

Proposed Rules

Federal Register

Vol. 61, No. 151

Monday, August 5, 1996

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. FV96-911-1PR]

Limes Grown in Florida and Imported Limes; Increase in the Minimum Size Requirement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a proposed increase in the current minimum size requirement for limes grown in Florida and for limes imported into the United States. The Florida Lime Administrative Committee (Committee), is the agency responsible for the local administration of the marketing order covering limes grown in Florida. This rule would increase the minimum size requirement from 1 7/8 inches to 2 inches in diameter during the period of January 1 through May 31. Larger fruit tend to have a higher juice content. Therefore, the increase in fruit size would enable handlers to meet the 42 percent juice content requirement specified in the regulations for limes shipped to the fresh market. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by October 4, 1996.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments should 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 or by FAX at (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:

Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522-S, Washington, DC 20090-6456; telephone: 202-720-5127; or Aleck J. Jonas, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813-299-4770. 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 2523-S, Washington, D.C. 20090-6456; telephone: 202-720-2491, Fax # 202-720-5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 911 (7 CFR Part 911), as amended, regulating the handling of limes grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities, including limes, imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities regulated under the Federal marketing orders.

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

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

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

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 approximately 30 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. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule proposes an increase in the minimum size requirement for Florida and imported limes, which could impose some additional costs on handlers and importers, including small entities. However, any additional costs

will not impose a significant economic impact. The minimum size requirement would be applied to both small and large handlers and importers in the same way. With an increase in the minimum size, the larger limes are more likely to meet the 42 percent minimum juice content requirement. This change is expected to reduce the incidence of repacking and may lower costs to handlers and importers. Increasing the minimum size would also ensure that such limes would be more mature and have a higher juice content, which would encourage repeat purchases by consumers. This increase in quality to the consumer is expected to increase returns to handlers, importers, and producers. Therefore, AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

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 §§911.311, 911.329 and 911.344. Section 911.51 requires inspection and certification that these requirements are met. Currently, the minimum size requirement for Florida limes is that they measure at least 1 $\frac{7}{8}$ inches in diameter.

The destruction caused by Hurricane Andrew in 1992 has drastically reduced the lime acreage in Florida from 6,500 acres to approximately 1,500 acres. During the 1991–92 season, prior to Hurricane Andrew, 1,682,677 bushels of limes were assessed. For the 1993–94 season, assessments were collected on 228,455 bushels, and for the 1994–95 season, assessments were collected on 283,977 bushels of limes. These factors led the Committee to reconsider current marketing order requirements, including the 1 $\frac{7}{8}$ inches in diameter size requirement.

The Committee met on January 10, 1996, and recommended to increase the minimum size requirement for Florida limes from 1 $\frac{7}{8}$ inches to 2 inches in diameter during the period of January 1 through May 31. The recommendation passed by a vote of seven in favor to one opposed. The one dissenting voter did not comment on why he was opposed to the increase.

Florida lime production and the quantity of lime imports into the United States reach their lowest point from January through May. During the 1994–95 season, 32,035 bushels of Florida limes and 2,402,987 bushels of imported limes, were shipped to the fresh market during the January through May

production period. In comparison, 257,178 bushels of Florida limes and 5,980,669 bushels of imported limes, were shipped to the fresh market during the peak production period of June through December.

During the January through May period, prices are generally higher while lime quality is lower. Market demand however, remains the same as in the peak production period. These factors have resulted in an incentive to pack low quality fruit. Also, the juice content requirement for limes shipped to the fresh market is 42 percent. Handlers have had difficulty meeting the requirement during the low production period because limes are less mature and have thicker skins. The thicker-skinned limes tend to have lower juice content.

Limes that are 2 inches or larger in diameter have a higher juice content than smaller limes. The larger limes, therefore, have a greater chance of meeting the 42 percent juice content requirement. Increasing the minimum size to 2 inches in diameter would therefore result in more fresh limes meeting the 42 percent juice content requirement. These limes would pass inspection without the expense of repacking and regrading the fruit which would reduce handling costs.

The increase would have a positive cost effect on consumers because it would allow handlers of limes to provide the consumer with higher quality fruit at a reasonable cost. According to the Committee, the industry's past sales records indicate that consumers have a preference for the larger sized limes. Producers and importers of limes would also benefit by experiencing higher return rates.

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 increase the minimum size requirement for Florida limes, a corresponding change would also apply to imports.

In a separate rulemaking action, the Department is proposing to reduce the regulatory period for Florida limes and limes imported into the United States. The proposed action would modify language in both the domestic and import regulations to change the regulatory period to January 1 through May 31 from its current continuous, year round, implementation.

Minimum grade, size, quality, and maturity requirements for limes imported into the United States are currently in effect under §944.209 (7 CFR 944.209). This proposal would increase the minimum size requirement for imported limes from 1 $\frac{7}{8}$ inches to 2 inches in diameter during the period of January 1 through May 31. This rule would result in more imported limes passing the 42 percent juice content requirement, providing higher quality fruit at a reasonable cost.

The largest exporter of limes to the United States is Mexico, with the heaviest volumes of lime shipments occurring between June 1 and December 31. Mexico exported 6,075,685 bushels of fresh limes to the United States during the 1994–95 season, while other import sources shipped a total of 201,053 bushels, combined.

The 1 $\frac{7}{8}$ inches in diameter size requirement is not specifically stated in the lime import regulation. Therefore, no change is needed in the text of §944.209.

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

Interested persons are invited to submit comments on this proposal. A 60-day comment period is deemed appropriate because all parties need time to ensure all comments are received in order to be of maximum benefit to the lime industry during the January 1 through May 31 period.

List of Subjects in 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth above, 7 CFR part 911 is proposed to be amended as follows:

1. The authority citation for 7 CFR part 911 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

§911.344 [Amended]

2. In §911.344, paragraph (a)(3) the words “at least 1 $\frac{7}{8}$ inches” are revised to read “at least 2 inches”.

Dated: July 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–19854 Filed 8–2–96; 8:45 am]

BILLING CODE 3410–02–P