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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:

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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.

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 continuance 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.