

**§ 301.92–9 Costs and charges.**

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

**§ 301.92–10 Treatments.**

The following methods may be used to treat the regulated articles listed for *Phytophthora ramorum*:

(a) Soil must be heated to a temperature of at least 180 °F for 30 minutes in the presence of an inspector.

(b) Wreaths, garlands, and greenery of arrowwood (*Viburnum × bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos* spp.), rhododendron (*Rhododendron* species, including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*) must be dipped for 1 hour in water that is held at a temperature of at least 160 °F.

**§ 301.92–11 Inspection and sampling protocol.**

(a) *Annual nursery inspection and sampling.* To meet the requirements of § 301.92–5(a)(1)(iv) of this subpart, nurseries that ship regulated articles of nursery stock interstate must be inspected for symptoms of *Phytophthora ramorum* annually in accordance with this section.

(1) If the nursery contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If the nursery contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the nursery that exceeds 100. The regulated articles to be inspected will be randomly selected from throughout the nursery.

(2) If symptomatic plants are found upon inspection, the inspector must collect at least one sample per symptomatic plant.

(3) If fewer than 40 symptomatic plants are found in a nursery during an annual inspection, the inspector must collect samples from nonsymptomatic regulated articles of nursery stock so that the total number of sampled plants is at least 40.

(4) Samples must be labeled and sent for testing to a laboratory approved by APHIS.

(5) If any regulated articles within a nursery are found to be infected with *Phytophthora ramorum*, the nursery will be prohibited from moving regulated articles interstate until such time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.

(b) *Inspection and sampling of individual shipments.* To meet the requirements of § 301.92–5(a)(1)(iv) of this subpart, each shipment of regulated articles of nursery stock intended for interstate movement must be inspected for symptoms of *Phytophthora ramorum* in accordance with this section.

(1) If a shipment contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If a shipment contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the shipment that exceeds 100. The regulated articles to be inspected will be randomly selected.

(2) If symptomatic plants are found upon inspection, the inspector will collect at least one sample per symptomatic plant, and one sample per regulated article of nursery stock that is in close proximity to, or that has had physical contact with a symptomatic plant.

(3) Samples will be labeled and sent for testing to a laboratory approved by APHIS, and must be found free of *Phytophthora ramorum* prior to the interstate movement of any regulated articles contained in the shipment.

(4) If any plants intended for interstate movement are found to be infected with *Phytophthora ramorum*, the nursery from which they originate will be prohibited from moving regulated articles interstate until such time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.

Done in Washington, DC, this 12th day of February 2002.

**W. Ron DeHaven,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Parts 911 and 944**

[Docket No. FV01–911–2 FR]

**Limes Grown in Florida and Imported Limes; Suspension of Regulations**

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

**ACTION:** Final rule.

**SUMMARY:** This rule suspends regulations for one year for limes grown in Florida and for limes imported into the United States that are shipped to the fresh market. This rule suspends grade, size, quality, maturity, pack, inspection, assessment collection, reporting, and other requirements currently prescribed under the Florida lime marketing order (order). The order is administered locally by the Florida Lime Administrative Committee (Committee). This suspension gives the industry time to evaluate citrus canker eradication efforts and the market effects of suspending regulations for one year. This change reduces costs and will help the industry recover from the effects of citrus canker. The suspension of the grade, size, quality, maturity, and inspection requirements specified in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937.

**EFFECTIVE DATE:** This final rule becomes effective February 19, 2002 through February 24, 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 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing

Agreement No. 126 and Order No. 911, both as amended (7 CFR part 911), 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 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 (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 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. 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.

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 final rule suspends regulations currently prescribed under the Florida lime marketing order. This rule suspends grade, size, quality, pack, inspection, assessment collection, and other requirements for one year. This suspension provides the industry time to evaluate citrus canker eradication efforts and assess the market effects of

no regulation on the industry after the one-year suspension. This change also reduces costs and will help the industry recover from the effects of citrus canker.

Section 911.48 of the order authorizes the issuance of regulations for grade, size, quality, and pack for limes grown in the production area. Section 911.49 authorizes the modification, suspension, or termination of regulations issued under § 911.48. Section 911.51 provides that whenever limes are regulated pursuant to § 911.48, such limes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Under the order, fresh market shipments of Florida limes are required to be inspected and are subject to grade, size, quality, pack, and container requirements. Section 911.344 *Grade and Size Requirements* (7 CFR 911.344) states that no handler shall handle any variety of limes grown in the production area unless such limes of the group known as seeded or true limes meet the requirements specified for U.S. No. 2 grade, except as to color. Further, if such limes do not meet these requirements, they may be handled within the production area if they meet the minimum juice content requirement of at least 42 percent by volume and if handled in containers other than those specified in § 911.329. Such limes of the group known as seedless, large-fruited, or Persian limes must meet the requirements in §§ 911.311 and 911.329 and grade at least a U.S. Combination, Mix Color. They also must be at least two inches in diameter from January 1 through May 31, and at least 1 7/8 inches in diameter from June 1 through December 31. Further, they must contain not less than 42 percent juice content by volume. Section 911.344 also includes some container specifications and inspection requirements.

The order's pack and container requirements are specified in §§ 911.311 and 911.329. These sections state, in part, that limes must be packed in containers of 5.5, 8, 10, 20, and 38 pounds designated net weight. Each container of limes in each lot must be marked or stamped on the outside end in letters at least 1/4 inch in height to show the United States grade and either the average juice content of the limes or the phrase "average juice content forty-two percent (42%) or more." The containers must also be marked with a Federal-State Inspection Service lot stamp number showing that the limes have been inspected and with a stamp indicating size. Related provisions appear in the regulations at § 911.110

*Exemption certificates*; § 911.120 *Handler registration*; § 911.130 *Limes not subject to regulation*; and § 911.131 *Limes for processing*.

At its April 18, 2001, meeting, in a vote of six in favor and one opposed, the Committee recommended suspending the grade, size, quality, pack, inspection, assessment collection, and other requirements for one year. The Committee met again on May 16, 2001, to review the recommendation made at the earlier meeting and to clarify its original motion. The Committee requested that this rule be in place for one year beginning with the effective date of this rule.

Because limes are marketed all year, the Committee was not concerned about recommending a specific effective date for the suspension. The fiscal year covers the 12-month period beginning April 1 and ending March 31. Since the suspension only applies for the 12 months following the effective date of this final rule, the suspension of the handling, inspection, assessment, and other requirements will start during the 2001/2002 fiscal period and end during the 2002/2003 fiscal period. This is not expected to cause any problems for handlers.

The objective of the handling and inspection requirements is to ensure that only limes of acceptable quality enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the costs associated with the order may exceed the benefits derived at this time, especially in view of the reduction in production due to citrus canker.

The Committee is concerned, however, that the elimination of current requirements could possibly result in lower quality limes being shipped to fresh markets and that markets will be hurt by poor quality. For this reason, the Committee recommended that the suspension of requirements be effective for one-year only. This will enable the Committee to study the impacts of canker and the suspension and consider appropriate actions for ensuing seasons.

This rule allows handlers to ship limes without regard to the minimum grade, size, quality, pack, and inspection requirements for one year. This allows handlers to decrease costs by eliminating the costs associated with inspection and assessments. This rule does not restrict handlers from seeking inspection on a voluntary basis.

The purpose of this rule is to reduce the burden on the industry. If at any

time during the suspension the Committee determines this action is having an unfavorable impact on the industry, the Committee could meet and rescind the suspension.

This rule suspends §§ 911.110, 911.120, 911.130, 911.131, 911.311, 911.329, and 911.344 of the rules and regulations in effect under the order. Section 911.110 provides for hardship exemptions from inspection. Section 911.120 provides for the registration of handlers. Section 911.130 specifies minimum quantity and gift exemptions, and defines commercial processing. Section 911.131 provides requirements for limes for processing.

This rule also suspends § 911.234 requiring that an assessment rate of \$0.16 per 55-pound bushel equivalent of limes be collected from Florida lime handlers. Authorization to assess lime handlers enables the Committee to incur expenses that are necessary to administer the marketing order. With the suspension of handling, inspection, and assessment requirements, a limited Committee budget is needed for program administration. For the period of suspension, the Committee will meet and recommend a reduced budget. The Committee has about \$26,000 in operating reserves to cover approved Committee expenses.

In 1995, citrus canker was detected near the Miami International Airport. Citrus canker spread throughout South Florida and by March 2000, almost 1,500 acres of lime groves had tested positive for citrus canker. Prior to the outbreak of citrus canker, there were approximately 3,200 acres of commercial lime groves in Dade County. Estimates now place the Florida lime industry at somewhere between 600 and 1,000 acres of production. During the 1999–2000 season, fresh lime production was 774,111 bushels. This past season, production fell to 344,032 bushels. Production in 2001–02 is estimated to be 300,000 bushels.

Citrus canker is a highly infectious disease that attacks citrus trees. Canker attacks the tree and the fruit and may produce a variety of effects, including defoliation, severely blemished fruit, reduced fruit quality, and premature fruit drop. The only known method of eradicating citrus canker is to bulldoze and burn infected and exposed trees. Trees surrounding infected trees must also be bulldozed and burned. At the beginning of the eradication program, trees within a 125 foot radius of an infected tree were destroyed. However, after research was conducted, it was determined that all trees within a 1,900 foot radius had to be destroyed. The removal of these additional trees has

quicken the reduction of lime acreage in South Florida.

Many lime growers have lost all of their production to canker. By regulation, until citrus canker is eradicated, lime growers are not permitted to replant. The production area is also under a quarantine that makes it difficult to sell harvested fruit. Lost income from reduced volume and the cost of maintaining groves with reduced monetary returns have hurt the industry. Because of this and the substantially reduced crop, the Committee believes that regulation should be suspended.

By suspending regulation, the industry has an opportunity to evaluate how the citrus canker eradication efforts are progressing. The industry also has an opportunity to assess the market impact of having no regulation. Also, under a suspension, inspection fees and program assessment costs are eliminated. This is a savings for both growers and handlers. The savings will help offset some of the effects of citrus canker.

The Committee member who opposed the recommendation believes that there is enough limes remaining to warrant regulation. Without regulation, the member believes that poor quality lime shipments will negatively impact better quality shipments. He also stated that he believes imported limes will flood the market and destroy the market for domestically produced limes. USDA received several letters emphasizing these points. They were considered prior to the issuance of the proposed rule. As mentioned earlier, the Committee has similar concerns, but believes that a one-year suspension of regulations is necessary to help reduce costs for those producers and packers who still have limes to market. The suspension provides time to assess canker eradication efforts, evaluate the effects on the market of having no regulations for one year, and offers the industry some needed cost relief from assessments and inspection fees. For these reasons, the Committee voted to recommend that grade, size, quality, maturity, pack, inspection, assessment collection, and other requirements be suspended for one year.

Suspension of all of the specified requirements is expected to reduce the reporting burden on small or large Florida lime handlers by about 22 hours, and should further reduce industry expenses. During the suspension period, handlers will not have to file the following forms with the Committee: Application for Registered Handler (16.5 burden hours); Application for Registered Processor (10

minutes); Application for Lime Grade Label (5.5 burden hours).

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 suspends regulations for domestically produced limes, a corresponding change to the import regulations must also be made.

Minimum grade, size, maturity, and quality requirements for limes imported into the United States are effective under § 944.209 (7 CFR 944.209). This rule suspends § 944.209 requiring that limes imported into the United States be inspected for grade, size, maturity, and quality. Because this rule suspends import requirements for one year, it could also result in reduced costs for importers.

Mexico is the largest exporter of limes to the United States. In calendar year 2000, Mexico exported approximately 9,630,909 bushels of limes to the United States, while all other import sources shipped a combined total of approximately 98,182 bushels during the same time period. Other sources of lime imports to the United States include Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, and Venezuela. Mexico's highest volume occurs in the months of June through September.

#### 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.

There are approximately 52 producers of limes in the production area and approximately 10 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 suspension. 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, excluding receipts from other sources. The majority of Florida lime producers and handlers may be classified as small entities.

In calendar year 2000, imports of limes totaled about 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 suspends grade, size, quality, pack, inspection, assessment collection, and other requirements as specified in §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344. Section 944.209 of the import regulations, specifying the requirements for limes imported into the United States, is also suspended in its entirety. The suspensions are in effect for one year.

Citrus canker has reduced Florida lime production from 3,200 acres to between 600 and 1,000 acres. The only known method for eradicating citrus canker is to bulldoze and burn infected trees and exposed trees. This suspension gives the industry time to evaluate citrus canker eradication efforts and to assess the effects on the market of having no regulations for one year. This change also reduces costs and will help the industry recover from the effects of citrus canker.

At the April and May meetings, the Committee discussed the impact of this change on handlers and producers in terms of cost. This rule allows handlers to ship limes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements. It will decrease handler costs associated with inspection. This action also will eliminate the cost of assessments. Currently, handlers are required to pay an inspection fee of \$0.14 per bushel and an assessment rate of \$0.16 per bushel handled. Eliminating these costs will result in a savings for growers and handlers. Importers also will benefit from the reduction in inspection costs. These savings will help offset the loss of income from canker, as well as assist in the costs of replanting, when

replanting is again authorized. The purpose of this rule is to reduce the burden on the industry. If at any time during the suspension the Committee determines this action is having an unfavorable impact on the industry, the Committee could meet and rescind the suspension. The benefits of this rule are expected to be available to lime handlers, growers, and importers, regardless of their size of operation.

The Committee discussed alternatives to this change, including not suspending regulations at all, as well as terminating the order. Terminating the order was deemed too drastic an action at this time. However, most of the Committee members believe that suspension is necessary because of the substantially reduced crop and to reduce inspection and assessment costs. Citrus canker has had a negative economic impact on the lime industry and cost savings will be beneficial. Suspending regulations also provides the Committee time to evaluate the effects of canker and to consider what actions should be taken in the future. The Committee acknowledged that quality problems might occur in the absence of regulation, but believed that suspension was the best course of action at this time given the industry situation. Therefore, the alternatives of termination and continuing without change were rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. Suspension of all of the specified requirements is expected to reduce the reporting burden on small or large Florida lime handlers by 22 hours, and should further reduce industry expenses. During the suspension period, handlers will not have to file the following forms with the Committee: Application for Registered Handler (16.5 burden hours); Application for Registered Processor (10 minutes); Application for Lime Grade Label (5.5 burden hours). As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

Pursuant to section 8e of the Act, this action also suspends the lime import regulation (7 CFR 944.209). That regulation specifies grade, size, quality, maturity, inspection, and other requirements.

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

The Committee's meetings were widely publicized throughout the lime industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 18, 2001, and the May 16, 2001, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on August 6, 2001 (66 FR 40923). Copies of the rule were mailed or sent via facsimile to all Committee members and lime handlers. Finally, the Office of the Federal Register and USDA made the rule available through the Internet. A 30-day comment period ending September 5, 2001, was provided to allow interested persons to respond to the proposal.

Twenty-five comments were received during the comment period in response to the proposal. Many of the points made in the comments were thoroughly discussed prior to the Committee vote and the issuance of the proposed rule.

Of the twenty-five comments received, four were in support of the proposal, one from a grower, two from handlers, and one from an importer. Three of the comments in support of the suspension discussed the costs associated with growing, handling, and importing limes.

An importer of limes stated that, with no requirement to have limes inspected, there would be reduced costs for importers. The commenter further stated that this suspension would also result in cost savings for both growers and handlers of limes.

A handler and a grower of Florida limes stated that the lime industry cannot afford to maintain the Federal marketing order. One commenter stated that the costs for picking limes have exceeded the return to the grower, increasing the need for cost savings. Another commenter stated that the average return per bushel has declined by \$4.00 since 1999. The effort to prevent the further spread of canker has also increased industry costs.

Before making a recommendation to suspend regulation, the Committee prepared a budget of expenses to determine the assessment rate necessary to cover expenses required to maintain the order. With the reduced production, the Committee determined an assessment rate of \$0.30 per bushel would be necessary to maintain the order. That rate is almost double the

existing assessment rate. Increasing the assessment rate would have meant a further reduction in returns. The Committee believes the suspension will help increase returns by reducing costs.

Citrus canker has reduced the Florida lime industry from approximately 3,200 acres before the outbreak of citrus canker to less than 1,000 acres currently. The only known way to eradicate citrus canker is to bulldoze the infected and exposed trees and burn them. The production area is also quarantined and no new trees can be planted at this time. The money saved as a result of the suspension can be used to offset the loss of income due to the reduced production of limes.

Two commenters in support of suspension noted that this change is for a period not to exceed one year. The Committee determined that suspending regulations for a period not to exceed one year would give the industry time to assess the citrus canker eradication efforts and evaluate the effects of no regulations on the market. During the suspension, the Committee will meet periodically to discuss the effects citrus canker has had on the industry and the impact of no regulation. After the one-year period, regulations will return absent further action by the Committee. However, if conditions warrant, the Committee could recommend reinstating the suspended requirements earlier. During the period of suspension, handlers of domestic and imported limes are free to voluntarily obtain inspection to assure the quality of the limes marketed, and to meet the needs of their customers.

Two of the comments in favor of the rule discussed maintaining quality in the absence of regulations. Both commenters stated that the market and consumers would dictate the quality of limes that is acceptable. Shippers will continue to supply their customers with a high quality product because the buyer will pay a premium price for it. Also, as previously noted, inspection can be obtained to assure that the limes meet buyer specifications.

Twenty-one comments were received in opposition to this rule. Fourteen were from importers of limes and seven comments were received from Florida lime growers and handlers.

The fourteen lime importers opposing the suspension were concerned by the potential of poor quality imports, and the negative impact such imports could have on market prices and sales. 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 suspends regulations for domestically produced limes, a corresponding change to the import regulations must also be made.

The comments received from importers all expressed concern for the impact on quality resulting from the suspension. These same or similar concerns were also expressed in six of the comments received from Florida lime growers and handlers. The Committee itself had similar concerns, and weighed these concerns against the need to reduce costs. For this reason, the Committee recommended that the suspension of requirements be effective for one year only. This will enable the Committee to study the impacts of canker and the suspension, reduce costs during a very difficult time, and consider appropriate actions for ensuing seasons. If the elimination of the current requirements does result in the shipment of lower quality limes and markets are hurt, the Committee could recommend reinstitution of the requirements.

This rule relaxes requirements and provides handlers and importers of limes with more flexibility in meeting the needs of their buyers. Handlers and importers will be able to market limes without inspection and eliminate inspection costs. Buyer and seller interaction will determine the terms and conditions of sales and the quality of limes sold and purchased. As previously noted, even though inspection requirements are suspended, inspection of limes can be obtained on a voluntary basis for a fee by the handler or importer to assure quality and meet customer requirements.

The Committee believes one year of suspension will determine if consumer demand will keep quality high or result in product substitution and loss of market share. The purpose of this rule is to reduce the burden on the industry. If at any time during the suspension the Committee determines this action is having an unfavorable impact on the industry, the Committee could meet and rescind the suspension. Consequently, the Committee recommended suspending provisions for one year to garner the benefits of the associated cost savings and to study the effect on the market. This action reduces costs in view of the current industry situation. It also provides an opportunity to evaluate the progress on the eradication of citrus canker and the market impact of no regulation.

Five commenters addressed the suspension as if it were a termination of the marketing order. This action does

not terminate the order. It only provides a one-year suspension of the regulations specified above. Terminating the order would require additional Committee action or action on the part of the industry.

Four comments stated that this rule change would only benefit importers of limes by allowing inferior limes to be imported into the U.S. It is doubtful whether the importation of inferior quality limes will benefit importers. Experience has shown that the marketing of poor quality tends to cause the market to deteriorate for everyone.

Another commenter expressed concern regarding Committee membership when an industry member may import limes in addition to handling limes. The commenter was concerned that this could unduly shape the decision-making of the Committee and bias decisions in favor of importers. The Committee is established and selected in accordance with the provisions of the order. Committee meetings concerning this action were widely publicized throughout the lime industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Further, many of the comments received in opposition to this action were from importers.

One commenter stated that some of the members voting for suspension were not qualified to serve as members. Nominations for the Committee were held in February 2001, and the new Committee was seated for the April meeting. Prior to seating the new Committee, qualifications to serve were confirmed by USDA field representatives.

Two comments expressed concern that some Committee members were not present at the time the Committee voted to make this recommendation. As with all Committee meetings, the time and place of the Committee meetings were well publicized throughout the industry. All members of the Committee and growers and handlers in the industry were given reasonable notice of the meeting, and given an opportunity to attend.

One commenter expressed concern that the members of the Committee that made this recommendation would be responsible for ending the suspension. The suspension of the handling, inspection, and assessment requirements is for a period of time not to exceed one year. At the end of that time, no action by the Committee will be required to reinstate regulations. Regulations will revert back at the end of the one-year period. However, further suspension or termination would

require action on the part of the Committee and a vote. The suspension could be removed sooner if marketing conditions deteriorate for limes, or for other good cause.

Two commenters stated that this action should be postponed until after the continuance referendum required under the order. Every sixth year, growers vote in a continuance referendum to determine whether or not the industry continues to support the marketing order. Such a referendum, absent this suspension, would have been scheduled for some time during the coming year. It now will most likely be scheduled after the suspension expires.

However, a continuance referendum would be an indication of industry support for the order, not an indicator of support or opposition to the suspension. Support for the order is something different than what is contemplated by this action. This suspension does not terminate the marketing order. This action was recommended by the Committee to reduce industry costs and to evaluate the progress of citrus canker and the market's response to no regulation during the one-year suspension.

USDA believes postponing the suspension until after a continuance referendum is held would not be in the best interest of industry. The question at hand is not whether or not to terminate the marketing order, but on whether or not the industry would benefit from the cost savings provided by the suspension. The Committee is the organization responsible for the local administration of the marketing order. The Committee voted six in favor to one opposed in support of the suspension. Delaying the suspension would only postpone the industry's opportunity to benefit from the cost saving offered by this suspension.

Another commenter stated that growers who have the majority of lime acreage do not support the suspension. The marketing order is created to benefit all growers, not just the ones with the most acreage. We do note that, of the grower members seated for the vote recommending this suspension, all three voted for suspension.

One commenter stated that the industry is still strong enough to maintain the marketing order. Another stated that the industry has a willingness to continue. The lime industry has overcome past hardships. However, this action will provide cost reduction relief in view of the current situation facing the lime industry.

Growers are facing reduced production from canker and increased

costs from requirements established to battle its spread. After Hurricane Andrew, the Committee recommended that certain regulations be relaxed and assessments be eliminated for two years to help the industry recover. This action is another such incidence. This action does not terminate the order, but offers some cost relief to provide the industry an opportunity to recover.

In January 1996, the Committee was concerned by the state of the industry. To address its concerns, the Committee voted to suspend all regulation for a six-month period. However, prior to the suspension taking effect, the Committee determined the industry had sufficiently recovered and voted to rescind the suspension. The Committee has taken a similar action here. At any time during the one-year suspension, the Committee could vote to rescind the suspension and return to regulation.

Another commenter recommended that requirements for imports of size 250's apply year round as opposed to six months. However, this recommendation is not within the scope of the proposed rule on suspending the requirements.

One comment was received after the comment period ended. This comment did not raise any issues that were raised by comments that were timely filed.

The suspension will allow those still active in the lime industry to benefit from a needed reduction in costs given the current circumstances facing the industry. A one-year suspension of the regulations will provide needed cost savings and a period to evaluate the status of canker and on the market effects of the suspension of regulation. Accordingly, no changes are being made to the rule as it was proposed, based on the comments received.

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 information and recommendation submitted by the Committee, the comments received, and other available information, it is hereby found that the provisions suspended, as hereinafter set forth, will not tend to effectuate the declared policy of the Act for the period of suspension. Therefore, these

provisions of the order are being suspended.

It is further found 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 2001–02 crop, and this rule needs to be in effect as soon as possible to provide relief to the Florida lime industry. No special preparations are needed by handlers and importers to take advantage of this relaxation. Also, the industry has been discussing this issue for some time, and the Committee has kept the industry well informed. It has also been widely discussed at various industry and Committee meetings.

#### 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 above, 7 CFR parts 911 and 944 are amended as follows:

#### **PART 911—LIMES GROWN IN FLORIDA**

1. The authority citation for 7 CFR parts 911 and 944 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In part 911, §§ 911.110, 911.120, 911.130, 911.131, 911.234, 911.311, 911.329, and 911.344 are suspended in their entirety effective February 19, 2002, through February 24, 2003.

#### **PART 944—FRUITS; IMPORT REGULATIONS**

3. In Part 944, § 944.209 is suspended in its entirety effective February 19, 2002 through February 24, 2003.

Dated: February 8, 2002.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

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