

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 944

[Docket No. FV03-911-1 FR]

Limes Grown in Florida and Imported Limes; Termination of Marketing Order and Implementing Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; termination order.

SUMMARY: This final rule terminates the marketing order covering limes grown in Florida, the rules and regulations established under the order, and the requirements for limes imported into the United States that are shipped to the fresh market. The Department of Agriculture (USDA) has determined the order should be terminated due to the results of a recent referendum where growers indicated they did not support the continuance of the program. The termination of the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: March 6, 2003.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone (863) 324-3375, Fax (863) 325-8793; or Anne Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration

Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This action is being taken under the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," and §§ 911.49(b) and 911.64(d) of Marketing Order No. 911, regulating the handling of limes grown in Florida, hereinafter referred to as the "order."

This 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.

USDA is issuing this rule in conformance with Executive Order 12866.

This final 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 8c(15)(A) of the Act, any handler subject to an order may file with USDA 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 USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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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 rule terminates the marketing order covering Florida limes and the rules and regulations established under the order.

The order has been in effect since 1955. It authorizes the establishment of grade, size, quality, pack, and container requirements, although such requirements have not been in effect since February 2002. The order also authorizes production and marketing research and development. The program is funded by assessments imposed on lime handlers.

Section 911.64(d) of the order specifies that continuance referenda must be conducted among lime producers every sixth year before March 31. Therefore, during the period from September 9 to September 28, 2002, USDA conducted a referendum among lime growers to determine if they favored continuation of their program. The referendum order provided that USDA would consider terminating the provisions of the order if less than two-thirds of the number of growers voting and growers of less than two-thirds of the lime volume represented in the referendum favored continuance.

Ballots were mailed to 54 known lime growers in Florida. By the close of the voting period, 11 valid votes had been cast. The results show that 18.2 percent of the growers voting, who produced 57.73 percent of the volume represented in the referendum, favored continuation of the program. The order failed to pass either criteria for continuance, demonstrating a lack of producer support needed to carry out the objectives of the Act. In addition, effective February 19, 2002 (67 FR 6837), grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements prescribed under the order as specified in §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344 were suspended. Thus, it has been determined that the provisions of the order no longer tend to effectuate the declared policy of the Act.

Therefore, pursuant to section 8c(16)(A) of the Act and § 911.64 of the order, it has been found that the order provisions should be terminated.

Section 8c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order program. Congress was so notified on November 6, 2002.

Pursuant to § 911.65 of the order, the members of the Lime Administrative Committee shall serve as trustees to conclude and liquidate the affairs of the committee.

Section 8e of the Act provides that whenever certain specified 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 as those in effect for the domestically produced commodities. Since this rule terminates the lime marketing order for domestically produced limes and the resultant rules and regulations, a corresponding change to the import regulations must also be made.

In addition, effective February 19, 2002 (67 FR 6837), grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements prescribed under the order as specified in §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344 were suspended.

Consequently, this rule removes § 944.209.

Final Regulatory Flexibility Analysis

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 final 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 54 producers of limes in the production area and approximately 6 handlers subject to regulation under the marketing order. In addition, approximately 240 importers of limes are subject to import regulations and will be impacted by this termination. Small agricultural producers are defined as those having annual receipts of less than \$750,000, and small agricultural service firms,

which include handlers and importers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000.

The average f.o.b. price for fresh limes during the 2000–01 season was around \$14.75 per bushel and total shipments were 344,032 bushels for the season. Using this price and total volume for the season, all lime handlers could be considered small businesses under the SBA definition. The majority of Florida lime producers may also be classified as small entities.

In calendar year 2000, imports of limes totaled 9.7 million bushels. Assuming the same average f.o.b. price as for Florida limes, the average importer receives gross receipts of about \$600,000. Thus, the majority of lime importers can be classified as small entities.

This final rule terminates the marketing order covering limes grown in Florida, the rules and regulations established under the order, and the requirements for limes imported into the United States that are shipped to the fresh market. USDA has determined the order should be terminated. In a recent referendum, growers indicated that they did not support the continuance of the program.

This action eliminates program requirements imposed on lime handlers and importers. Minimum grade, size, maturity and quality requirements for limes imported into the United States are effective under § 944.209 (7 CFR 944.209). As this rule terminates the marketing order for limes and the corresponding regulations, the import regulations for limes imported into the United States are also terminated. All regulations were previously suspended effective February 19, 2002.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being terminated by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Termination of the order is expected to reduce the total annual reporting burden on Florida lime handlers by a total of 73.98 burden hours.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned

address in the **FOR FURTHER INFORMATION CONTACT** section.

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

After consideration of all relevant matter presented, including the results of a recently held producer referendum, it is hereby found that the lime marketing order and the rules and regulations in effect under the order do not tend to effectuate the declared policy of the Act and, therefore, are terminated.

It is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, 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: (1) This action relieves restrictions on handlers and importers by terminating the requirements of the lime marketing order and the lime import regulations; (2) handlers were given notice of this action in a widely distributed press release issued on November 5, 2002; (3) a final rule was published in the **Federal Register** on February 14, 2002, suspending all regulations from February 19, 2002 through February 24, 2003; and (4) no useful purpose would be served by delaying the effective date.

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, and under the authority of 7 U.S.C. 601–674, 7 CFR Parts 911 and 944 are amended as follows:

PART 911—[REMOVED]

1. Part 911 is removed.

PART 944—FRUITS; IMPORT REGULATION

§ 944.209 [Removed]

2. Section 944.209 is removed.

§ 944.350 [Amended]

3. In § 944.350, the word “limes,” is removed in the section heading and each place it appears in the section.

§ 944.400 [Amended]

4. In § 944.400, the word “limes,” is removed in the section heading and each place it appears in the section.

Dated: February 26, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-5080 Filed 3-4-03; 8:45 am]

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DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 984**

[Docket No. FV02-984-1 FIR]

Walnuts Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Walnut Marketing Board (Board) for the 2002-03 and subsequent marketing years from \$0.0124 to \$0.0120 per kernelweight pound of assessable walnuts. The decreased assessment rate should generate sufficient income to meet the Board's 2002-03 anticipated expenses of \$2,970,000. The lower assessment rate is due to a reduced budget that is about 5 percent less than last year's budget. The Board locally administers the marketing order (order) which regulates the handling of walnuts grown in California. Authorization to assess walnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The marketing year runs from August 1 through July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Marketing Assistant, or Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237,

Washington, DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, Stop 0237, Washington DC 20250-0237; telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 984, both as amended, (7 CFR part 984), regulating the handling of walnuts grown in California, 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.”

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on August 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, 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 USDA 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. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA 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 USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to decrease the assessment rate established for the Board for the 2002-03 and subsequent marketing years from \$0.0124 to \$0.0120

per kernelweight pound of assessable walnuts.

The California Walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001-02 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0124 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 13, 2002, and unanimously recommended 2002-03 expenditures of \$2,970,000 and an assessment rate of \$0.0120 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were \$3,124,800. The assessment rate is \$0.0004 lower than the \$0.0124 rate previously in effect. The lower assessment rate is necessary because this year's crop is estimated by the California Agricultural Statistics Service (CASS) to be 275,000 tons (247,500,000 kernelweight pounds merchantable), and the budget is about 5 percent less than last year's budget. Thus, sufficient income should be generated at the lower rate for the Board to meet its anticipated expenses.

Major categories in the budget recommended by the Board for the 2002-03 year include \$2,438,403 for program expenses, including marketing and production research projects, \$333,100 for employee expenses such as administrative and office salaries, payroll tax and benefits, \$80,500 for office expenses, \$79,500 for other operating expenses, and \$38,497 as a reserve for a contingency. Budgeted expenses for these items in 2001-02 were \$2,566,569 for program expenses including marketing and production research projects, \$313,200 for employee expenses, \$130,600 for office expenses, \$76,000 for other operating expenses, and \$38,431 as a reserve for a contingency.