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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Docket No. FV-97-911-1A IFR]

Limes Grown in Florida and Imported Limes; Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the regulatory period 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 revokes the temporary suspension of grade and size requirements and maintains continuous, year round, implementation of regulations. This rule will maintain quality standards ensuring continued customer satisfaction with fresh limes. The change in import requirements is necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: This interim final rule becomes effective June 9, 1997; comments received by July 7, 1997, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. 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 made 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 Anne Dec, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, 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 rule is issued under Marketing Agreement No. 126 and Marketing Order No. 911 (7 CFR part 911), both as amended, regulating the handling of limes grown in Florida, 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 interim final 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This 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 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 interim final rule revokes the temporary suspension of regulations currently prescribed under the lime marketing order and the lime import regulations. The temporary suspension was published in the **Federal Register** on August 21, 1996 (61 FR 43141) and suspended both the domestic and import regulations for the period June 1, 1997, through December 31, 1997. This rule keeps the regulations in effect beginning with its effective date and through the remainder of 1997.

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. Prior to this rule, the requirements specified under Sections 911.311, 911.329 and 911.344 were temporarily suspended from June 1, 1997, through December 31, 1997.

Beginning with its effective date, this rule revokes the suspension of regulations. 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 from June 7, 1996, to July 8, 1996. 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 to suspend regulations. 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 original rule suspending regulations 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 operated off reserves last season with a zero assessment, and it has budgeted to work off reserves with a zero assessment for the current 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.

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 will change the regulatory period under the domestic

handling regulations, a corresponding change to the import regulations must also be made.

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 interim final rule revokes the temporary suspension period for both the domestic and import regulations. Beginning with its effective date, this rule leaves the lime import regulations in effect throughout the remainder of 1997. This reflects the same changes being 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 size and grade requirements are 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 67 percent of the total, 6,190,321 bushels, shipped during the 1996-97 season that ended in March. Mexico exported 559,525 bushels of limes to the United States for the month of June 1996, approximately 9 percent of the total, 6,190,321 bushels, shipped in the 1996-97 season.

Pursuant to 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.

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. Using the average f.o.b. price, about 80 percent of lime handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of lime handlers, producers, and importers may be classified as small entities.

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 interim final rule changes the regulatory period currently prescribed under the lime marketing order and the lime import regulations. Beginning on its effective date, this interim final rule revises both the domestic and import regulations by removing a temporary suspension of regulations and thereby maintaining handling regulations for the remainder of 1997. The regulations are specified in sections 911.311, 911.329 and 911.344 and establish pack, container, grade and size requirements. The committee recommended this change to maintain the quality of limes in the marketplace. Additionally, the need to suspend regulations to reduce handling costs has diminished.

This interim final rule will 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 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 action will 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. Maintaining quality to the consumer will 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 shipments were 398,279 bushels. A steady increase in production is indicated. Mexican exports have also increased from 2,626,707 bushels in the 1990-91 season to 6,190,321 bushels in the 1996-97 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. Accordingly, the committee unanimously recommended this change as outlined.

This action will 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.

A proposed rule concerning this action was issued by the Department on April 25, 1997, and published in the **Federal Register** on Tuesday, April 29, 1997 (62 FR 23185). That rule also proposed an increase in the minimum size for the month of June. Copies of the rule were mailed or sent via facsimile to all Committee members and lime handlers and producers. The rule was also made available through the Internet by the Office of the Federal Register.

A 30-day comment period, ending May 29, 1997, was provided to allow interested persons to respond to the proposal. Two comments were received. The commenters, one representing a Mexican exporter and the other a Mexican exporters' and packers' union, requested that the comment period for the rule be extended to allow for additional time, 30 days and 90 days, respectively, to analyze the proposal. One commenter concluded the proposal would have a negative effect on its business and the other noted that the proposal would have a direct effect on its business.

The Department has reviewed the requests, and has determined that an extended period with no minimum quality or size standards in place would be detrimental to the industry. As previously discussed, the suspension was originally recommended at a time when cost savings were of utmost concern to the Florida lime industry. Now, however, the benefits of maintaining quality and ensuring customer satisfaction and repeat purchases outweigh the diminished need to take action that would result in cost savings.

Therefore, the Department is instituting the revocation of the suspension through this interim final rule which will allow 30 additional days to comment.

However, with regard to increasing the minimum size requirement, the Department is issuing in a separate **Federal Register** publication an extension of the proposed comment period concerning implementing the increase in minimum size from 1 7/8 to 2 inches in diameter for the month of June. Any additional comments received during the extended comment period would be considered before the rule is finalized.

This rule also modifies language in the regulations to return the minimum size requirement of 1 7/8 inches from June 1 through December 31. The 1 7/8 inch minimum size requirement was inadvertently removed when the temporary suspension was issued on August 14, 1996 (61 FR 43141).

After consideration of all relevant matter presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

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

Pursuant to 5 U.S.C. 553, it is also found and determined that it is impracticable, unnecessary and contrary to the public interest to give further notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping limes from the 1997-98 crop. The industry also needs the regulation in effect as close to June 1 as possible, to minimize any negative effects caused by a period of deregulation. Further, handlers are aware of this rule, which was recommended at a public meeting. A 30-day comment period is provided for in this interim final rule. A proposed rule was published previously with opportunity for comments.

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 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. Temporary suspension of §§ 911.311 and 911.329 is revoked effective June 9, 1997.

§ 911.344 [Amended]

3. Temporary suspension of § 911.344 is revoked effective June 9, 1997, 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 May 31, and at least 1 7/8 inches in diameter from June 1 through December 31".

PART 944—FRUITS, IMPORT REGULATIONS

§ 944.209 [Amended]

4. Temporary suspension of § 944.209 is revoked effective June 9, 1997.

Dated: May 29, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-14650 Filed 6-2-97; 10:02 am]

BILLING CODE 3410-02-P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Update of FOIA fee schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its annual update to the Freedom of Information Act (FOIA) Fee Schedule pursuant to 10 CFR § 1703.107(b)(6) of the Board's regulations.

EFFECTIVE DATE: June 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004-2901, (202) 208-6447.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On March 15, 1991 the Board published for comment in the **Federal Register** its proposed FOIA Fee Schedule. 56 FR 11114. No comments were received in response to that notice and the Board issued a final Fee Schedule on May 6, 1991.

Pursuant to 10 CFR § 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. Previous Fee Schedule updates were published in the **Federal Register** and went into effect, most recently, on June 1, 1996. 61 FR 28725.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

Defense Nuclear Facilities Safety Board Schedule of Fees for FOIA Services (Implementing 10 CFR § 1703.107(b)(6))

Search or Review Charge—\$48 per hour.

Copy Charge (paper)—\$.06 per page, if done in-house, or generally available commercial rate (approximately \$.10 per page).

Copy Charge (3.5" diskette)—\$5.00 per diskette.