

1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Manager's salary, \$19,094 (\$15,172), office salaries, \$24,000 (\$22,000), payroll taxes, \$4,000 (\$3,100), insurance, \$8,000 (\$6,250), rent and utilities, \$6,500 (\$5,000), supplies, \$2,000 (\$1,500), postage, \$1,500 (\$1,000), telephone and telegraph, \$4,000 (\$2,500), furniture and fixtures, \$2,000 (\$1,000), equipment rental and maintenance, \$3,500 (\$2,500), contingencies, \$6,706 (\$3,978), manager travel, \$5,000 (\$3,000), Canadian onion promotion, \$5,000 (\$4,450), \$226,000 for promotion (\$200,000), onion breeding research, \$99,000 (\$88,028), and \$3,750 for deferred compensation (manager's retirement), and \$5,000 for miscellaneous promotion expenses, which were not line item expenses last year. All other items are budgeted at last year's amounts.

The initial 1995-96 budget, published on August 17, 1995, did not establish an assessment rate. Therefore, by a vote of 11 to 1, the Committee also recommended an assessment rate of \$0.10 per 50-pound container or equivalent of onions, \$0.06 more than last year's assessment rate. The no vote came from a grower who thought increasing the assessment rate from \$0.04 to \$0.10 cents was too great an increase. This rate, when applied to anticipated shipments of approximately 6,000,000 50-pound containers or equivalents, will yield \$600,000 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1995, were \$408,314, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the Federal Register on December 12, 1995 (60 FR 63610). That interim final rule amended § 959.236 to increase the level of authorized expenses to \$585,250 and establish an assessment rate of \$0.10 per 50-pound container or equivalent of onions for the Committee. That rule provided that interested persons could file comments through January 11, 1996. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS 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.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 fiscal period began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and published in the Federal Register as an amended interim final rule.

#### List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending 7 CFR part 959 which was published at (60 FR 63610) on December 12, 1995, is adopted as a final rule without change.

Dated: February 22, 1996.  
Martha B. Ransom,  
*Acting Deputy Director, Fruit and Vegetable Division.*

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#### 7 CFR Part 979

[Docket No. FV96-979-1IFR]

#### Melons Grown in South Texas; Change in Cantaloup Container Requirements

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule changes the container requirements for cantaloups grown in South Texas under Marketing Order No. 979. This rule increases the depth of cantaloup cartons from 10 $\frac{3}{8}$  to 11 $\frac{3}{8}$  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. This change will allow 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. This change should be in effect as soon as possible, to give handlers adequate time to order cartons, and manufacturers an opportunity to make them, for the 1996 shipping season. This rule also corrects telephone area codes, and removes out-of-date handler assessment information.

**DATES:** Effective on February 28, 1996. Comments which are received by March 29, 1996, will be considered prior to issuance of any final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456, FAX 202-720-5698. All comments should reference the docket number and the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: 210-682-2833; FAX: 210-682-5942; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: 202-720-2431; FAX: 202-720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." This 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 of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This interim final 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity 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 Administrator of 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. Currently, § 979.304(b)(1) specifies that the depth of cantaloup cartons may be not more than 10  $\frac{3}{8}$  nor less than 9  $\frac{3}{4}$  inches. A tolerance of  $\frac{1}{4}$  inch is permitted. The committee recommended an one inch increase in depth to 11  $\frac{3}{8}$  inches.

In recent years, buyers have requested increased supplies of larger cantaloups. Handlers have experienced difficulty in packing larger cantaloups without bruising because the current container depth does 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 is more difficult and compression damage often occurs to the cantaloups when loading and shipping. Increasing the depth of cantaloup cartons by one inch to 11  $\frac{3}{8}$  inches will allow 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 are not correct. This rule amends § 979.304(c)(4) to correct those area codes from (502) and (512), respectively, to (210).

Section 979.304(c)(5) specifies 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 annually 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) are removed.

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

After consideration of the committee's recommendation and other relevant information presented, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This rule relaxes carton requirements currently in effect; (2) the committee recommended this rule at a public meeting; (3) this change should be in effect as soon as possible, to give handlers adequate time to order cartons, and manufacturers an opportunity to

make them; and (4) this rule provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

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

#### PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 979.304 is amended by revising the first sentence in paragraph (b)(1), and paragraphs (c)(4), and (c)(5) to read as follows:

#### § 979.304 Handling regulation.

\* \* \* \* \*

(b) *Container requirements.* (1) Except as provided in paragraphs (b)(4), (d) or (e) and (f) of this section all cantaloups shall be packed in fiberboard cartons with inside dimensions of not more than 17  $\frac{1}{4}$  nor less than 16  $\frac{3}{4}$  inches in length, not more than 13 nor less than 12  $\frac{3}{4}$  inches in width, and not more than 11  $\frac{3}{8}$  nor less than 9  $\frac{3}{4}$  inches in depth. \* \* \*

\* \* \* \* \*

(c) \* \* \*

(4) Designated inspection stations will be located at the Texas Federal Inspection Service office, 1301 W. Expressway, Alamo (Phone (210) 787–4091 or 6881) and the Matt Dietz Packing Co., 4700 N. Santa Maria, Laredo (Phone (210) 723–9178 or 9170), to be available for handlers who do not have permanent packing facilities recognized by the committee.

(5) Handlers shall pay assessments on all assessable melons according to the provisions of § 979.42.

\* \* \* \* \*

Dated: February 22, 1996.

Martha B. Ransom,  
*Acting Deputy Director, Fruit and Vegetable Division.*

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