

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. FV96-911-2PR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal invites comments on proposed changes to 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 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. This proposed rule is in response to changes in the market, rising costs of production and the cost of replanting in the aftermath of Hurricane Andrew. By reducing the regulatory period and its associated costs, this rule should decrease industry expenses. The changes in import requirements are necessary under section 8e of the Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by June 7, 1996.

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 Number (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; or Britthany Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-3923.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Marketing Order No. 911 (7 CFR part 911), as amended, regulating the handling of limes, hereinafter referred to as the "order."

This 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 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 proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed 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 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 about 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.

This proposed rule invites comments on a change to the regulatory period currently prescribed under the Florida lime marketing order. This rule would modify language in the order's rules and regulations to change the regulatory period from its current continuous, year round, implementation to January 1 through May 31. This change was recommended by the committee on a vote of 6 supporting and 4 against.

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, there is no regulatory period stated in the order, and the regulations are applied on a continuous year-round basis.

There is general agreement in the industry for the need to reduce costs and increase grower returns under the current market conditions. The committee made this recommendation to decrease industry expenses by reducing the regulatory period and its associated costs. Prior to Hurricane Andrew, there were approximately 6,500 producing acres of limes in the production area. Currently, there are approximately 1,500 acres of producing lime trees in the production area. Growers are expending approximately \$2,500 per acre to plant new groves and replant lost ones. They are also spending approximately \$1,500 per acre per year to maintaining new groves of young trees which will not produce fruit for several years, thus, giving no return for investment. During the 1991–1992 season prior to Hurricane Andrew, assessments were collected on 1,682,677 bushels. In the 1993–1994 and the 1994–1995 seasons after the storm, assessments were collected on 228,455 bushels and 283,977 bushels respectively. Lost income from reduced volume and the costs of replanting and maintaining groves, with no immediate monetary return, has caused the industry to seek cost saving measures.

Historically, the June 1 through December 31 time period is a time when fruit is plentiful, prices are low, and the overall quality of the crop is good for both domestic and imported supplies. The committee maintains that under these abundant and good quality fruit conditions, competition and market demand will keep quality standards high. Conversely, during the time period, January 1 through May 31, past seasons have shown that for both domestic and imported fruit, skins are thicker, the juice content is lower and supplies of fruit are limited. Because the temptation to ship poor quality is greater under these high demand and low supply conditions, the committee believes regulations are necessary to prevent poor quality fruit from entering and damaging the lime market. Therefore, the committee believes that for the period June 1 through December 31, pack, container, grade and size regulations can be ended. Competition under good quality and high supply conditions should protect the consumer from poor quality fruit entering the

market during the proposed deregulated period. The application of regulations from January 1 through May 31, will insure uniform quality throughout the year.

Growers, handlers and importers should benefit from the reduced costs of no regulations, such as no inspection fees during the deregulated period. Committee expenses should also be reduced by requiring fewer meetings and less compliance monitoring. Reporting requirements are not affected by this change and will continue to be collected year-round.

One alternative to the proposed rule was to leave the regulations in place year-round. This alternative was rejected by the committee because the need to take some action was considered necessary under the current market conditions. It was argued that when these regulations were put in place, the quality of both the domestic and imported lime supply varied greatly. Over the years, improved agricultural practices have produced a consistent high quality lime supply. This is particularly true during the June through December time period. The majority of committee members believe that the regulations are unnecessary when there is such a large supply of high quality fruit.

Another alternative raised was to terminate the marketing order. Although seriously considered, committee members rejected the idea under arguments that during the January through May time period when supplies are reduced and juice content of all limes is lower, poor quality fruit could enter the market. Consumer dissatisfaction with poor quality limes could lead to product rejection and substitution with lemons, causing a lost market share. This proposed rule represents a compromise of the two alternatives presented. The committee believes that this change will provide the consumer with quality fruit throughout the year, while reducing industry costs.

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 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 § 944.209 (7 CFR 944.209). This

proposed rule would modify language in the import regulations to change the regulatory period from its current continuous, year round, implementation to January 1 through May 31. This rule would result in relaxed import requirements because the lime import regulations would not be in effect during the months of June through December. This could result in reduced costs to importers.

Mexico is the largest importer of limes into the United States. During the 1994–95 season, Mexico imported 6,075,685 bushels into the United States, while all other import sources shipped a combined total of 201,053 bushels during the same time period. The majority of Mexican imports enter the United States between June 1 and December 31, the proposed deregulated period covered in this rule.

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.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

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 part 911 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 911—LIMES GROWN IN FLORIDA

§ 911.311 [Amended]

2. In § 911.311, paragraph (a), introductory text, is amended by removing the words “No handler” and adding in its place the words “From January 1 through May 31 of each season, no handler”.

§ 911.329 [Amended]

3. In § 911.329, paragraph (a) is amended by removing the words "No handler" and adding in its place the words "From January 1 through May 31 of each season, no handler".

§ 911.344 [Amended]

4. In § 911.344, paragraph (a), is introductory text, is amended by removing the words "No handler" and adding in its place the words "From January 1 through May 31 of each season, no handler".

PART 944—FRUITS, IMPORT REGULATIONS

5. In § 944.209, paragraph (a) is revised to read as follows:

§ 944.209 Lime Import Regulation 10.

(a) *Applicability to imports.* Pursuant to section 8e of the act and Part 944—Fruits; Import Regulations, the importation into the United States from January 1 through May 31 of any limes is prohibited unless such limes meet the minimum grade and size requirements specified in § 911.344 Florida Lime Regulation 43.

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Dated: May 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-11460 Filed 5-7-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 924 and 944

[Docket No. FV95-924-1PR]

Fresh Prunes Grown in Washington and Oregon: Proposed Handling Requirement Revision; Fruits; Import Regulations; Proposed Fresh Prune Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the effective period of the handling regulations in effect for shipments of fresh prunes grown in specified counties of Washington and in Umatilla County, Oregon under Marketing Order No. 924 to coincide with the domestic shipping season. This proposed rule would also establish grade, size, and quality requirements for prune variety plums (fresh prunes) imported into the United States. The proposed import requirements would be issued pursuant to the authority in section 8e of the amended Agricultural Marketing Agreement Act of 1937.

DATES: Comments must be received by June 7, 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, PO 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:

Britthany E. Beadle, Marketing Order Administration Branch, AMS, USDA, PO Box 96456, room 2526-S, Washington, DC 20090-6456; telephone: (202) 720-5127; or Teresa Hutchinson, Northwest Marketing Field Office, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326-2725.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Order No. 924 (7 CFR part 924), as amended, regulating the handling of fresh prunes grown in specified counties of Washington and in Umatilla County, Oregon, 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 proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including plums or fresh prunes, 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 Secretary has determined that the minimum grade, quality, and size requirements for fresh prunes imported into the United States should be the same as those established for fresh prunes grown in Washington and Umatilla County, Oregon, under Marketing Order No. 924.

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 12778, 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 5 handlers subject to regulation under the order and about 350 producers of Washington-Oregon fresh prunes. There are no known importers of fresh prunes. Small agricultural service firms, which include fresh prune 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 and producers may be classified as small entities.

Most of the prune variety plums (fresh prunes) grown in the United States are produced in certain counties in Washington and in Umatilla County, Oregon. Such fresh prunes are regulated under the order which establishes