all required cars or to replace cars which become defective and must be removed from such sets of cars. The remaining serviceable cars are subsequently delayed awaiting replacement of the defective cars in order to provide car sets of the size required by the applicable tariffs. The delays to cars caused by these conditions further aggravate existing car shortages and contribute to loss of utilization of covered hopper cars.

It is the opinion of the Commission an emergency exists and that there is good cause to authorize the application of multiple-car rates requiring the use of twenty-five (25) to one hundred (100) cars to shipments of fewer cars when the carriers are unable to supply all of the cars required by the applicable tariffs; that notice and public procedure herein are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1312 Service Order No. 1312.

(a) *Railroads authorized to transport unit-grain-trains of less than number of cars required by tariffs.* Any railroad which is unable to supply the number of covered hopper cars required by its tariffs to transport unit-grain-train shipments of grain, grain products or soybeans is authorized to operate unit-grain-trains comprising fewer cars in accordance with the scale provided in paragraph (b) of this section.

Number of cars required to comply with tariff provisions	Maximum number of cars authorized to reduce	Train load weight reduction per car reduced from unit train
25-49 cars	2 cars	4 pct.
50-74 cars	4 cars	2 pct.
75-99 cars	6 cars	1.33 pct.
100 cars and over	8 cars	1 pct.

(b) *Scale of Unit-Grain-Train Reduction.*

(c) *Adjustment of Minimum Weights.* (1) The minimum quantity to be transported by any unit-grain-train from which cars have been authorized by this order to be removed shall be reduced by the percentages provided in paragraph (b) of this section.

(2) If the cars are removed from a unit-grain-train which is required by tariff provisions to be one of two or more consecutive unit train movements the deficit tonnage may, with the consent of the carrier, be added to the tonnage transported in one or more of the subsequent trips required by the tariffs. If the carrier fails to give its consent or if the shipper notifies the carrier that it will be impossible to add the deficit tonnage to subsequent consecutive shipments, the total volume of all consecutive shipments will be reduced, on a per train basis, as provided in paragraph (b) of this section.

(3) Nothing in this order shall be deemed to authorize any change in minimum weights required by the applicable tariffs to be loaded into each car nor to authorize the loading of any car in excess of its stencilled load limit.

(d) *Unit-Grain-Trains Defined.* The term "unit-grain-train" as used in this order means a multiplecar shipment of grain, grain products, or soybeans subject to a tariff provision which requires the use of twenty-five (25) or more covered hopper cars in a single shipment, on one bill of lading, on one day.

(e) *Consent of Shipper Required.* The consent of the shipper is required before any unit-grain-train is operated with a reduced number of cars as authorized by paragraphs (a) and (b) of this section.

(f) *Billing to be endorsed.* The bills of lading and the master way bills of each unit-grain-train authorized by this order to operate with fewer than the required number of cars shall bear the following endorsement:

Unit-grain-train comprising ( ) cars transporting ( ) tons. Reduction of train from ( ) cars to transport ( ) tons authorized by ICC Service Order No. 1312.

(g) *Application.* (1) The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(2) The provisions of Service Orders Nos. 1308, 1304, and 1280, revisions thereof or amendments thereto, shall remain in effect.

(3) All tariff provisions not specifically modified by this order shall remain in effect.

(4) The application of all other rules and regulations, insofar as they conflict with the provisions of this order, is suspended.

(h) *Effective date.* This order shall become effective at 12:01 a.m., March 24, 1978.

(i) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., May 31, 1978.

(49 U.S.C. 1(10-17).)

It is further ordered, That copies of this order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael, Member Joel E. Burns not participating.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-8280 Filed 3-28-78; 8:45 am]

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 18—MARINE MAMMALS

Designation of Marine Otter as a Marine Mammal

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service hereby determines that the marine otter (*Lutra felina*) be formally designated as a marine mammal for purposes of the Marine Mammal Protection Act of 1972. This action is being taken, based on available biological data, in order to afford this endangered species additional protection.

EFFECTIVE DATE: March 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Marshall L. Stinnett, Special Agent in Charge, Regulations and Penalties, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 202-343-9242.

SUPPLEMENTARY INFORMATION: On June 16, 1977, The Service published a proposed rulemaking in the FEDERAL REGISTER (42 FR 30659-30660) advising that sufficient biological data was on file to support a determination that the marine otter, an endangered species which is protected under the Endangered Species Act of 1973 (16 U.S.C. 1531-1543), required additional protection and should be added to the list of species formally designated as marine mammals.

Public comments were requested on this proposed rule, with comments received no later than July 18, 1977, to be considered before adoption of the final rule. One comment, from the Environmental Defense Fund, was received and that comment supported the proposed designation for the reasons therein stated. The Fund also pointed out that the marine otter was not listed as "depleted" under the Marine Mammal Protection Act. The Service has taken this point under advisement and will respond at a later date.

Also, this document corrects two previous errors in the association of the common names with the scientific names *Trichechus inunguis* and *Trichechus senegalensis*.

The final rule is therefore adopted as proposed. The principal author of this document is Joel McLeod, Legal Specialist, Division of Law Enforcement.

NOTE.—The Fish and Wildlife Service has determined that (1) this final rule is not a major Federal action significantly affecting the human environment and requiring preparation of an environmental impact statement and (2) that this final rule does not contain a major rule requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Accordingly, the definition of "marine mammal" contained in § 18.3 of Part 18, Subchapter B, Chapter I of Title 50, Code of Federal Regulations, is amended to read as follows:

§ 18.3 Definitions.

In addition to the definitions contained in section 3 of the Act and in Part 10 of this subchapter, and unless the context requires otherwise, in this Part 18:

* * * * *

"Marine mammal" means any specimen of the following species, whether alive or dead, and any part thereof, including but not limited to, any raw, dressed, or dyed fur or skin:

Scientific name	Common name	Date listed
Ursus maritimus	Polar bear	Dec. 21, 1972.
Enhydra lutris	Sea otter	Do.
Odobenus rosmarus.	Walrus	Do.
Dugong dugon	Dugong	Do.
Trichechus manatus.	West Indian manatee.	Do.
Trichechus inunguis.	Amazonian manatee.	Do.
Trichechus senegalensis.	West African manatee.	Do.
Lutra felina	Marine otter	Date of FR publication.

NOTE.—Common names given may be at variance with local usage.

* * * * *

Dated: March 23, 1978.

LYNN A. GREENWALT,
Director, Fish and Wildlife Service.

[FR Doc. 78-8258 Filed 3-28-78; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Parts 911 and 915]

[Docket Nos. AO-267-A9, AO-254-A8]

LIMES GROWN N FLORIDA—AVOCADOS GROWN IN SOUTH FLORIDA

Recommended Decision and Opportunity To File Written Exceptions on Proposed Further Amendment of the Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends certain changes in the marketing agreements and orders regulating the handling of limes grown in Florida and avocados grown in South Florida, based on proposals of the Florida Lime and Avocado Administrative Committees considered at a public hearing on February 7, 1978. The principal changes would: Authorize addition of a public member to each committee; allow an assessment rate exceeding 20 cents per bushel when recommended by a specified majority of the committee; change the financial reserve provision to permit the carryover of up to three years' expense; authorize regulations for export shipments that are different from regulations for shipments to domestic markets; delete the provision allowing compensation to committee members for performing program duties; and, for limes, exclude export shipments from volume control and handler prorate base calculations

DATE: Comments are due on or before April 14, 1978.

ADDRESS: Send two copies of written exceptions to this decision to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b).)

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed further amendment of the marketing agreements and orders (7 CFR Parts 911 and 915), regulating, respectively, the handling of limes grown in Florida and avocados grown in South Florida (hereinafter, in the text of the Fndings and Conclusions, collectively referred to as the "orders").

The above notice of filing of the decision and of opportunity to file exceptions thereto is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Preliminary statement. The proposed amendment of the marketing agreements, as amended, and orders, as amended, was formulated on the record of a public hearing held at Homestead, Fla, on February 7, 1978. Notice of the hearing was published in the January 17, 1978, issue of the FEDERAL REGISTER (43, FR 2401). The proposals contained in the notice of hearing were submitted by the Florida Lime Administrative Committee and the Avocado Administrative Committee.

Material issues. The material issues of record are as follows:

(1) Add a new definition "Export" and authorize regulations for export shipments that are different from regulations for shipments to other destinations.

(2) Provide for addition of a public member to each committtee.

(3) Authorize establishment of an assessment rate exceeding 20 cents per bushel if recommended by a specified majority of each committee.

(4) Delete the provision allowing committee members to receive compensation for performing program duties.

(5) Change the financial reserve provision to permit the carryover of up to three years' expenses.

(6) For limes, exclude export shipments from volume control and handler prorate base calculations.

(7) Make conforming changes.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Each of the orders should be amended, as hereinafter set forth, to include a definition of the term "export" and to authorize regulations applicable to shipments to export that are different from regulations applicable to shipments to other destinations. "Export" should be defined as meaning the shipment of limes or avocados (as the case may be) to any destination which is not within the 48 contiguous States or the District of Columbia of the United States or Canada.

While the principal markets for Florida limes and avocados are in the area emcompassed by the 48 contiguous States, the District of Columbia, and Canada, some quantities of these fruits are marketed in markets outside this area and there is a potential for expansion of such markets. Expansion of the export market may require that regulations such as those prescribing grades, sizes, quality, maturity, packs, or containers be tailored to the peculiar requirements or demands of those markets. The inclusion in the order of authority for different regulations, would permit recognition of market differences in the issuance of regulations. The inclusion of a definition of the term export would delineate the area in which the export markets are located and this would facilitate the issuance of such regulations.

There is a strong indication that the production of both limes and avocados will increase in the future. Increased production creates a need for expansion of all markets. Consequently, the orders should contain provisions which will enable and encourage such expansion.

The authority for different regulations should pertain to any regulations relating to grade, size, quality, container or pack, including maturity for avocados and juice content for limes, to provide the committee and the Secretary the flexibility needed to deal with the differences in requirements and demands of different markets. The committee, in its consideration of the need for regulations, should appraise the need for different regulations for shipments to export, and if it concludes that a different regulation is needed, should forward a recommendation detailing such regulation along with the information upon which such recommendation is predicated. If the committee determines that, under prevailing circumstances, no different regulation is necessary, it should so recommend.

Some concern was expressed at the hearing that the issuance of regulations which may prescribe less strigent requirements for export markets could result in enforcement problems, through the possibility of fruit packed to lower standards for export being diverted to unauthorized markets. This possibility is recognized. However, the view was expressed that appropriate safeguards, requirements, and procedures could be established which would minimize any such occurrence. It was indicated that requiring appropriate marking of containers of fruit for export could serve to distinguish them from containers for other markets and this could constitute a safeguard measure. Also, it was indicated that the committees could employ compliance personnel to exercise surveillance, if it appears that this is necessary to exercise the necessary control so as to assure that fruit is not diverted.

(2) Each of the orders should be amended as hereinafter set forth to provide that a public member and alternate may be added to each program's administrative committee.

A public member could be helpful in bringing the viewpoint of the general public into committee deliberations. Such viewpoint could be particularly valuable in planning, implementing and evaluating committee plans for quality and grade regulations, for market development, and consumer education, nutrition and publicity programs. The public member should serve in the same capacity as any other member and, thus, would be able to initiate proposals to be considered by the committee; vote on committee actions; and should be reimbursed for expenses incurred in attending committee meetings or in the performance of committee duties. A public member should not be engaged in the commercial production, marketing, buying, packing, grading, or processing of agricultural commodities. Nor should any such member be an officer, director, member, or employee of any firm engaged in those activities.

The procedure and guidelines for nominating persons to fill public member positions on each committee should be established as an administrative rule. Thus, prior to selection of a public member, each committee should recommend appropriate procedures and guidelines to the Secretary for approval. Several methods were suggested for nominating the public member, including establishment of a subcommittee to develop lists of potential nominees; nomination by committee members; solicitation of potential nominees through use of publications in the production area; and request any interested person to attend a committee meeting and seek nomination. The committees should weigh these and other appropriate suggestions and recommend a procedure and qualifications for establishment under both orders that is designed to result in nomination of persons who could make a contribution in the role of public member.

Under the orders, the Secretary has discretion to select committee members from those persons nominated in accordance with order requirements, or from other eligible persons. This should apply to the public member. However, it is customary for nominations to be made by the industries, therefore, the committees should make such nominations.

The term of office for public members, insofar as possible, should coincide with those of grower and handler members, that is a one-year term beginning April 1 and ending on March 31 of the following year. It was advanced that it would take a period of time for a public member to become familiar with the lime and avocado industries and committee procedures, and that it would be more beneficial and useful and less costly to the committees and the public member, if such member resided in the production area and if such member could be nominated and serve, without the current limitation that consecutive terms of office of grower and handler members shall be limited to three terms. Hence, the public member should be permitted to serve more than three terms, if nominated by the committee and approved by the Secretary for more than three terms.

If the orders are amended, the committees should, as soon as practicable, subsequent to the effective date, recommend appropriate rules and procedures and hold committee meetings to consider nominees for public member on each committee for the remainder of the then current term of office, which would end March 31, 1979.

The committee proposals contained a provision that if each committee is increased by one member, the quorum requirement under the orders shall be increased to seven and any decision, recommendation or other action of the committee shall require not less than six concurring votes, including one by a handler or an alternate acting as such. The record indicates that if the committee nominates a public member and the Secretary selects such member, the person selected for such position should be a voting member of each committee and as such should enjoy all the rights, privileges and immunities granted to other committee members under the orders and the act. Accordingly, the orders should be amended as hereinafter set forth.

(3) The orders should be amended to delete the provision which limits assessments to a rate not in excess of 20 cents per bushel of fruit. The record indicates that this provision is unduly restrictive in view of inflationary tendencies and the need for financial flexibility to deal with problems and carry out activities under the order. Any rate of assessment recommended by the committee must be arrived at in open meetings and must be justified as necessary to enable the committee to perform its functions and carryout its duties under the order. Morever, any such rate is subject to approval of the Secretary. The Secretary's approval is contingent upon his determining that the budget and the rate of assessment recommended to him by the committee are reasonable and necessary for the maintenance and functioning of the committee. This procedure should be sufficient to assure that expenses and rates of assessments are kept within reasonable bounds. However, it was advanced that the committee in its consideration of its budget and the rate of assessments will take into account, to the fullest extent possible, the financial concerns of all affected persons, and the orders should provide that for any recommendation for an assessment rate exceeding 20 cents per bushel of fruit, the committee quorum should be 8 members and 8 concurring votes should be required. Such a requirement would assure a high degree of unanimity for the recommendation and it is concluded that this quorum and voting requirement should be included in each order, as hereinafter set forth.

A number of reasons were recited which indicate that higher assessment rates may be required. Among these is the outlook for expanded production and a need to expand markets to accommodate such production. Data were presented indicating that if expectations are realized, production of Florida limes and avocados will increase sharply in the next two or three years, and further increases are likely in the forseeable future. It was reported that in excess of two thousand acres of lime and avocado groves have been planted recently in the production area. In addition, the older bearing groves, reportedly about 4,500 acres, some of which suffered severe freeze damage in January 1977, are recovering and should produce a substantial crop in the 1978-79 season and a full crop in the 1979-80 and following seasons. Hence, it is anticipated that increased market development, promotion, and advertising efforts will be required to market the larger production successfully. Funding such efforts under the order will increase expenses and require a larger assessment. Too, indications are that funds from assessments will continue to be needed to finance research projects to seek solutions to production problems. It was testified that research facilities and personnel are available but funds are necessary to make them operational. Both committees have agreed that funds should be made available to continue basic research projects dealing with pre-harvest and post-harvest problems of limes and avocados.

Some witnesses testified that raising the assessment rate ceiling would be preferable to eliminating it, and suggested a maximum rate of 30 to 35 cents per bushel of fruit. However, no evidence was offered in support of this suggested alternative which would justify it. Testimony, in connection with the proposal, indicates that all present handler members of the committees are also growers, and that it is in all members' interest that assessment rates be kept at the lowest levels possible consistent with the objectives of the orders and the act. Elimination of the limitation on the assessment rate also should obviate the need for amendment of the orders at considerable cost to the committees and the Department, which likely would be required to allow the committees to continue activities which otherwise would have to be reduced or terminated due to the inroads of inflation.

(4) The orders should be amended to delete a provision in each order, which currently permits each committee member or alternate to receive $10.00 per day compensation in addition to actual expense incurred when attending committee meetings or performing other duties at the direction of the committee. The $10.00 per day compensation was included when the orders were promulgated, as it was believed this might be necessary to encourage grower and handler participation as members of the committees. Such payment would reimburse the members in the event someone had to perform business duties for them while they were attending committee meetings or performing other committee duties. The committees have not found it necessary to pay compensation. Grower and handler members willingly contribute their time to the committees in the interest of each industry, hence the provision for compensation should be abolished. Committee members and alternates should be reimbursed for travel and other expenses necessarily incurred by them in attending meetings or in performing program duties. The orders currently provide for reimbursement of alternates only when they are acting as members. This provision should be amended to permit each committee to reimburse alternate members for expenses incurred to attend meetings or when performing other services for the committee, even though they are not acting as members. Testimony indicates that payment of expenses of alternates as well as members would encourage alternates to attend committee meetings and this would be in the interest of both industries. Accordingly, the orders should be amended, as hereinafter set forth, to provide for reimbursement of alternates.

(5) The orders should be amended to delete the requirement which mandates that, if at the end of a fiscal year, the committee's financial reserve is equal to or more than two years' operational expenses, reserve funds shall be used for committee expenses and no assessments may be collected from handlers during the following year.

The record indicates that advance planning of market research and development projects may require that substantial sums be available well in advance of the time an actual promotional campaign is to be set in motion. Such planning is financed from the reserve. It was maintained that the provision which requires a cessation of assessment and depletion of the reserve when, at the end of any fiscal year, the amount in reserve is equal to or exceeds two fiscal years' expenses prevents the reserve from reaching a desirable level. Substantial depletion of the Avocado Administrative Committee's reserve is occurring in the current fiscal year, as the entire cost of operation for such year is being paid from the reserve, and the view was expressed that this depletion will hamper the committee in its planing and conduct of market development activities. The record indicates that it would be desirable and appropriate to delete the provision from each order which mandates termination of assessment and the financing of operations from the reserve as now specified in the order. The effect of this would be to permit the accumulation of assessments in the reserve up to an amount equal to 3 years' expenses. This accumulation would not be automatic. Under each order, the committee is authorized to carry over, as a reserve, funds remaining at the end of a fiscal year which are in excess, only if the Secretary determines that the carry over into following years of such funds is appropriate for the maintenance and functioning of the committee. Absent such determination, such funds are to be credited pro rata to the persons from whom the funds were collected.

Under such circumstances, it appears that it would be reasonable to amend the orders to allow the committees to accumulate funds in a reserve not exceeding 3 fiscal years' operational expenses, subject to the provision which requires a determination by the Secretary that placing funds remaining at the end of a given fiscal year in reserve is appropriate for the maintenance and functioning of the committees. Of course, if at the end of a fiscal year, funds in the reserve equalled 3 fiscal years' operational expenses, any funds in excess of that amount would have to be credited pro rata to the persons from whom the excess was collected.

The reserve provision in each order specifies that reserve funds may be used to cover the expenses of liquidation in the event of termination, to cover expenses when there is a crop failure or during periods when any or all provisions of the orders are suspended, and to cover expenses in any fiscal year prior to the time that assessment income is sufficient to cover such expenses. The orders should provide also, that reserve funds may be used to cover deficits incurred during any fiscal year when income is less than expenses. This would permit the use of reserve funds to supplement assessment income and enable a lower assessment rate when such appears to be necessary or desirable.

The provision that specifies that any reserve funds used to finance committee operations shall be returned to the reserve as soon as assessment income is available for this purpose is unnecessary and should be deleted, as the addition of funds to the reserve is subject to the approval of the Secretary and, likewise, the use of any reserve funds by the committee is subject to his approval. Therefore, the order should be amended consistent with the foregoing, and as hereinafter set forth.

(6) The lime order (7 CFR Part 911) should be amended to exclude lime export shipments from weekly volume control limitations, and to exclude export shipments of limes from prorate bases calculated for each handler. Currently, the order permits a maximum of eight weekly volume control regulations during a designated 18-week regulatory period each season. It was advanced that the development of export markets is appropriate and desirable to assist in disposition of the expanding production of limes. It was indicated that handlers could be encouraged to expand export markets, if exports were free from volume control limitations. The 18-week regulatory period during which regulations may be made effective, covers the period of peak lime production. When weekly volume regulations are in effect, they apply to limes for export markets as well as non-export markets. Unrestricted export shipments during such period could prove to be an incentive to encourage handlers to export fresh Florida limes.

As previously indicated the lime industry needs to develop and expand markets for expected future larger crops of limes. The committee's goal, under the order, is to develop domestic and export markets for fresh limes, as grower returns for limes marketed fresh are normally much higher than those marketed for processing. Limes which exceed fresh market needs are processed into juice and other products. Limes utilized in processed products usually bring very low returns to the grower, sometimes less than picking and hauling costs. A larger fresh market would improve returns to growers as some of the volume now sent to processing could be marketed fresh.

If limes to export markets are not regulated, export shipments should not be included in handlers' prorate base calculations, as the inclusion of such shipments would give handlers who export an advantage over non-exporting handlers in regulated markets during weeks of volume control.

The committee should adopt appropriate procedures and safeguards to assure that limes destined for export markets are, in fact, exported. Otherwise, limes handled for export may be diverted to domestic markets, thus disrupting the orderly marketing of limes in domestic markets. Examples given of the kind of compliance safeguards that could be established included a requirement that each container in shipments destined for export be marked "Export Only" and the related Federal-State inspection certificate be similarly identified by the inspector. Such identification would enable the committee to exclude such shipments from prorate base calculations. Florida State road guard inspectors, who check lime certificates that accompany shipments out of the production area, could aid the committee in obtaining compliance. Other procedures such as having committee compliance personnel check air bills of lading and export documents could be established. It is, therefore, concluded that the order should be so amended.

(7) The amendment to the orders, heretofore recommended, will make it necessary to make certain conforming changes in sections not specifically discussed in connection therewith. All such changes should be incorporated in the orders, as hereinafter set forth.

Rulings on briefs of interested persons. At the conclusion of the hearing, the Administrative Law Judge fixed March 6, 1978, as the final date for interested persons to file proposed findings and conclusions and written arguments or briefs, based upon the evidence received at the hearing. No briefs were filed.

General findings. Upon the basis of the record, it is found that:

(1) The findings hereinafter set forth are supplementary, and in addition, to the previous findings and determinations which were made in connection with the issuance of the marketing agreements and orders and each previously issued amendment thereto. Except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein, all of said prior findings and determinations are hereby ratified and affirmed;

(2) The marketing agreements and orders, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(3) The marketing agreements and orders, as amended, and as hereby proposed to be further amended, regulate the handling of limes and avocados, respectively, grown in the designated production areas in the same manner as, and are applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreements and orders upon which hearings have been held;

(4) The marketing agreements and orders as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(5) There are no differences in the production and marketing of limes grown in the production area which make necessary different terms and provisions applicable to different parts of such area;

(6) The marketing agreement and order prescribe, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of avocados grown in the production area; and

(7) All handling of limes and avocados grown in the production area as defined in the marketing agreements and orders as amended, and as hereby proposed to be further amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended amendments of the marketing agreements and orders. The following amendments of the marketing agreements and orders, as amended, are recommended as the detailed means by which the foregoing conclusions may be carried out:

PART 911—LIMES GROWN IN FLORIDA

1. Add a new § 911.12 *Export* as follows:

§ 911.12 Export.

"Export" means to ship limes to any destination which is not within the 48 contiguous States or the District of Columbia of the United States or Canada.

* * * * *

Revise § 911.48 by adding a new paragraph (a)(7). As amended, § 911.48 reads as follows:

§ 911.48 Issuance of regulations.

(a) * * *

(7) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of limes which are different from those applicable to the handling of the same variety to other destinations.

* * * * *

2. Revise § 911.20 by designating the first paragraph as paragraph (a) and by adding a new paragraph (b). As amended, § 911.20 reads as follows:

§ 911.20 Establishment and membership.

* * * * *

(b) The committee may be increased by one public member and alternate. Persons for the public member positions would be nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the public member and alterate.

Revise paragraph (a) of § 911.30 and add a new paragraph (d) to such section. As amended, § 911.30 reads as follows:

§ 911.30 Procedure.

(a) Except as provided in paragraphs (c) and (d), of this section, six members of the committee, including alternates acting for members, shall constitute a quorum and any decision, recommendation or other action of the committee shall require not less than five concurring votes, including one by a handler, or an alternate acting as such: *Provided,* That if the committee is increased by one, the quorum requirement shall be increased to seven and any decision, recommendation or other action of the committee shall require not less than six concurring votes, including one by a handler or an alternate acting as such.

* * * * *

(d) For any recommendation of the committee for an assessment rate exceeding $0.20 per bushel to be applied pursuant to § 911.41, the quorum requirement shall be eight members or alternates acting for members and eight concurring votes shall be required.

3. Revise paragraph (b) of § 911.41 to read as follows:

§ 911.41 Assessments.

* * * * *

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance.

4. Revise § 911.31 to read as follows:

§ 911.31 Expenses.

The members of the committee and their respective alternates when performing duties at the direction of the committee, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

5. Revise paragraph (a)(2) of § 911.42. As amended § 911.42 reads as follows:

§ 911.42 Accounting.

(a) * * *

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal year which are in excess of the expenses necessary for committee operation during such a year may be carried over into following years as a reserve. Such reserve may be established at an amount not to exceed approximately 3 fiscal years' operational expenses. Funds in the reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal year when there is crop failure, or during any period of suspension of any or all the provisions of this part. Such reserve may also be used by the committee to finance its operations during any fiscal year prior to the time that assessment income is sufficient to cover such expenses and to cover deficits incurred during any fiscal year when income is less than expenses. Upon termination of this part any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

* * * * *

6. Revise paragraph (a) of § 911.53, so that after revision such paragraph reads as follows:

§ 911.53 Recommendation for volume regulation.

(a) The committee may, during any week, recommend to the Secretary the total quantity of limes which it deems advisable to be handled to destinations within the forty-eight contiguous States of the United states, the District of Columbia and Canada during the next succeeding week: *Provided*, That such volume regulations shall not be recommended for any week except during the 18-week regulatory period beginning with the week preceding the first full week in May: *Provided, further*, That no such regulation shall be recommended after such regulations have been in effect for an aggregate of eight (8) weeks during the aforesaid period.

* * * * *

Revise § 911.54 to read as follows:

§ 911.54 Issuance of volume regulations.

Whenever the Secretary finds from the recommendation and information submitted by the committee, or from other available information, that to limit the quantity of limes which may be handled to destinations within the 48 contiguous States of the United States, the District of Columbia and Canada during a specified week of a regulatory period will tend to effectuate the declared policy of the act, he shall fix such quantity: *Provided*, That such regulations during a regulatory period shall not in the aggregate limit the volume of lime shipments for more than eight (8) weeks. The quantity so fixed for any week may be increased by the Secretary at any time during such week. Such regulations may, as authorized by the act, be made effective irrespective of whether the season average price of limes is in excess of the parity price. The Secretary may, upon the recommendation of the committee, or upon other available information, terminate or suspend any regulation pursuant to this section at any time.

* * * * *

Revise paragraph (d) of § 911.55 to read as follows:

§ 911.55 Prorate bases.

* * * * *

(d) Each week during the regulatory period when volume regulation is likely to be recommended for the following week, the committee shall compute a prorate base for each handler who has made application in accordance with the provisions of the section. The prorate base for each such handler shall be computed by adding together the handler's shipments of limes in the current season and his shipments in the immediately preceding seasons, if any, within the representative period in which he shipped limes and dividing such total by a divisor computed by adding together the number of weeks elapsed in the current season and the eighteen weeks for each of such immediately preceding seasons within the representative period in which the handler shipped limes. For purposes of this section "shipments" shall include only those limes which were shipped to destinations within the forty-eight contiguous States of the United States, the District of Columbia and Canada; "representative period" means the two preceding seasons together with the current season; the term "season" means the eighteen-week period beginning with the week preceding the first full week in May of any fiscal year; and the term "current season" means the period beginning with the week preceding the first full week in May of the current fiscal year through the fourth full week preceding the week of regulation: *Provided*, That when official shipping records are available to the committee the said "current season" shall extend through the third full week preceding the week of regulation.

7. Section 911.110 contains erroneous references to § 911.54. The correct reference is § 911.50. As corrected, § 911.110 reads as follows:

Subpart—Rules and Regulations

§ 911.110 Exemption certificates.

Exemption certificates under § 911.50 shall be issued by the Florida Lime Administrative Committee pursuant to the following rules and regulations:

* * * * *

(c) Approval of the application shall be evidenced by the issuance to the applicant, by the Manager of the Florida Lime Administrative Committee on its behalf, of one or more exemption certificates which shall authorize the handling of such quantity of the applicant's limes as may be necessary to accomplish the purposes of § 911.50.

* * * * *

Section 911.130(a) contains erroneous references to §§ 911.52 and 911.55. The correct references are §§ 911.48, 911.54 and 911.55. Paragraph (b) contains erroneous references to §§ 911.52 and 911.55. The correct references are 911.48 and 911.51. Paragraph (c) contains an incorrect reference to § 911.56. The correct reference is § 911.52. As corrected, § 911.130 reads as follows:

§ 911.130 Limes not subject to regulation.

(a) *Minimum quantity*. During any one day any handler may handle not to exceed 55 pounds total of limes exempt from the provisions of §§ 911.41, 911.48, 911.51 and 911.54, and the regulations issued thereunder: * * *

(b) *Gift shipments*. Any handler may, exempt from the provisions of

§§ 911.41, 911.48, and 911.51, and the regulations issued thereunder, * * *

(c) *Commercial processing into products.* The term "commercial processing into products," as used in § 911.52(c) means the manufacture of any lime product which has been preserved by any recognized commercial process, * * *

In § 911.311(a)(2) change the word "marketing" which appears in the proviso to "marking". As corrected, the proviso reads as follows:

Subpart—Pack Regulation

§ 911.311 Lime Regulation 9.

(a) (1) * * *

(2) * * * *Provided,* That in lieu of such marking requirement, any handler may affix to the container a label, brand, or trademark, registered with the Florida Lime Administrative Committee in accordance with the following, which appropriately identifies the grade:

* * * * *

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. Add a new § 915.12 Export as follows:

§ 915.12 Export.

"Export" means to ship avocados to any destination which is not within the 48 contiguous States or the District of Columbia of the United States or Canada.

* * * * *

Amend § 915.51(a) by adding a new subparagraph (7). As amended, § 915.51 reads as follows:

§ 915.51 Issuance of regulations.

(a) * * *

(7) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of avocados which are different from those applicable to the handling of the same variety to other destinations.

* * * * *

2. Revise § 915.20 by designating the first paragraph as paragraph (a) and by adding a new paragraph (b). As amended, § 915.20 reads as follows:

§ 915.20 Establishment and membership.

* * * * *

(b) The committee may be increased by one public member and an alternate. Persons for the public member positions would be nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office and the procedure for nominating the public member and alternate.

Revise paragraph (a) of § 915.30 and add a new paragraph (c) to such section. As amended, § 915.30 reads as follows:

§ 915.30 Procedure.

(a) Except as provided in paragraph (c) of this section, six members of the committee, including alternates acting for members, shall constitute a quorum and any decision, recommendation or other action of the committee shall require not less than five concurring votes including one by a handler, or an alternate acting as such; *Provided,* That if the committee is increased by one, the quorum requirement shall be increased to seven and any decision, recommendation or other action of the committee shall require not less than six concurring votes including one by a handler, or an alternate acting as such.

* * * * *

(c) For any recommendation of the committee for an assessment rate exceeding $0.20 per bushel to be applied pursuant to § 915.41, the quorum requirement shall be eight members or alternates acting for members and eight concurring votes shall be required.

3. Revise paragraph (b) of § 915.41 to read as follows

§ 915.41 Assessments.

* * * * *

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment, in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance.

4. Revise § 915.31 to read as follows:

§ 915.31 Expenses.

The members of the committee and their respective alternates when performing duties at the direction of the committee, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

5. Revise paragraph (a)(2) of § 915.42. As amended § 915.42 reads as follows:

§ 915.42 Accounting.

(a) * * *

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal year which are in excess of the expenses necessary for committee operations during such year may be carried over into following years as a reserve. Such reserve may be established at an amount not to exceed approximately 3 fiscal years' operational expenses. Funds in the reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal year when there is crop failure, or during any period of suspension of any or all of the provisions of this part. Such reserve may also be used by the committee to finance its operations during any fiscal year prior to the time that assessment income is sufficient to cover such expenses and to cover deficits incurred during any fiscal year when income is less than expenses. Upon termination of this part any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided,* That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

* * * * *

7. Section § 915.205(a) refers to a reserve fund not to exceed the amount of "$10,000". Amendment 5 would increase the authorized reserve to an amount not to exceed approximately 3 fiscal years' operational expenses. Accordingly, § 915.205 should be revised. As revised, § 915.205 reads as follows:

Subpart—Budget of Expenses, Rate of Assessment and Carryover of Unexpended Funds

§ 915.205 Reserve fund.

(a) The establishment of a reserve fund at an amount not to exceed approximately 3 fiscal years' operational expenses is appropriate and necessary to the maintenance and functioning of the Avocado Administrative Committee. Such reserve, including funds carried forward from prior fiscal years, shall be used to provide for the maintenance and functioning of the committee in accordance with the provisions of the marketing agreement, as amended, and this part.

(b) Terms used in this section shall have the same meaning as when used in said marketing agreement and order.

Signed at Washington, D.C., on March 23, 1979.

WILLIAM T. MANLEY,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 78-8207 Filed 3-28-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 205]

ADMINISTRATIVE PROCEDURES AND SANCTIONS

Amendments Regarding Issuance of Remedial Orders

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Extension of Date for Receipt of Written Comments; Notice of Public Hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) extends the date for receipt of written comments in its rulemaking proceeding regarding procedures for issuance of Remedial Orders. The due date for receipt of written comments, originally February 15, 1978, is changed to May 10, 1978. In addition, the ERA gives notice that it will hold a public hearing on this rulemaking on May 3, 1978, in Washington, D.C.

DATES: Comments by May 10, 1978; Requests to speak by April 17, 1978, 4:30 p.m.; Hearing date: May 3, 1978, 9:30 a.m.

ADDRESSES: Comments and requests to speak to: Department of Energy, Public Hearing Management, Room 2313, 2000 M Street, Box QW, Washington, D.C. 20461; Hearing location: Room 2105, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), 2000 M Street NW., Room 2222, Washington, D.C. 20461, 202-254-5201.

Nancy E. Williams (Office of General Counsel), 12th and Pennsylvania Avenue NW., Room 7134, Washington, D.C. 20461, 202-566-2454.

SUPPLEMENTARY INFORMATION:

I. EXTENSION OF DATE FOR RECEIPT OF WRITTEN COMMENTS

On January 6, 1978 (43 FR 1930, January 13, 1978; corrected and republished at 43 FR 3995, January 31, 1978) we adopted, as interim rules, amendments to the administrative procedures contained in 10 CFR Part 205 regarding the issuance of Remedial Orders with respect to violations of the DOE regulations issued under the Emergency Petroleum Allocation Act of 1973, as amended. Written comments on the amendments were requested by February 15, 1978.

We have received several requests to extend the date for receipt of written comments, based on the need for additional time to review the amendments and on the importance of these amendments to the parties affected. In order to assure maximum public participation in this rulemaking, the date for receipt of written comments in this proceeding is hereby extended to Wednesday, May 10, 1978.

II. PUBLIC HEARING

The notice that set forth the interim rules did not provide an opportunity for the oral presentation of views, data or arguments. However, several of the written comments which have been received strongly urge that a public hearing be held, and, in light of these requests, we have decided to do so. The hearing will be held on May 3, 1978 in Washington, D.C.

III. COMMENT PROCEDURES

A. WRITTEN COMMENTS

You are invited to participate in this rulemaking by submitting written views, data or arguments with respect to the amendments set forth at 43 FR 3995 (January 31, 1978) by the close of business on May 10, 1978. Comments should be submitted to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope with the designation "Amendments to Administrative Procedures Regarding Issuance of Remedial Orders." Fifteen copies should be submitted. All comments received will be available for public inspection in the DOE Reading Room, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., between the hours of 8 a.m. and 4:30 a.m., Monday through Friday.

B. PUBLIC HEARING

1. REQUESTING OPPORTUNITY TO MAKE ORAL STATEMENT

The time and place for the hearing are indicated in the "Dates" and "Addresses" sections of this notice. If necessary to present all testimony, the hearing will be continued to 9:30 a.m. of the first business day following the date of the hearing shown above.

You may make a written request for an opportunity to make an oral presentation at the hearing. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m. e.s.t., April 19, 1978, and must submit 100 copies of your statement to Public Hearing Management, Room 2313, 2000 M Street NW., Washington, D.C., before 4:30 p.m., e.d.t., on May 1, 1978.

2. CONDUCT OF THE HEARING

We reserve the right to select the persons to be heard at this hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to Public Hearing Management before 4:30 p.m., e.d.t., May 1, 1978. You may also submit any questions, in writing, to the presiding officer at the time of the hearing. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L.