

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 911 and 915

[Docket No. FV98-911-2 IFR]

#### Limes and Avocados Grown in Florida; Relaxation of Container Dimension, Weight, and Marking Requirements

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule changes the container requirements prescribed under the Florida lime and avocado Federal marketing orders. The marketing orders are administered locally by the Florida Lime Administrative Committee and the Avocado Administrative Committee (committees). This rule simplifies container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. This rule also removes weight limits on lime and avocado containers packed within a master container, and relaxes certain minimum weight requirements on containers of avocados. In addition, this rule eliminates specific container dimension requirements for both limes and avocados, but maintains net weight requirements. These changes will reduce handling costs and provide greater flexibility in lime and avocado packing operations.

**DATES:** Effective July 14, 1998; comments received by September 11, 1998 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 to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room

2525-S, P.O. Box 96456, Washington, DC 20090-6456, Fax: (202) 205-6632. 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:

William G. Pimental, Marketing Specialist, 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 George Kelhart, Technical Advisor, 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) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 126 and Marketing Order No. 911, both as amended (7 CFR part 911), regulating the handling of limes grown in Florida, and Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in Florida, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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 the date of the entry of the ruling.

Under the terms of the marketing orders, fresh market shipments of Florida limes and avocados are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. Current pack and container requirements outline the types of information and the number of times this information needs to appear on a container. The requirements also list the specific dimensions of the containers in which the fruit can be packed and the weight restrictions the packed containers must meet.

This rule makes several changes to the orders' pack and container rules and regulations. This rule simplifies container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. In addition, this rule removes net weight limits on lime and avocado containers packed within a master container, and relaxes certain minimum net weight requirements on containers of avocados. This rule also eliminates specific container dimension requirements for both limes and avocados. These changes will reduce handling costs and provide greater flexibility in lime and avocado packing operations. The committees met several times to discuss and recommend changes needed in the container regulations. The committees met and unanimously recommended these changes on July 9, 1997, August 13, 1997, and February 11, 1998.

Section 911.48 and 915.51 of the orders provide the authority to issue regulations establishing specific pack

and container requirements for limes and avocados, respectively. These requirements are specified under sections 911.311, 911.329 and 911.344 for limes, and under sections 915.305 and 915.306 for avocados. These sections specify, in part, container size, weight, and marking requirements.

This rule makes several changes to the pack and container provisions under the orders. The first change reduces the number of times the size for limes and the grade for avocados need to appear on a container. Sections 911.311(5)(d) and 915.306(a)(6) of the rules and regulations outline the container marking requirements for limes for size and avocados for grade, respectively. Current requirements specify that the size for limes be marked in letters at least one inch in height on two sides of the container. For avocados, the grade must be stamped in letters at least one inch in height on the top and two sides of the lid. This rule relaxes these requirements by establishing that containers be stamped only once, anywhere except the bottom of the container.

The size and grade information on a container is usually applied automatically by machine, or stamped individually by hand. Each time a container is stamped, there is an associated cost. The committees recommended reducing the number of times a container must be stamped, as well as expanding the possible stamp location, to provide handlers additional flexibility, and to reduce costs.

The committees believe this change will benefit both large and small packing operations. Larger operations use automated stamping. Current stamping requirements mean that each packing line needs to have at least two in-line stamp rollers or ink jet printers. In cases where the line has only one stamping device, the containers must be reversed and run through the line a second time for limes, and three times for avocados. This can take a considerable amount of time. This change will allow containers to move more rapidly through the packing line, reduce the number of stamping machines required, and decrease the costs associated with these activities.

Most smaller operations stamp the containers by hand. To meet the current requirements, each box must be rotated and stamped in more than one location. This increases the time and effort needed to pack each box. Reducing the number of times a container must be stamped will decrease the amount of labor needed and the associated stamping costs required to meet these requirements.

The requirement that containers be stamped more than once with size or grade information originated from the way limes and avocados were marketed by retailers in the past. Limes and avocados were, at one time, marketed and sold out of the containers in which the fruit was originally packed. Having the information on the container appear in several locations was done so that the customer could read it. However, the way limes and avocados are marketed has changed. Rather than being presented in the shipping container, retailers move the fruit to display bins.

The stamping of containers with required information benefits the retailer and helps the committees' check that the lots (shipments) meet order requirements. Retailers tend to buy in large lots, purchasing a specified size and grade. The number of times an individual box needs to be stamped is less important. The committees anticipate that this change will reduce costs and give handlers additional flexibility under the rules and regulations. Therefore, the committees recommended relaxing the stamping requirements for both limes and avocados.

The next change this rule makes is to the weight limits on individual containers that are packed inside larger master containers. Sections 911.329(a)(3) and 915.305(b) specify that individual packages of limes or avocados contained within master containers are not to exceed four pounds in weight. This rule relaxes this weight limit, allowing packaged limes or avocados contained within master containers to exceed four pounds in weight.

The committees are always looking for ways to strengthen and expand the market for limes and avocados. One way they do this is through the approval of experimental containers not currently included under the regulations. This is done for market research purposes. The committees use such research to determine the benefits and acceptance of different containers in the marketplace.

The use of master containers packed with limes and avocados in packages in excess of 4 pounds has been approved on an experimental basis. The approvals were made to allow handlers to meet specific requests from their customers.

Consequently, these larger sized packages within a master container have been shown to have a market potential.

The committees both discussed the merits of eliminating the four pound limit on packages within a master container. The committees believe this change will provide handlers with

additional marketing flexibility, increased sales potential, and with more opportunities to satisfy customers with special needs. Based on the information collected from the use of the trial containers, the committees recommended that the four pound limit on packages within a master container be removed.

This rule also lowers certain minimum net weight requirements for containers of avocados. Section 915.305 specifies minimum weight requirements for avocados packed under the marketing order for avocados grown in Florida. The current regulations specify that avocados be packed in containers of 8.5, 12½, 25, 32, or 34 pounds designated net weights. This rule reduces the net weight requirements of 12½, 25, 32, and 34 pounds to 12, 24, 31, and 33 pounds, as recommended by the Avocado Administrative Committee (AAC). AAC members agreed that the problems prompting this change were more prevalent in the containers associated with the last four weights. Therefore, no change was recommended for the 8.5 pound designated net weight.

Handlers use containers that are associated by size with the minimum weights listed under the rules and regulations. These weight requirements closely match the capacity of the containers. These containers are inspected by the Federal-State Inspection Service (FSIS). One of the things FSIS checks is whether the packed containers meet the established minimum weight requirements.

An allowable tolerance for variation from the requirements is specified under the rules and regulations. With respect to each lot of containers of minimum weights 12½ and 25 pounds, only 5 percent or less, by count, of the individual containers in the lot may fail to meet the applicable specified weight. The tolerance is 10 percent for minimum weights of 32 and 34 pounds. If the allowable tolerances are exceeded, the lot fails inspection and would need to be reworked and repacked before it could meet inspection.

Failing inspection and having to rework a lot after it has been packed results in a considerable loss of time and money for the individual handler. One AAC member used the example of a 12½ pound net weight container packed with 16 ounce avocados in a single layer with 12 avocados per layer to illustrate the problem. He said that when FSIS found the minimum weight to be 8 ounces short in enough boxes to exceed the tolerance, they would fail the lot, requiring it to be redone. Handlers then are forced to make a choice between adding an additional avocado

to each container, or risk the possibility of failing the minimum net weight requirement. AAC members concurred with the problem presented by this particular situation. Several handlers stated that rather than risk being underweight, they would force an additional avocado into the container. The handlers agreed that in many cases, this meant that they were literally giving one avocado per pack away.

In addition, members stated that this practice of over packing the containers was having a negative effect on the avocados during shipment. The AAC discussed that some shipments were being received out of the production area in poor condition due to the over filling of containers to ensure compliance with the minimum net weight requirements. The containers were so tightly packed that the avocados were bruised or damaged in transit.

The AAC understands the benefits of a uniform pack. However, in this case, the requirements were having a negative effect on the condition of the avocados. Changing container sizes to better accommodate the required weights would be difficult and costly. Handlers have containers in inventory, and have their equipment adjusted to those containers. By lowering the minimum net weights, handlers will be able to use the boxes they have. This change will also reduce the need to add additional avocados to meet net weight requirements. In addition, it will help reduce the possibility of containers failing the minimum weight requirement, and save handlers the expense of reworking failed lots of avocados. This change also will benefit growers by providing greater packouts and additional grower revenue. Therefore, the AAC recommended lowering the minimum net weights of 12½, 25, 32, and 34 pounds to 12, 24, 31, and 33 pounds designated net weights. However, this action does not change the established tolerances or the requirement for a fairly tight pack.

The final change made by this rule is the elimination of specific container dimension requirements from both orders' rules and regulations. Current requirements include dimensions for all authorized containers of limes and avocados, specifying specific measurements for height, width, and depth. This rule eliminates the specific dimension constraints, but maintains the container net weight requirements.

Sections 911.329 and 915.305 of the rules and regulations outline container dimension requirements for limes and avocados, respectively. These sections establish specific interior dimensions in inches for containers approved for use

under the orders. The dimensions vary from a small 5.5 pound container with measurements of 7½ × 11⅞ × 4¼ inches to a large 42 pound container with measurements of 12¾ × 15¼ × 10¾ inches for limes. Avocados also have similar specific interior dimensions, from a small 8.5 pound container with dimensions of 16½ × 13½ × 3¼ inches to a large 34 pound container with dimensions of 11 × 16¼ × 10¾ inches.

A recent review of the containers in use throughout the industry revealed that interior dimensions varied from handler to handler, and in many cases, were different than those specified in the rules and regulations. Some of the differences occurred in the box manufacturing process, where tolerances were granted to allow for equipment adjustments.

While the dimensions of containers has varied throughout the industry, the adherence to the net weight requirements has not. Under current inspection procedures, the containers are being weighed and checked for compliance with net weight requirements. This means that even though container dimensions may vary somewhat among individual handlers, the essential volume among like containers is the same. Therefore, rather than revising the rules and regulations to incorporate numerous additional containers with specific dimensions, the committees voted to eliminate the references to set measurements while maintaining the container net weight requirements.

The committees concluded that requiring handlers to use containers with specific dimensions is not necessary as long as the containers used contain a net weight specified in the requirements. The committees believe that even with this change, the rules and regulations continue to promote the shipment of a uniform product. The committees also anticipate that this change will reduce costs by allowing handlers to use boxes in inventory, rather than ordering new containers and making adjustments to equipment. They thought that removing specific container dimension requirements provided handlers with additional packing flexibility under the rules and regulations. They also agreed this change made more sense than trying to add the dimensions of all the containers currently in use to the requirements. Therefore, the committees recommended removing the regulations requiring specific interior dimensions for containers. However, all containers must continue to meet the specific net

weight requirements as they appear in the rules and regulations.

Section 8e of the Act provides that when certain domestically produced commodities, including limes and avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule changes the container marking and minimum net weight requirements currently issued under these orders. Therefore, no change is necessary in the lime or avocado import regulations.

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

There are approximately 111 lime producers and 141 avocado producers in the production area and approximately 33 lime handlers and 49 avocado handlers subject to regulation under the marketing orders. Small agricultural producers have been defined by the Small Business Administration (SBA) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000 (13 CFR 121.601).

Based on the Florida Agricultural Statistical Service and committee information, the average on-tree price for fresh limes during the 1996-97 season was \$7.10 per 88 pound box equivalent and shipments totaled 398,279 bushels (55 pound bushel). Approximately 20 percent of all handlers handled 86 percent of Florida lime shipments.

The average price for fresh avocados during the 1997-98 season was \$14.60 per 55 pound bushel box equivalent for all domestic shipments and the total shipments were 937,568 bushels. Approximately 10 percent of all handlers handled 90 percent of Florida avocado shipments. Many lime and avocado handlers ship other tropical fruit and vegetable products which are not included in the committees' data but

would contribute further to handler receipts.

Using these prices, about 90 percent of lime and avocado handlers could be considered small businesses under the SBA definition and about 10 percent of the handlers could be considered large businesses. The majority of Florida lime and avocado producers and handlers may be classified as small entities.

Under § 911.48 and § 915.51 of the marketing orders for limes and avocados grown in Florida, the committees have the authority to establish and modify pack and container requirements for limes and avocados handled under the order. Current pack and container requirements outline the types of information and the number of times this information needs to appear on a container. The requirements also list the specific requirements as to container size and weight restrictions the packed container must meet.

This rule makes several changes to §§ 911.311 and 911.329, and §§ 915.305 and 915.306 of the rules and regulations concerning the pack and container requirements for limes and avocados, respectively. This rule simplifies container marking requirements for both limes and avocados by reducing the number of times the size for limes and the grade for avocados need to appear on a container. This rule also removes net weight limits on lime and avocado containers packed within a master container, and relaxes certain minimum net weight requirements on packed avocados. In addition, this rule eliminates specific container dimension requirements for both limes and avocados. These changes will reduce handling costs and provide greater flexibility in lime and avocado packing operations.

This rule will have a positive impact on affected entities. The changes were recommended to reduce costs and provide additional flexibility in packing limes and avocados. None of the changes are expected to increase costs associated with the pack and container requirements.

The change in the stamping requirement will allow containers to move more rapidly through the packing line, reduce the number of stamping machines and labor needed, and decrease costs associated with complying with the marking requirements.

The committees believe this change will benefit both large and small packing operations. Larger operations use automated stamping. Current stamping requirements mean that each packing line needs to have at least two in-line stamp rollers or ink jet printers.

In cases where the line has only one stamping device, the containers must be reversed and run through the line a second time for limes, and three times for avocados. This can take a considerable amount of time. This change will allow containers to move more rapidly through the packing line, reduce the number of stamping machines required, and decrease the costs associated with these activities.

Most smaller operations stamp the containers by hand. To meet the current requirements, each box must be rotated and stamped in more than one location. This increases the time and effort needed to pack each box. Reducing the number of times a container must be stamped will decrease the amount of labor needed and the associated stamping costs required to meet these requirements.

The change in net weight of a container packed within a master container will provide handlers with more options in how they use a master container, and provide handlers greater flexibility in addressing the needs of customers.

Lowering certain minimum net weight requirements for avocados will reduce the practice of over filling containers to ensure compliance with the minimum net weight requirements. Some handlers have been packing the containers so tightly that the avocados were bruised or damaged in transit. This change will reduce the need to add additional avocados to meet net weight requirements, thus, saving on costs from adding additional fruit to the containers and damaged fruit. This change also will help reduce the possibility that containers will fail the minimum weight requirement, saving the handler the expense of reworking failed lots of avocados. Growers also might benefit from this change. If less fruit damage results in increased customer satisfaction and higher f.o.b. prices, some additional revenue might be passed on to the growers.

A recent review of the containers in use throughout the industry revealed that the interior dimensions varied with each packer, and in many cases, were different than those specified in the rules and regulations. Absent this change eliminating specific container dimensions, some handlers would need to bear the expense of ordering new boxes, and take a loss on the boxes they have in inventory, or petition the committees to expand the list of approved container dimensions. The elimination of specific container dimension requirements from both orders' rules and regulations will reduce costs to handlers by allowing handlers

to use boxes in inventory, rather than having to order new containers.

As long as the containers contain enough limes or avocados to meet net weight requirements, the committees believe that different container dimensions are not necessary. The committees believe that even with this change, the rules and regulations will continue to promote the shipment of uniform product, while providing handlers additional latitude in their choice of containers.

These changes are intended to reduce costs and provide additional flexibility for all those covered under the orders. The opportunities and benefits of this rule are expected to be equally available to all lime and avocado handlers and growers regardless of their size of operation.

Other alternatives to the actions approved were considered by the committees prior to making the recommendations. One alternative discussed by the committees regarding the stamping question was to require containers to continue to be stamped on two sides for limes, and on the top and two sides of the lid for avocados. The committees believed that this is a duplicate effort that provides little benefit and increases associated packing costs. They rejected this alternative.

The committees also considered an alternative to the change recommended regarding the weight of containers packed within a master container. The committees discussed establishing another net weight limitation above the current four pound restriction. However, the committees believed that just increasing the weight limit would still limit flexibility and rejected that option.

The AAC considered several alternatives to relaxing specific minimum net weight requirements. One alternative discussed was increasing the percentage tolerance in terms of the number of containers that could fail to meet the weight requirements before the entire lot would fail. Members were concerned that raising the allowable tolerance would have a negative impact on the uniformity of the pack, allowing for too much variance from the standard. There was also concern that this may not fully address the problem. Even with the increased tolerance, to avoid reaching the limit, there would still be cause to over pack containers. Another alternative considered was to change the way the tolerance was measured, changing from containers per lot to an average of containers packed on a given day. Under this alternative, a handler would not know if they had exceeded the allowable tolerance until

the end of the packing day. This would mean that if a handler was found to be out of compliance, they would be out of compliance for the whole day, requiring a rework of all the fruit packed that day rather than only the lots that failed. The committees also considered changing the container requirements to specify containers that were wider and longer than present containers. Discussion concluded that there were already numerous containers and that adding or changing several containers to cover all the weights, sizes, and varieties would make things more complicated. It would also increase the financial burden by requiring the purchase of new boxes, and the modifying of equipment and pallets to accommodate the change. Therefore, the committees dismissed these alternatives.

Two alternatives to eliminating specific container dimension requirements were presented for discussion. One alternative was to leave all lime and avocado containers as they are now. A review of the containers in use throughout the industry revealed that interior dimensions varied from handler to handler and in many cases, were different than those specified in the rules and regulations. However, not making this change could result in additional costs for handlers. The second alternative centered on adjusting the regulations to accommodate all the containers currently in use. The committees rejected the idea of adding more containers to the regulations as making things overly complicated with little discernable benefit. The committees believed that the recommended change will continue to promote the shipment of uniform product, require no additional cost, and allow handlers additional flexibility in choice of containers. Based on this discussion, this alternative was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large lime or avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committees' meetings were publicized throughout the lime and avocado industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations. Like all the committees' meetings, the July 9, 1997, August 13, 1997, and February 11, 1998, meetings were public meetings

and all entities, both large and small, were able to express their views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the committees' recommendations, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the pack and container requirements currently prescribed under the Florida lime and avocado marketing orders. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary 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** because: (1) Handlers are currently shipping limes and will begin to ship avocados shortly; (2) the committees unanimously recommended these changes at public meetings and interested persons had an opportunity to provide input; (3) this rule relaxes container size, weight, and marking requirements; (4) Florida lime and avocado handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects

##### 7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

##### 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 911 and 915 are amended as follows:

1. The authority citation for both 7 CFR parts 911 and 915 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

#### PART 911—LIMES GROWN IN FLORIDA

2. In §911.311, the introductory text of paragraph (d) is revised to read as follows:

##### § 911.311 Florida lime pack and container marking regulation.

\* \* \* \* \*

(d) No handler shall handle any container of seedless limes, grown in the production area, unless such container is marked once on the top or on any one side of the container, not to include the bottom, with letters at least one inch in height with one of the size designations shown in column 1 of the following table: *Provided*, That the number of seedless limes in a ten pound sample of a particular size designation, representative of the limes in the container, corresponds to the permissible size range in column 2 of such table for such size designation: *Provided further*, That not more than 10 percent of the containers in any lot may fail to meet these requirements.

\* \* \* \* \*

3. In §911.329, paragraphs (a)(2)(iv) through (a)(2)(xi) are removed, and paragraphs (a)(2)(i) through (a)(2)(iii) and paragraph (a)(3) are revised to read as follows:

##### § 911.329 Florida lime container regulation.

(a)(1) \* \* \*

(2) \* \* \*

(i) All limes shall be packed in containers of 5.5, 8, 10, 20, and 38 pounds designated net weights. The net weight of the contents shall not be less than the designated net weight. The net weight of limes shall not exceed the designated net weight by more than two pounds for 10 and 20 pound containers, and shall not exceed the designated net weight by more than four pounds for 38 pound containers. Further, the net weight shall not exceed the designated net weight by more than one pound for 8 pound containers, and this container shall be for export shipments only.

(ii) When a container of 38 pounds designated net weight is used as a master container for bagged limes, the minimum net weight of limes shall be 35 pounds, provided the container is marked "Master Container."

(iii) Such other types and sizes of containers as may be approved by the Florida Lime Administrative Committee, with the approval of the Secretary, for testing in connection with a research project conducted by or in cooperation with said committee: *Provided*, That the handling of each lot of limes in such test containers shall be

subject to the prior approval, and under the supervision of, the Florida Lime Administrative Committee.

(3) The limitations set forth in paragraph (a)(2) of this section shall not apply to master containers of individual packages, including individual bags of limes: *Provided*, That the markings or labels, if any, on such packages do not conflict with the markings or labels on the master container.

\* \* \* \* \*

## PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

4. Section 915.305, is revised to read as follows:

### § 915.305 Florida Avocado Container Regulation 5.

(a) No handler shall handle any avocados for the fresh market from the production area to any point outside thereof in containers having a capacity of more than 4 pounds of avocados unless the containers meet the requirements specified in this section: *Provided*, That the containers authorized in this section shall not be used for handling avocados for commercial processing into products pursuant to § 915.55(c). All avocados shall be packed in containers of 33, 31, 24, 12, and 8.5 pounds designated net weights and shall conform to all other applicable requirements of this section:

(1) Containers shall not contain less than 33 pounds net weight of avocados, except that for avocados of unnamed varieties, which are avocados that have not been given varietal names, and for Booth 1, Fuchs, Trapp varieties, such weight shall be not less than 31 pounds with respect to each lot of such containers, not to exceed 10 percent, by count, of the individual containers in the lot may fail to meet the applicable specified weight but no container in such lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight, and each avocado in such container in a lot shall weigh at least 16 ounces, except that not to exceed 10 percent, by count, of the fruit in the lot may fail to meet such weight requirement but not more than double such tolerance shall be permitted for an individual container in the lot; or

(2) Containers shall not contain less than 24 pounds net weight of avocados: *Provided*, That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in two layers and the net weight of all avocados in any such container

shall not be less than 24 pounds:

*Provided*, That the requirement as to placing avocados in two layers only shall not apply to such container if each of the avocados therein weighs 14 ounces or less; or

(3) Containers shall not contain less than 12 pounds net weight of avocados: *Provided*, That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in one layer only and the net weight of all avocados in any such container shall not be less than 12 pounds; or

(4) Containers shall not contain less than 8.5 pounds net weight of avocados: *Provided*, That not to exceed 5 percent, by count, of such containers in any lot may fail to meet such weight requirement. All avocados packed at this designated net weight shall be placed in one layer only and the net weight of all avocados in any such container shall not be less than 8.5 pounds. Such containers shall be for export shipments only.

(5) Such other types and sizes of containers as may be approved by the Avocado Administrative Committee, with the approval of the Secretary, for testing in connection with a research project conducted by or in cooperation with said committee: *Provided*, That the handling of each lot of avocados in such test containers shall be subject to prior approval, and under the supervision of, the Avocado Administrative Committee.

(b) The limitations set forth in paragraph (a) of this section shall not apply to master containers for individual packages of avocados: *Provided*, That the markings or labels, if any, on the individual packages within such master containers do not conflict with the markings or labels on the master container.

5. In § 915.306, paragraph (a)(6) is revised to read as follows:

### § 915.306 Florida avocado grade, pack, and container marking regulation.

(a) \* \* \*

(6) Such avocados when handled in containers authorized under § 915.305, except for those to export destinations, are marked once with the grade of fruit in letters and numbers at least one inch in height on the top or one side of the container, not to include the bottom, effective each fiscal year from the first Monday after July 15 until the first Monday after January 1.

\* \* \* \* \*

Dated: July 7, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-18459 Filed 7-10-98; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 3

[Docket No. 98-044-1]

### Animal Welfare; Primary Enclosures for Dogs and Cats

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the regulations under the Animal Welfare Act pertaining to primary enclosures for dogs and cats by removing the requirement that primary enclosures with flooring made of mesh or slatted construction include a solid resting surface. This requirement was erroneously added in a recent final rule that amended the requirements for primary enclosures for dogs and cats to prohibit bare wire flooring in such enclosures. However, we do not believe that it is necessary for primary enclosures with acceptable flooring of mesh or slatted construction to include a solid resting surface. Therefore, this action relieves an unnecessary and unintended requirement.

**DATES:** Interim rule effective July 14, 1998. Consideration will be given only to comments received on or before September 11, 1998.

**ADDRESSES:** Please send an original and three copies of your comments to Docket No. 98-044-1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comments refer to Docket No. 98-044-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room. **FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Smith, Staff Animal Health Technician, Animal Care, AC, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737-1234, (301) 734-4972.