Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Docket No. FV97–911–1PR]

Limes Grown in Florida and Imported Limes; Change in Regulatory Period and Minimum Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on proposed changes to the regulatory period and the minimum size requirements currently prescribed under the lime marketing order and the lime import regulations. The marketing order regulates the handling of limes grown in Florida and is administered locally by the Florida Lime Administrative Committee (committee). This rule would revoke the suspension and maintain continuous, year round, implementation of regulations. This proposed rule would also increase the minimum size requirement from 1⅞ to 2 inches in diameter for the month of June. This would result in the 2 inch minimum being required from January 1 through June 30 of each year. This rule would maintain and improve quality standards ensuring continued customer satisfaction with fresh limes. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by May 29, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, Fax: (202) 720–5698. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: *Aleck Jonas,* Southeast Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; *telephone:* (941) 299–4770, *Fax:* (941) 299–5169; or *Caroline Thorpe,* Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; *telephone:* (202) 720–8139, *Fax:* (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: *Jay Guerber,* Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; *telephone:* (202) 720–2491, *Fax:* (202) 720–5698.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 126 and Marketing Order No. 911 (7 CFR part 911), both as amended, regulating the handling of limes, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including limes, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

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

This proposal would make two changes to the regulations currently prescribed under the lime marketing order and the lime import regulations. The first change would revoke the temporary suspension of regulations scheduled for June 1, 1997, through December 31, 1997. This proposal would keep the regulations in effect throughout all of 1997 and thereafter. The second change would increase the minimum size from 1⅞ inches to 2 inches for the month of June. This change would extend the current regulations requiring a minimum diameter of 2 inches from January 1 through May 31 to January 1 through June 30.

Section 911.48 of the lime marketing order provides authority to issue regulations establishing specific pack, container, grade and size requirements. These requirements are specified under Sections 911.311, 911.329 and 911.344. Currently, the requirements specified under Sections 911.311, 911.329 and 911.344 are temporarily suspended from June 1, 1997, through December 31, 1997.

This rule would revoke the scheduled suspension of regulations from June 1, 1997, through December 31, 1997. The committee met on February 5, 1997, and, on a unanimous vote, recommended terminating the scheduled suspension.

The suspension of regulations was first published, as a proposed rule, in the May 8, 1996, **Federal Register** (60

FR 20754). A notice, published in the June 26, 1996, **Federal Register** (61 FR 33047), extended the comment period of the proposed rule. The final rule was published in the August 21, 1996, **Federal Register** (61 FR 43141).

In its deliberations, the committee noted that this issue has been argued and debated by the committee since its original proposal. Even then, the committee was divided, passing the measure on a split vote of six in favor and four opposed, January 10, 1996. Comments from growers and grower/handlers concerning the changes in the proposed rule expressed concern that the loss of regulation and the associated quality standards would result in poor quality limes on the market and consumer dissatisfaction.

The committee, upon further discussion, shared these concerns. In fact, the committee revisited the issue on April 17, 1996. After deliberations on the possibilities of what could occur without regulations, the committee recommended, on a vote of seven in support, none against and one abstention, that the original proposal be modified from a permanent change to a one year experiment. This action was taken to provide the committee with an opportunity to study the effects the suspension of the handling regulations would have on the industry and market versus the cost savings derived from it.

The change was originally to have begun on June 1, 1996. However, an extended comment period, and the requested modifications to the proposal itself, resulted in the start date being delayed to June 1, 1997. This one year delay in implementation has allowed the committee time to reevaluate the need to suspend regulations.

The proposed rule was issued in response to changes in the market, rising costs of production and the cost of replanting in the aftermath of Hurricane Andrew. The committee commented that when the change was originally recommended on January 10, 1996, the industry's position and future prospects appeared quite different from today. At that time, many of the lime trees were less than 3 years old and too young to bear fruit. These lime trees had been replanted after Hurricane Andrew. Money was being expended on replanting and no revenue was coming in from these young non-bearing trees. Further, last year citrus leaf minor was a new threat to the lime trees and at that time predictions called for expensive control methods that may or may not have worked. Throughout the industry, the concern to save money was great, and the suspension of regulations was thought to be a money saving avenue. By reducing the regulatory period and its associated costs, the committee hoped to provide a decrease in industry expenses. The committee hoped the reduced costs of no regulations, no inspection fees and reduced committee expenses, resulting from fewer meetings and less compliance monitoring, would benefit the industry and foster growth.

The industry's present situation is much improved over what it was when the changes to the regulation were proposed and made final. The young lime trees are now 3 and 4 years old and bearing fruit, resulting in a larger crop and more revenue. Citrus leaf minor is far less a threat than originally presumed, due, in part, to native insect predation against it. This has resulted in less funds being required to combat this pest.

Also, the lime committee has operated off reserves this current season with a zero assessment, and it has budgeted to work off reserves with a zero assessment for the next season. This will result in industry savings of approximately $75,000 each season. The committee believes that all of these factors have eliminated the critical need for the further cost savings which prompted the original request for the change.

Reviewing the past year, committee members stated that fresh limes sold were generally plentiful and of good quality. However, they also noted that even with quality regulations in effect, some poor quality limes do reach the retail market. The committee is now concerned that removing quality regulations, even for an experimental period, may result in even larger quantities of poor quality fruit reaching the retail market, resulting in consumer dissatisfaction and product substitution. Committee members commented that past experience has indicated the difficulty of enticing customers to return to a product once substitution has taken place.

Committee members maintain that although some poor quality limes still appear on the market, the regulations have done much to reduce the number and help provide uniform quality. This, in turn, has ensured customer satisfaction with fresh limes which is a primary concern to the industry. Thus, the committee believes the benefits of the quality regulations outweigh the now diminished need to take action that would result in cost savings.

This proposed rule would also change the minimum size regulations established under the order. This proposal would increase the minimum size diameter from 1⅞ inches to 2 inches for the month of June. This change would extend the current regulations requiring a minimum diameter of 2 inches to January 1 through June 30, with 1⅞ inches the standard for the remainder of the year. This change was recommended by the committee, on a unanimous vote, at its February 5, 1997, meeting.

Section 911.344 of the regulations specifies that limes contain not less than 42 percent juice by volume. This section was amended by a final rule published on December 4, 1996, and effective on January 3, 1997, (61 FR 64255). That rule was intended to increase the minimum size requirement for limes grown in Florida from 1⅞ inches to 2 inches in diameter during the period January 1 through May 31. The December 4, 1996, rule when read with the May 8, 1996, proposed suspension would result in a minimum size diameter of 2 inches for the months of January through May. During that time prices are high and quality lower, resulting in an incentive to pack lower quality fruit. From January 1, 1996, through May 31, 1996, Florida shipped 50,365 bushels of limes, approximately 14 percent of the total, 362,289 bushels, shipped in 1996. Florida shipped 55,136 bushels of limes in June 1996, approximately 14 percent of the total, 387,833 bushels, shipped thus far in the 1996–97 season which ends in March.

Limes that are 2 inches or larger in diameter have a higher juice content than smaller limes. The larger limes have a greater chance of meeting the 42 percent juice content requirement. Increasing the minimum size to 2 inches in diameter would result in more fresh limes meeting the 42 percent juice content requirement. The larger size should also reduce the number of limes failing inspection for low juice content. This would help lower handling costs by reducing the expense of repacking and regrading fruit that fails inspection.

During committee deliberations, members commented that the current 2 inch minimum diameter rule has been well received by their customers. Committee members expressed that the 2 inch requirement ends too early in the season. The committee agreed that the problem with limes with low juice content extends into June and July. Committee members were concerned that customers would switch to a substitute product in place of fresh limes after being disappointed with the lack of juice.

The committee discussed increasing the minimum size requirements for both June and July. The committee members noted that weather conditions in South Florida are in transition during the month of July, changing from relatively dry, to increasing rains and tropical storms as the month progresses. The increasing rains allow the smaller limes to contain more juice. Unfortunately, the same rains cause larger limes to begin having problems, such as stylar-end break down and yellowing. Also, limes left on the tree to gain size can be lost during topical storms. Although some retail samples in July had low juice content in the smaller limes, committee members reasoned that the transitory weather conditions of July and its corresponding problems support maintaining the current minimum of 1⅞ for July. Therefore, the committee is recommending that the 2 inch minimum diameter extension end June 30 with 1⅞ inch minimum diameter the standard for the rest of the season.

Section 8e of the Act provides that when certain domestically produced commodities, including limes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule would change the regulatory period and the minimum size requirements under the domestic handling regulations, a corresponding change to the import regulations must also be considered.

Minimum grade and size requirements for limes imported into the United States are currently in effect under Section 944.209 [7 CFR 944.209]. This proposed rule would revoke the temporary suspension period scheduled for June 1, 1997, through December 31, 1997. This rule would leave the lime import regulations in effect throughout 1997 and thereafter. This proposal would also increase the minimum size requirement for imported limes during the month of June. Under this rule, the minimum size requirement for June would increase from the current 1⅞ inches to 2 inches. This reflects the same changes that would be made under the order for Florida limes. The minimum size and grade requirements for Florida limes are specified in section 911.344 under marketing order 911. The minimum diameter size requirement is not specifically stated in the lime import regulation. Therefore, no change is needed in the text of Section 944.209.

Mexico is the largest exporter of limes to the United States. During the 1995–96 season, Mexico exported 5,591,451 bushels to the United States, while all other import sources shipped a combined total of 167,832 bushels during the same time period. From June 1, 1996, through December 31, 1996, Mexico exported 4,151,867 bushels of limes to the United States, approximately 71 percent of the total, 5,819,410 bushels, shipped thus far in the 1996–97 season ending in March. Mexico exported 559,525 bushels of limes to the United States for the month of June 1996, approximately 10 percent of the total, 5,819,410 bushels, shipped thus far in the 1996–97 season.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

There are approximately 10 handlers subject to regulation under the order and about 50 producers of Florida limes. There are approximately 35 importers of limes. Small agricultural service firms, which include lime handlers and importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. A majority of these handlers, producers, and importers may be classified as small entities.

Based on the Florida Agricultural Statistic Service and committee data for the 1995–96 season, the average annual f.o.b. price for fresh Florida limes during the 1995-96 season was $16.50 per 55 pound bushel box equivalent for all domestic shipments, and the total shipments for the 1995–96 season were 371,413. Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments. In addition, many of these handlers ship other tropical fruit and vegetable products which are not included in committee data but would contribute further to handler receipts.

Section 911.48 of the lime marketing order provides authority to issue regulations establishing specific grade and size requirements, and section 8e of the Act requires that when such regulations are in effect for limes, the same or comparable requirements be applied to imports.

This proposal would change the regulatory period and the minimum size requirements currently prescribed under the lime marketing order and the lime import regulations. This rule would revise both the domestic and import regulations by removing a scheduled, June 1, 1997, through December 31, 1997, suspension of regulations and maintaining continuous, year round, handling regulations. The regulations are specified in sections 911.311, 911.329 and 911.344 and establish pack, container, grade and size requirements. This proposed rule would also increase the minimum size requirement from 1⅞ inches to 2 inches in diameter for the month of June. The committee recommended these changes to maintain and improve the quality of limes in the marketplace.

This proposal is expected to have a positive impact on growers, handlers and importers, as fruit and vegetable prices are quite responsive to quality differentials. This action is intended to maintain and improve quality. At the meeting, the committee discussed the impact of this change on handlers and producers in terms of cost. Any costs to handlers and importers caused by this proposal would be the loss of projected savings from the suspension. The majority of possible cost savings would have resulted from eliminating inspection fees during the suspension.

The scheduled suspension period would have only been effective for one year, resulting in limited cost savings. The industry is already used to budgeting for inspection and associated regulation costs. The Federal/State Inspection Service assesses fees to provide their service. The cost for inspection is equitable. Small and large handlers are charged the same base rate, with the overall cost determined by a handler's volume.

During this season, and the season prior, the committee voted to operate on reserves rather than assessing the industry. This will result in an industry cost savings of approximately $75,000, the approximate cost of operating the committee for a year, during each of these two years. This will do much to offset any costs that result from the revocation of the suspension period. Assessments, when they are applied, are based on the amount of fruit handled, therefore, the costs are borne proportionally by small and large operations. Consequently, the benefits of no assessments are received equally. Importers do not have to pay assessments to maintain the marketing order.

Since the recommendation to establish the suspension period was made, industry needs for cost savings have diminished. The focus has shifted to the need for stable markets and returns. Customers are willing to pay for quality, and complementary studies show that customers return purchase rate declines considerably if they are disappointed by the quality of the original purchase. The current cost of inspection is $.14 per 55 pound equivalent. However, a drop in quality could result in a price reduction measured in dollars rather than cents on the same equivalent. Thus, the benefits of a quality standard outweigh the minimal cost savings that may have resulted from the suspension.

The increase in the minimum size for June would also provide a cost benefit. With an increase in the minimum size, limes are more likely to meet the 42 percent minimum juice content requirement. This is expected to reduce the incidence of repacking, resulting in lower costs to handlers and importers. Maintaining and increasing quality to the consumer would result in a strong and stable market, benefiting growers, handlers and importers.

Shipments of Florida limes for the 1994–95 season were 289,213 bushels, for the 1995–96 season they were 371,413 bushels, and for the current 1996–97 season, though not complete, shipments through February 18, 1997, with 41 days remaining in the season, stand at 382,991 bushels. A steady increase in production is indicated. Mexican exports have also increased from 2,626,707 bushels in the 1990–91 season to 5,591,451 bushels in the 1995–96 season.

Committee members have considered alternatives to rescinding the suspension period. The committee considered a continuous period of no regulations for the months of June through December. They reconsidered the merits of such an action, determining that removing regulations to save money may have costs, such as lost market share, which would overshadow any potential savings. The committee determined that in the time that had passed since the original consideration of a suspension period, the need for cost savings measures had passed, and that the benefits of the quality standards outweighed the cost savings that may have been realized. The committee was unanimous in its belief that the need for the suspension has passed.

Under the change in minimum size, the committee considered the alternative of also changing the minimum size for July. While the committee agreed that there are limes with low juice in July, there were problems with increasing the minimum size requirement for that month. During July, the weather begins to shift to more tropical conditions. Rainfall increases, which adds juice to the limes, but it also causes problems with the larger sized fruit. Because of these problems, this alternative was rejected. Accordingly, the committee unanimously recommended the changes as outlined.

This action would not impose any additional reporting or recordkeeping requirements on either small or large lime 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.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, limes must meet the requirements as specified in the U.S. Standards for Grades of Persian Limes (7 CFR 51.1000 through 51.1016) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The committee's meeting was widely publicized throughout the lime industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the February 5, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on these issues. The committee itself is composed of ten members, of which four are handlers, five are producers and one is a public member. The majority of committee members represent small entities. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this proposed rule, as it pertains to limes imported into the United States.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 944

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

For the reasons set forth in the preamble, 7 CFR parts 911 and 944 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 911 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

§§ 911.311, 911.329 [Amended]

2. Scheduled suspension of §§ 911.311 and 911.329 effective June 1, 1997, through December 31, 1997, is terminated.

§ 911.344 [Amended]

3. Scheduled suspension of § 911.344, effective June 1, 1997, through December 31, 1997, is terminated, and paragraph (a)(3) is amended by removing the words "at least 2 inches diameter" and adding, in their place, the words "at least 2 inches in diameter from January 1 through June 30, and at least 1⅞ inches in diameter from July 1 through December 31".

PART 944—FRUITS, IMPORT REGULATIONS

§ 944.209 [Amended]

4. Scheduled suspension of § 944.209 effective June 1, 1997, through December 31, 1997, is revoked.

Dated: April 25, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–11164 Filed 4–25–97; 1:54 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

10 CFR Part 960

RIN 1901–1172

General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Proposed rule; Reopening of public comment period.

SUMMARY: In response to additional requests from several interested persons, the Department of Energy has granted additional time to comment on proposed amendments to its General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories.