rail car, an inspector must seal the truck or rail car with a serially numbered seal at the port of first arrival in the United States. If the avocados are transferred to another vehicle or container in the United States, an inspector must be present to supervise the transfer and must apply a new serially numbered seal. The avocados must be moved through the United States under Customs bond.

(h) *Inspection.* The avocados are subject to inspection by the Animal and Plant Health Inspection Service at the U.S./Mexico border, at any stops in the United States en route to Alaska, and at the port of arrival in Alaska.

Done in Washington, DC, this 21st day of July 1993.

Eugene Branstool,  
Assistant Secretary, Marketing and Inspection Services.  
[FR Doc. 93-17858 Filed 7-26-93; 8:45 am]  
BILLING CODE 3410-34-P

**Agricultural Marketing Service**

**7 CFR Part 1030**

**[DA-93-11]**

**Milk in the Chicago Regional Marketing Area; Suspension of Certain Provisions of the Order**

AGENCY: Agricultural Marketing Service, USDA.

**ACTION:** Suspension of rules.

**SUMMARY:** This action suspends certain provisions of the Chicago Regional Federal milk marketing order for the months of August 1993 through January 1994. The action suspends the shipping standard that applies to each plant in a unit of pool supply plants. Currently, each plant in a unit of supply plants must ship during certain months at least three percent of its receipts of milk or 47,000 pounds, whichever is less, to plants that distribute fluid milk products. The suspension was requested by Central Milk Producers Cooperative, (CMPC), a federation of cooperatives that represents producers who supply milk for the market. This action is necessary to prevent uneconomical and inefficient movements of milk.

**EFFECTIVE DATE:** August 1, 1993, through January 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovics, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 690-1366.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of proposed suspension: Issued June 4, 1993; published June 10, 1993 (58 FR 32464).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674) (the "Act"), provides that administrative proceedings must be