

Agricultural Marketing Agreement Act of 1937 (50 Stat. 246), as amended.

(b) The term *Department* means the United States Department of Agriculture.

(c) The term *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(d) The term *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in his stead.

(e) The term *proceeding* means a proceeding before the Secretary arising under sections 8a, 8b(b), 8c(14), 8e, 10(c) and 10(h).

(f) The term *hearing* means that part of the proceeding which involves the submission of evidence.

(g) The term *marketing agreement* means any marketing agreement or any amendment thereto which may be entered into pursuant to section 8b of the act.

(h) The term *marketing order* means any order or any amendment thereto which may be issued pursuant to section 8c of the act, and after notice and hearing as required by said section.

(i) The term *handler* means any person who, by the terms of a marketing order or marketing agreement, is subject thereto, or to whom a marketing order or marketing agreement is sought to be made applicable.

(j) The term *importer* means any person who, by the terms of section 8e of the act, is subject thereto.

(k) The term *person* means any individual, corporation, partnership, association, or any other business unit.

§ 900.82 Stipulation procedures.

The Administrator, or the Administrator's representative, may, at any time before the issuance of a complaint seeking a civil penalty under the Act, enter into a stipulation with any handler or importer in accordance with the following procedures:

(a) The Administrator, or the Administrator's representative, shall give the handler or importer notice of the alleged violation of the applicable marketing order or marketing agreement, or the requirements issued pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e, and an opportunity for a hearing thereon as provided by the Act;

(b) In agreeing to the proposed stipulation, the handler or importer expressly waives the opportunity for a

hearing and agrees to pay a specified civil penalty within a designated time;

(c) The Administrator, or the Administrator's representative, agrees to accept the specified civil penalty in settlement of the particular matter involved if it is paid within the designated time;

(d) In cases where the handler or importer does not pay the specified civil penalty within the designated time, or the handler or importer does not agree to the stipulation, the Administrator may issue an administrative complaint; and

(e) The civil penalty that the Administrator may have proposed in a stipulation agreement shall have no bearing on the civil penalty amount that the Department may seek in a formal administrative proceeding against the same handler or importer for the same alleged violation.

Dated: May 2, 1996.

Lon Hatamiya,
Administrator.

[FR Doc. 96-11461 Filed 5-7-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 979

[Docket No. FV96-979-1FIR]

Melons Grown in South Texas; Change in Cantaloup Container 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 that changed the container requirements for cantaloups grown in South Texas under Marketing Order No. 979 by increasing the depth of cantaloup cartons from 10³/₈ to 11³/₈ inches. The South Texas Melon Committee (committee), the agency that locally administers the marketing order for melons grown in South Texas, unanimously recommended this change. That change allowed handlers to use deeper cartons in shipping larger cantaloups. The use of deeper cartons is expected to result in less damage during packing and shipment and foster buyer confidence. The interim final rule also corrected telephone area codes and removed out-of-date handler assessment information.

EFFECTIVE DATE: June 7, 1996.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501,

telephone 210-682-2833, FAX 210-682-5942, or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-690-0464, FAX 202-720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979) regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The order is 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 12778, 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.

Pursuant to the 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.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 27 handlers of South Texas melons who are subject to regulation under the marketing order and 30 producers in the production area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of South Texas melons may be classified as small entities.

At a public meeting on December 12, 1995, the committee unanimously recommended, under the authority of § 979.52 of the order, increasing the depth of cantaloup cartons. Section 979.304(b)(1) specified that the depth of cantaloup cartons could be not more than 10 $\frac{3}{8}$ nor less than 9 $\frac{3}{4}$ inches. A tolerance of $\frac{1}{4}$ inch was permitted. The committee recommended a one inch increase in depth to 11 $\frac{3}{8}$ inches.

In recent years, buyers have requested increased supplies of larger cantaloups. Handlers had experienced difficulty in packing larger cantaloups without bruising because the container depth did not allow sufficient room for the larger fruit and ice packed with the cantaloups to keep them cool. Also, without adequate carton space, proper stacking on pallets was more difficult and compression damage often occurred to the cantaloups when loading and shipping. Increasing the depth of cantaloup cartons by one inch to 11 $\frac{3}{8}$ inches allows for proper stacking and delivery of cantaloups without bruising and other damage. This change is expected to foster buyer satisfaction and confidence. Handlers will not be prevented from using their current supply of smaller cartons if they desire.

Section 979.304(c)(4) designates inspection stations in Alamo and Laredo, for handlers who do not have permanent packing facilities recognized by the committee. The telephone area codes specified for Alamo and Laredo were not correct. The interim final rule amended § 979.304(c)(4) to correct those area codes from (502) and (512), respectively, to (210).

Section 979.304(c)(5) specified that handlers shall pay assessments on all assessable melons according to the provisions of § 979.42, at the rate of $\frac{3}{4}$ cent per carton. The $\frac{3}{4}$ cent per carton rate of assessment has not been in effect for a number of years. The current rate of assessment is 7 cents per carton. Also, because the assessment rate is established by the Department in a separate rulemaking document and handlers are informed of the rate by the committee through handler notices, the

rate of assessment does not need to be referenced in these provisions. Therefore, the words "at the rate of $\frac{3}{4}$ cent per carton" in § 979.304(c)(5) were removed.

The interim final rule was published in the Federal Register on February 28, 1996 (61 FR 7408). That rule amended § 979.304 to change the container requirements for cantaloups, to correct the telephone area codes, and to remove the out-of-date handler assessment information. That rule provided that interested persons could file comments through March 29, 1996. No comments were received.

Based on the above, the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending § 979.304 which was published at 61 FR 7408 on February 28, 1996, is adopted as a final rule without change.

Dated: May 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-11462 Filed 5-7-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Parts 1002 and 1004

[DA-96-02]

Milk in the New York-New Jersey and Middle Atlantic Marketing Areas; Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rules.

SUMMARY: This document suspends a pooling provision of the New York-New Jersey order and a provision in the Middle Atlantic order's base-excess

plan. The request for suspension was submitted on behalf of several handlers (cooperative and proprietary) who market the milk of dairy farmers who are located in a common supply area and who have milk pooled under both orders. This suspension will permit more efficient assembly and transportation of producer milk.

EFFECTIVE DATE: May 1, 1996, through September 30, 1996.

FOR FURTHER INFORMATION CONTACT:

Gino M. Tosi, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, PO Box 96456, Washington, DC 20090-6456, (202) 690-1366.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued March 27, 1996; published April 2, 1996 (61 FR 14514).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the orders and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a 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 Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), 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 provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a 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