

emitter or a hose end. If a drip irrigation system is used, backflow devices must be installed to prevent any *R.*

*solanacearum* race 3 biovar 2 that may be present from spreading to the rest of the production site through the irrigation system. Ebb and flow irrigation may not be used.

(xi) Production site personnel must be educated regarding the various pathways through which *R.*

*solanacearum* race 3 biovar 2 can be introduced into a production site and must be trained to recognize symptoms of *R. solanacearum* race 3 biovar 2 infection in articles of *Pelargonium* spp. or *Solanum* spp. in the production site.

(xii) Articles of *Pelargonium* spp. or *Solanum* spp. produced for export within an approved production site must be handled and packed in a manner adequate to prevent the presence of *R. solanacearum* race 3 biovar 2. The articles must be labeled with information indicating the production site from which the articles originated.

(xiii) If *R. solanacearum* race 3 biovar 2 is found in the production site or in consignments from the production site, the production site will be ineligible to export articles of *Pelargonium* spp. or *Solanum* spp. to the United States. A production site may be reinstated if a reinspection reveals that the production site is free of *R. solanacearum* race 3 biovar 2 and all problems in the production site have been addressed and corrected to the satisfaction of APHIS.

(xiv) The phytosanitary certificate of inspection required by § 319.37-4 that accompanies these articles must contain an additional declaration that states "These articles have been produced in accordance with the requirements in 7 CFR 319.37-5(r)(3)."

(xv) The government of the country in which the articles are produced must enter into a trust fund agreement with APHIS before each growing season. The government of the country in which the articles are produced or its designated representative is required to pay in advance all estimated costs that APHIS expects to incur through its involvement in overseeing the execution of paragraph (r)(3) of this section. These costs will include administrative expenses incurred in conducting the services enumerated in paragraph (r)(3) of this section and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The government of the country in which the articles are produced or its

designated representative is required to deposit a certified or cashier's check with APHIS for the amount of the costs estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires the government of the country in which the articles are produced or its designated representative to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before the services will be completed. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to the government of the country in which the articles are produced or its designated representative or held on account until needed.

(Approved by the Office of Management and Budget under control numbers 0579-0049, 0579-0176, 0579-0221, and 0579-0246.)

Done in Washington, DC, this 20th day of April, 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04-9262 Filed 4-22-04; 8:45 am]

**BILLING CODE 3410-34-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 979

[Docket No. FV04-979-1 FR]

#### Melons Grown in South Texas; Increased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the South Texas Melon Committee (Committee) for the 2003-04 and subsequent fiscal periods from \$0.06 to \$0.09 per carton of melons handled. The Committee locally administers the marketing order which regulates the handling of melons grown in South Texas. Authorization to assess melon handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began on October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** April 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Regional Manager, McAllen Marketing Field Office,

Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682-2833, fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; telephone: (202) 720-2491, fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing 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 of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas melon handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons beginning on October 1, 2003, and continue until amended, suspended, or terminated. 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 USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an

inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from \$0.06 to \$0.09 per carton of melons handled.

The South Texas melon marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are growers and handlers of South Texas melons. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–02 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on September 11, 2003, and unanimously recommended 2003–04 expenses of \$89,859 for personnel, office, compliance, and partial market development expenses to be funded by the continuing assessment rate of \$0.06 per carton. Specific funding for production research and market development projects were to be recommended at a later Committee meeting.

The Committee subsequently met on January 14, 2004, and recommended 2003–04 expenditures of \$351,859 and an assessment rate of \$0.09 per carton of melons handled. In comparison, last year's budgeted expenditures were \$313,853. The assessment rate of \$0.09 is \$0.03 higher than the rate currently in effect. The Committee recommended the increased rate to fund a variety of market development and production research projects, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to \$37,368, which is lower than what the Committee needs for operations. This amount is derived by taking the current reserve (\$181,127), adding the \$203,100 in assessment income based on the old

rate ( $3,385,000 \times \$0.06$  per carton) and anticipated interest totaling \$5,000, and then subtracting the 2003–04 budget of \$351,859. With the new rate, \$304,650 in assessment income would be generated, and the reserve fund would only drop to \$138,918.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include \$59,859 for administrative expenses, \$20,000 for compliance, \$160,000 for market development, and \$112,000 for production research projects. Budgeted expenses for these items in 2002–03 were \$59,859, \$20,000, \$137,000, and \$100,800, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas melons, anticipated interest income, and the amount of funds in the Committee's operating reserve. As mentioned earlier, melon shipments for the fiscal period are estimated at 3,385,000, which should provide \$304,650 in assessment income at the \$0.09 per carton rate. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$181,127) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 979.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

### Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 33 growers of melons in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2002–03 marketing year, the industry's 25 handlers shipped melons produced on 5,945 acres with the average and median volume handled being 111,651 and 32,215 cartons, respectively. In terms of production value, total revenue for the 25 handlers was estimated to be \$25.6 million, with the average and median revenues being \$1.02 million and \$296,000, respectively.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate crops, like onions.

Based on the SBA's definition of small entities, the Committee estimates that 23 of the 25 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises could likely push a large

number of these handlers above the \$5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of \$750,000; therefore, the majority of growers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from \$0.06 to \$0.09 per carton handled. The Committee recommended 2003–04 expenditures of \$351,859 and an assessment rate of \$0.09 per carton. The assessment rate of \$0.09 is \$0.03 higher than the current rate. At the rate of \$0.09 per carton and an estimated 2003–04 melon production of 3,385,000 cartons, the projected income derived from handler assessments (\$304,650), along with interest and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include \$59,859 for administrative expenses, \$20,000 for compliance, \$160,000 for market development, and \$112,000 for production research projects. Budgeted expenses for these items in 2002–03 were \$59,859, \$20,000, \$137,000, and \$100,800, respectively.

The Committee recommended the increased rate to fund a variety of production and marketing research projects, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to \$37,368, which is lower than what the Committee needs for operations. With the increased rate, the reserve fund would only drop to \$138,918.

The Committee voted to increase its assessment rate because the current rate would reduce the Committee's reserve funds to an acceptable level. Assessment income, along with interest and funds from the Committee's authorized reserve, will provide the Committee with adequate funds to meet its 2003–04 fiscal period's expenses.

The Committee reviewed and unanimously recommended 2003–04 expenditures of \$351,859, which included an increase in its market development and production research programs. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and Market Development Subcommittee.

Alternative expenditure levels were discussed by these groups, based upon the relative value of various production research and market development projects to the melon industry. The

assessment rate of \$0.09 per carton of assessable melons was then determined by considering the total recommended budget, the quantity of assessable melons estimated at 3,385,000 cartons for the 2003–04 fiscal period, anticipated interest income, and the funds in the Committee's operating reserve. The recommended rate will generate \$304,650, which is \$47,209 below the anticipated expenses. The Committee found this acceptable because interest and reserve funds will be used to make up the deficit.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2003–04 marketing season could range between \$6.68 and \$7.60 per carton of cantaloupes and between \$5.40 and \$6.33 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower revenue could range between 1.2 and 1.3 percent for cantaloupes and between 1.4 and 1.7 percent for honeydew melons.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the September 11, 2003, and January 14, 2004, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large South Texas melon handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on March 22, 2004 (69 FR 13269). Copies of the proposed rule were also mailed or sent via facsimile to all melon handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment

period ending April 6, 2004, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation 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.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2003–04 fiscal period began on October 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period; (2) shipments of 2004 crop melons are expected to begin in early May; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

#### 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 979.219 is revised to read as follows:

#### § 979.219 Assessment rate.

On and after October 1, 2003, an assessment rate of \$0.09 per carton is established for South Texas melons.

Dated: April 21, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-9425 Filed 4-21-04; 1:03 pm]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131**

[Docket No. AO-14-A72, et al.; DA-03-08]

**Milk in the Northeast and Other Marketing Areas; Interim Order Amending the Order**

7 CFR part	Marketing area	AO Nos.
1001 ..	Northeast .....	AO-14-A72
1005 ..	Appalachian .....	AO-388-A13
1006 ..	Florida .....	AO-356-A36
1007 ..	Southeast .....	AO-366-A42
1030 ..	Upper Midwest .....	AO-361-A37
1032 ..	Central .....	AO-313-A46
1033 ..	Mideast .....	AO-166-A70
1124 ..	Pacific Northwest .....	AO-368-A33
1126 ..	Southwest .....	AO-231-A66
1131 ..	Arizona-Las Vegas ....	AO-271-A38

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

**ACTION:** Interim final rule.

**SUMMARY:** This order amends certain classification of milk provisions in all Federal milk marketing orders. Specifically, this interim order reclassifies milk used to produce evaporated milk in consumer-type packages or sweetened condensed milk in consumer-type packages from Class III to Class IV. More than the required number of producers in each Federal milk order have approved the issuance of the interim order as amended.

**EFFECTIVE DATE:** May 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-3465, e-mail address: [antoinette.carter@usda.gov](mailto:antoinette.carter@usda.gov).

**SUPPLEMENTARY INFORMATION:** This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This interim rule has been reviewed under Executive Order 12988, 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 the 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 request modification or exemption from such order by filing with the Department 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department'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.

**Regulatory Flexibility Act and Paperwork Reduction Act**

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the \$750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's

size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During June 2003—the most recent representative period used to determine the number of small entities associated with Federal milk orders—there were a total of 60,096 dairy producers whose milk was pooled under Federal milk orders. Of the total, 56,818 dairy producers—or about 95 percent—were considered small businesses based on the above criteria. During this same period, there were about 1,622 plants associated with Federal milk orders. Specifically, there were approximately 387 fully regulated plants (of which 143 were small businesses), 92 partially regulated plants (of which 41 were small businesses), 44 producer-handlers (of which 23 were considered small businesses), and 108 exempt plants (of which 98 were considered small businesses). Consequently, 950 of the 1,622 plants meet the definition of a small business.

Total pounds of milk pooled under all Federal milk orders was 10.498 billion for June 2003 which represents 73.5 percent of the milk marketed in the United States. Of the 10.498 billion pounds of milk pooled under Federal milk orders during June 2003, 1.78 million pounds—or 1.7 percent—was used to produce evaporated milk and sweetened condensed milk products in consumer-type packages. Additionally, during this same period, total pounds of Class I milk pooled under Federal milk orders was 3.475 billion pounds, which represents 82.3 percent of the milk used in Class I products (mainly fluid milk products) that were sold in the United States.

This interim final rule will reclassify milk used to produce evaporated milk or sweetened condensed milk in consumer-type packages from Class III to Class IV in all Federal milk orders. This decision is consistent with the Agricultural Agreement Act of 1937 (Act), which authorizes Federal milk marketing orders. The Act specifies that Federal milk orders classify milk "in accordance with the form for which or purpose for which it is used."

Currently, the Federal milk order system provides for the uniform classification of milk in provisions that define four classes of use for milk (Class I, Class II, Class III, and Class IV). Each Federal milk order sets minimum prices that processors must pay for milk based on how it is used and computes weighted average or uniform prices that dairy producers receive.