Warehouses. Of the above comments 2,964 were against the proposed rule, 275 were in favor of the proposed rule and 3 had no opinion. Of the comments received in opposition to the proposal, 2,236 were in the form of preprinted postcards that were submitted by tobacco producers in Virginia.

Producers not in favor of the proposed rule expressed confidence in the security offered by the USWA and therefore, asked that tobacco warehouses to which they deliver tobacco be allowed to remain licensed under the USWA. Producers in favor of the proposed rule expressed a common concern about the charges assessed by warehouses licensed under the USWA.

The primary functions of tobacco auction warehouses are currently regulated by several USDA agencies. Tobacco auction warehouses approved by the Agricultural Marketing Service (AMS) and FSA may sell producer-owned and dealer-owned tobacco. AMS strictly regulates the manner in which the tobacco must be presented for sale and graded for sale. Further, AMS regulations include detailed recordkeeping requirements. Further, AMS has representatives on-site during all sales of tobacco.

In addition, the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, strictly regulate the sale of tobacco. The Commodity Credit Corporation (CCC) and FSA regulate auction warehouses through the Tobacco Marketing Quota and Price Support Programs they administer. These regulations are codified at 7 CFR part 723 and 1464. Under these regulations, CCC and FSA require that warehouse operators retain detailed records of all tobacco handled by them. The tobacco and the transactions associated with it must be tracked and recorded from the time the tobacco is brought into the warehouse by producers, to the time it leaves the warehouse.

The type and level of regulation by AMS, CCC, and FSA are unique to tobacco auction warehouses. Producers who believe they have not been treated fairly by the warehouse operator may seek relief directly from the on-site representatives of the various Government Agencies. If such allegations are confirmed, under the provisions of 7 CFR parts 723 and 1464, CCC or FSA has the right to take appropriate actions against the tobacco auction warehouse to protect the interests of producers. Accordingly, because tobacco auction warehouses are sufficiently regulated by other USDA regulations, and involve sales, primarily, rather than storage, FSA will discontinue licensing tobacco auction warehouses under the USWA. Additionally, those licenses currently held by tobacco auction warehouse operators will be administratively canceled by Secretarial determination effective October 31, 1999.

List of Subjects in 7 CFR Part 737

Administrative practice and procedure, Agricultural Commodities, Surety Bonds, Tobacco, Warehouses.

Accordingly, the provisions of 7 CFR part 737 are amended as follows:

PART 737—TOBACCO WAREHOUSES

1. The authority citation for part 737 continues to read as follows:

Authority: 7 U.S.C. 241 *et seq.*

2. Section 737.2 is amended by revising the introductory text and paragraph (j) to read as follows:

§ 737.2 Terms defined.

For the purposes of this part, unless otherwise provided, the following terms shall mean:

* * * * *

(j) *Warehouseman.* Any person lawfully engaged in the business of storing tobacco and holding a warehouse license.

* * * * *

3. Section 737.4 is revised to read as follows:

§ 737.4 Grounds for not issuing license.

A license for the conduct of a warehouse shall not be issued if it be found by the Secretary, or his designated representative, that the warehouse is not suitable for the proper storage of tobacco, that the warehouseman is insolvent or is incompetent to conduct such warehouse in accordance with the act and the regulations in this part, or that there is any other sufficient reason within the purposes of the act for not issuing such license. Further, a license shall not be issued for any place to which tobacco is delivered by the producers or their agents for the purposes of obtaining CCC price support advances and for the display and auction of tobacco.

4. Section 737.34 is revised to read as follows:

§ 737.34 Package arrangement.

(a) Each warehouseman shall arrange the packages of tobacco so that the identification number thereon as required by § 737.33 is visible, readily accessible, and arranged so as to permit an accurate check thereof, unless waived in writing by the Administrator.

(b) If, at any time, a warehouseman shall be offered tobacco in such quantity for storage so as to exceed the capacity of this warehouse, as shown in his license, he shall not accept such tobacco until he has first secured authority through an amended license, and after such authority has been granted the warehouseman shall continue to arrange the tobacco in accordance with paragraph (a) of this section.

Signed at Washington, DC, on November 3, 1998.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 98–29898 Filed 11–6–98; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 911 and 915

[Docket No. FV98–911–2 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule changing the container requirements prescribed under the Florida lime and avocado marketing orders. The marketing orders regulate the handling of limes grown in Florida and avocados grown in South Florida and are administered locally by the Florida Lime Administrative Committee and the Avocado Administrative Committee (Committees). This rule continues in effect changes to simplify 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 continues in effect the removal of weight limits on lime and avocado containers packed within a master container, and the relaxation of certain minimum weight requirements on containers of avocados. In addition, this rule continues in effect the elimination of specific container dimension requirements for both limes and avocados, but maintains net weight requirements. These changes are needed to reduce handling costs and provide greater flexibility in lime and avocado packing operations.

EFFECTIVE DATE: December 9, 1998.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, 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, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–5456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

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 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 date of the entry of the ruling.

This rule continues in effect several changes to the orders' pack and container rules and regulations. It continues in effect changes in container marking requirements for both limes and avocados that reduce the number of times the size for limes and the grade for avocados need to appear on a container. In addition, this rule continues in effect the removal of net weight limits on lime and avocado containers packed within a master container, and the relaxation of certain minimum net weight requirements on containers of avocados. This rule also continues in effect the elimination of specific container dimension requirements for both limes and avocados. Therefore, this rule reduces handling costs and provides 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.

Sections 911.48 and 915.51 of the orders provide 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. Prior to this change, requirements specified 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 was to 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. Former stamping requirements meant that each packing line needed to have at least two in-line stamp rollers or ink jet printers. In cases where the line had only one stamping device, the containers had to be reversed and run through the line a second time for limes, and three times for avocados. This could take a considerable amount of time. This change allows containers to move more rapidly through the packing line, reduces the number of stamping machines required, and decreases the costs associated with these activities.

Most smaller operations stamp the containers by hand. To meet the prior requirements, each box had to be rotated and stamped in more than one location. This increased 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. Prior to this rule, sections 911.329(a)(3) and 915.305(b) specified that individual packages of limes or avocados contained within master containers were 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 bases. 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. Prior to this rule, regulations specified 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. Prior to this rule, requirements included 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 outlined container dimension requirements for limes and avocados, respectively. These sections established specific interior dimensions in inches for containers approved for use under the orders. The dimensions varied 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 had 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 have 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), 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 the 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. 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. The former stamping requirements meant that each packing line needed to have at least two in-line stamp rollers or ink jet printers. In cases where the line had only one stamping device, the containers had to be reversed and run through the line a second time for limes, and three times for avocados. This took 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 prior requirements, each box had to be rotated and stamped in more than one location. This increased 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 AAC 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 AAC 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 discernible 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 were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on July 13, 1998. Copies of the rule were mailed by the committees' staff to all committee members and lime and avocado handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended September 11, 1998. No comments were received.

After consideration of all relevant material presented, including the committees' recommendations, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 37475, July 13, 1998)

will tend to effectuate the declared policy of the Act.

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.

PART 911—LIMES GROWN IN FLORIDA

Accordingly, the interim final rule amending 7 CFR part 911 which was published at 63 FR 37475 on July 13, 1998, is adopted as a final rule without change.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 53 FR 37475 on July 13, 1998, is adopted as a final rule without change.

Dated: November 4, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–29936 Filed 11–6–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV98–916–2 FIR]

Nectarines and Peaches Grown in California; Relaxation of Quality Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule relaxing ''CA Utility'' quality requirements for California nectarines and peaches for the remainder of the 1998 season. The ''CA Utility'' quality requirements are based on minimum quality requirements established under the California Agricultural Code, with a limitation on the amount of fruit meeting U.S. No. 1 or higher grade requirements that may be present in each container marked ''CA Utility.'' The interim final rule increased that percentage to not more than 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. A non-scoreable blemish is a defect that does not cause fruit to fail U.S. No. 1 grade requirements. This rule continues in effect this relaxation for the remainder of the 1998 season. This rule allows more U.S. No. 1 nectarines and peaches to be packed in containers marked ''CA Utility.'' The added packing flexibility provided by this rule is expected to benefit growers, handlers, and consumers.

EFFECTIVE DATE: November 10, 1998.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; Fax: (209) 487–5906; or George Kelhart, Technical Advisor, 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. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632, or E-mail: Jay__N__Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR Parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12866, 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.

This rule continues in effect, for the remainder of the 1998 season, the modification to the orders' administrative rules and regulations relaxing the ''CA Utility'' quality requirement by allowing more U.S. No. 1 grade nectarines and peaches in containers marked ''CA Utility.'' Prior to the publication of an interim final rule (63 FR 50461, September 22, 1998), the term ''CA Utility'' meant that not more than 30 percent of the nectarines and peaches in any container could meet or exceed the requirements of the U.S. No. 1 grade, and that the fruit meet other specified requirements. The interim final rule increased that percentage to 40 percent except that at least one-quarter of the fruit grading U.S. No. 1 in such containers must have non-scoreable blemishes. A non-scoreable blemish is a defect that will not cause the fruit to fail to meet the requirements of U.S. No. 1. This relaxation is in effect for the remainder of the 1998 season only, and allows more No. 1 grade fruit to be packed as ''CA Utility'' quality.

The Nectarine Administrative Committee (NAC) and Peach Commodity Committee (PCC) (committees) met on September 15, 1998, to discuss this relaxation. At that time, the NAC voted without opposition to recommend the increased percentage of U.S. No. 1 nectarines with non-scoreable blemishes. The PCC voted with eight in favor and one opposed to recommend a similar change. The member opposed believed that it was too late in the season to make such a change, that such a change would disadvantage those who had already