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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV05–979–2 FIR]

Melons Grown in South Texas; Continued Suspension of Handling and Assessment Collection Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending the minimum grade, quality, maturity, container, pack, inspection, assessment collection, and other related requirements prescribed under the South Texas melon (cantaloupes and honeydews) marketing order (order). It also continues in effect a suspension of all reporting requirements under the order. The order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). On September 7, 2005, the Committee recommended termination of the order. This rule continues to relieve handlers of regulatory requirements while the USDA evaluates the Committee's recommendation to terminate the order.

DATES: Effective January 6, 2006.

FOR FURTHER INFORMATION CONTACT: Martin J. Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; telephone: (559) 487–5110, Fax: (559) 487–5906; or Kathleen M. Finn, Formal Rulemaking Team Leader, 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.*

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.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with 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. A 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 continues in effect indefinitely a suspension of the minimum grade, quality, maturity, container, pack, inspection, and other related requirements prescribed under the South Texas melon order. For the purposes of this rule, these requirements are referred to as handling requirements. It also continues in effect indefinitely a suspension of assessment collection and reporting requirements under the order. An interim final rule published in the **Federal Register** on November 26, 2004 (69 FR 68761), suspended these requirements for the 2004–05 fiscal period to allow the South Texas melon industry to evaluate the need for the marketing order. A final rule was published in the **Federal Register** on February 23, 2005 (70 FR 8709). On September 7, 2005, the Committee recommended termination of the order after a year of evaluation. An interim final rule was published in the **Federal Register** on October 5, 2005, (70 FR 57995) continuing indefinitely the suspension of all regulatory requirements under the order while USDA evaluates the Committee's recommendation to terminate the order.

Section 979.52 of the order provides authority for grade, size, maturity, quality, and pack regulations for any variety of melons grown in the production area during any period. Section 979.52 also authorizes the modification, suspension, or termination of regulations issued under the order. Authority to terminate or suspend provisions of the order is specified in § 979.84.

Section 979.60 provides that whenever melons are regulated pursuant to § 979.52, such melons must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of such inspection and certification is borne by handlers.

Under the order, fresh market shipments of South Texas melons are required to be inspected and are subject to minimum grade, quality, maturity, and container and pack requirements. Section 979.304 Handling regulation (7 CFR part 979.304) specifies minimum grade and quality requirements for the handling of cantaloupes and honeydew melons. That section also specifies pack and container requirements for these commodities.

Section 979.304 further includes a minimum quantity exemption of 120 pounds per day, and reporting and safeguard requirements for special purpose and experimental shipments. Related provisions appear in the

regulations in § 979.106 *Registered handlers;* § 979.152 *Handling of culls;* and § 979.155 *Safeguards.*

At its September 16, 2004, meeting, the Committee unanimously recommended suspending, for the 2004–2005 fiscal period, the handling, assessment collection, and all reporting requirements, except for the acreage planting reporting requirement. The 2004–05 fiscal period began October 1, 2004, and ended September 30, 2005.

These requirements initially were suspended pursuant to a rule published in the **Federal Register** on November 26, 2004 (69 FR 68761). It was believed that the cost of inspection and certification and administering the order may exceed the benefits. The regulations were suspended for one fiscal year so the industry would have time to evaluate whether the order should be continued. Consistent with the suspension of § 979.304, also suspended for the 2004–2005 fiscal year were § 979.106, § 979.152, and § 979.155 of the rules and regulations in effect under the order. Section 979.106 provides for the registration of handlers, § 979.152 details procedures for the handling of cull melons, and § 979.155 provides safeguard requirements for special purpose shipments and establishes reporting and recordkeeping requirements when such exemptions are in place.

In addition, § 979.219 requiring that an assessment rate of $0.09 per carton of melons be collected from South Texas melon handlers was also suspended. Consistent with suspension of § 979.219, § 979.112 specifying late payment charges on delinquent assessments was also suspended.

The Committee met on September 7, 2005, to evaluate the industry situation since the regulations were suspended. Planted acreage continued to decline, from 4,780 acres in 2003–04 to 2,364 acres in 2004–05. The number of melon growers and handlers also continued to decline. During the 2003–04 season, there were 29 growers and 16 handlers; in 2004–05 the number of known growers decreased to 13 and handlers decreased to seven. In addition, no new varieties were introduced to improve the quality and make the product more competitive with product from other producing areas. In short, the industry situation continues to worsen. The Committee believes that there is no longer a need for the order, and therefore recommended its termination. USDA is evaluating the Committee's recommendation.

The first suspension of regulations expired on September 30, 2005. The process to terminate a marketing order takes several months to complete; therefore, an interim final rule continuing indefinitely the suspension of regulations was issued in the **Federal Register** at 70 FR 57995 on October 5, 2005. That interim final rule also suspended the one remaining reporting requirement in effect regarding planted acreage, as the Committee believes there is no need to incur any costs or gather additional data. This final rule continues in effect the suspension of all regulatory requirements under the order.

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 action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

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

During the 2004–05 marketing year, there were approximately seven handlers of South Texas melons subject to regulation under the marketing order and approximately 13 melon growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,000,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

Most of the handlers are vertically integrated corporations involved in growing, shipping, and marketing melons. For the 2003–04 marketing year, the industry's 16 handlers shipped melons produced on 4,780 acres with the average and median volume handled being 89,012 and 10,655 containers, respectively. In terms of production value, total revenue for the 16 handlers was estimated to be $12,175,919, with the average and median revenues being $760,996 and $91,094, respectively. Complete comparable data is not available for the 2004–05 marketing year, but based on a reduction of acreage from 4,780 acres in 2003–04 to 1,364 acres in 2004–05, and the reduced number of growers and handlers, it follows that the volume handled and the value of production likely declined as well.

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 alternative crops, like onions.

Based on the SBA's definition of small entities, it is estimated that all of the seven handlers regulated by the order would be considered small entities if only their Spring melon revenues are considered. However, revenues from other productive enterprises might push a number of these handlers above the $6,000,000 annual receipt threshold. Of the 13 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.

At its September 16, 2004, meeting, the Committee unanimously recommended suspending, for the 2004–2005 fiscal period, the handling, assessment collection, and all reporting requirements, except for the acreage planting reporting requirement. The Committee requested that the rule be effective for the 2004–05 fiscal period, which began October 1, 2004, and ends September 30, 2005. A rule was published in the **Federal Register** on November 26, 2004, suspending these requirements for the specified period (69 FR 68762). A final rule was published in the **Federal Register** on February 23, 2005 (70 FR 8709).

The objective of the handling and inspection requirements is to ensure that only acceptable quality cantaloupe and honeydew melons enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to growers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes that the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived, especially in view of reduced melon acreage and yields in recent years.

The South Texas cantaloupe and honeydew melon industry has been shrinking. South Texas historically had enjoyed a marketing window of

approximately six weeks beginning about May 1 each season. That window has steadily eroded in recent years due to strong competition and quality problems in Texas melons. As a result, acreage has decreased dramatically from a high of 27,463 acres in 1987, to 4,780 in 2004, and 1,364 acres in 2005. The number of producers and handlers also has steadily declined.

Underlying economics for the South Texas melon industry did not justify continuing the regulations for 2004–05. Too little assessment revenue could be generated for an effective marketing and promotion program, and buyer demands have superseded the regulations in dictating quality requirements.

Suspending the regulations enabled handlers to ship melons without regard to the minimum grade, quality, maturity, container, pack, inspection, and related requirements for the 2004–05 fiscal period. It decreased industry expenses associated with inspection and assessments.

In addition, this rule also suspended, for the 2004–05 marketing year, § 979.219 requiring that an assessment rate of $0.09 per carton of melons be collected from South Texas melon handlers. Consistent with suspension of § 979.219, § 979.112 specifying late payment charges on delinquent assessments was also suspended. Authorization to assess melon handlers enables the Committee to incur expenses that are necessary to administer the marketing order.

With the suspension of handling, inspection, and assessment requirements, a limited Committee budget was needed for program administration and collection of acreage planting reports. For the period of the suspension, the Committee recommended a reduced budget of $70,959 to cover anticipated expenses. Adequate funds to cover these expenses were provided from the Committee's reserves.

The Committee anticipated that suspending the regulations would not negatively impact small businesses. The suspension applied to minimum grade, quality, maturity, container, pack, inspection, assessment collection, some reporting, and other related requirements. Further, this rule allowed handlers and growers the choice to obtain inspection for melons, as needed, thereby reducing costs for the industry. The total cost of inspection and certification for fresh shipments of South Texas melons during the 2003–04 marketing season was $46,000. These costs were not incurred during the 2004–2005 season.

The suspension of the assessment collection requirements for the 2004–05 season also resulted in some cost savings. Assessment collections during the 2003–04 season totaled $102,988. As a result of the suspension of § 979.219, no assessments were collected during the 2004–05 season.

At its September 16, 2004, meeting, the Committee considered suspension of the marketing order, but chose to continue receiving data on plantings for a one-year period before deciding whether the order should be continued.

The Committee met on September 7, 2005, to evaluate the industry situation since the regulations were suspended. Planted acreage continued to decline, from 4,780 acres in 2003–04 to 2,364 acres in 2004–05. The number of melon growers and handlers also continued to decline. During the 2003–04 season, there were 29 growers and 16 handlers; in 2004–05 the numbers decreased to 13 and seven, respectively. In addition, no new varieties were introduced to improve the quality and make South Texas melons more competitive with other producing areas.

The Committee believes that there is no longer a need for the order, and therefore recommended its termination. USDA is evaluating the Committee's recommendation. The first suspension of regulations expired on September 30, 2005. A subsequent interim final rule was published in the **Federal Register** on October 5, 2005, (70 FR 57995) suspending all regulatory requirements under the order, including the one remaining reporting requirement in effect. This final rule continues in effect the suspension of all regulatory requirements indefinitely as USDA evaluates the Committee's recommendation to terminate the order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements continuing to be suspended by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. Suspension of all the reporting requirements under the order is expected to reduce the reporting burden on small or large South Texas melon handlers by 24.90 hours, and should further reduce industry expenses. Handlers are no longer required to file any forms with the Committee. This rule will, thus, not impose any additional reporting or recordkeeping requirements on either small or large 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.

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

Further, the Committee's meeting was widely publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 16, 2004, meeting and the September 7, 2005 meeting were public meetings and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. No comments were received.

An interim final rule concerning this action was published in the **Federal Register** on October 5, 2005. Copies of the rule were mailed by the Committee's staff to all Committee members and melon handlers. In addition, the rule was made available through the Internet by the USDA and the Office of the **Federal Register**. That rule provided for a 30-day comment period which ended November 4, 2005. 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 Committee's recommendation, and other information, it is found that the regulations suspended in this final rule, which adopts, without change, the interim final rule, as published in the **Federal Register** (70 FR 57995) no longer tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

PART 979—MELONS GROWN IN SOUTH TEXAS

■ Accordingly, the interim final rule amending 7 CFR Part 979 which was published at 70 FR 57995 on October 5, 2005, is adopted as a final rule without change.

Dated: December 1, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–23707 Filed 12–6–05; 8:45 am]

BILLING CODE 3410–02–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 796

Post-Employment Restrictions for Certain NCUA Examiners

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is adding a new part to NCUA's regulations to implement new, post-employment restrictions that will apply to certain senior NCUA examiners starting December 17, 2005. The final rule prohibits senior NCUA examiners, for a year after leaving NCUA employment, from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for a total of two or more months during their last 12 months of NCUA employment.

DATES: Effective December 17, 2005.

FOR FURTHER INFORMATION CONTACT: Regina M. Metz, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION: On December 17, 2004, Congress enacted the Intelligence Reform Act, Public Law 108–458, creating new, post-employment restrictions for certain federal employees who examine banks and credit unions. Public Law No. 108–458, § 6303(c), 118 Stat. 3754 (2004). The law amended the Federal Credit Union (FCU) Act and requires NCUA to prescribe a rule implementing this section for federal examiners of federally insured credit unions. 12 U.S.C. 1786(w). The law also requires NCUA to consult to the extent it deems necessary with the federal banking agencies. In July, the Board issued a proposed rule with a 60-day comment period on post-employment restrictions for certain NCUA examiners to implement the amendments. 70 FR 43800, Jul. 29, 2005. NCUA reviewed and considered all comments received and, except for two minor clarifications, is issuing the final rule unchanged from the proposed rule. As with the proposed rule, NCUA staff consulted with an interagency group so that the final rule is consistent and comparable with the final rule the Federal banking agencies are issuing.

The post-employment restrictions will apply to senior examiners starting December 17, 2005. For a year after leaving NCUA employment, senior examiners will be prohibited from accepting employment with a federally insured credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment.

The final rule implements the statutory provisions by giving NCUA the authority to issue administrative orders removing a person from a position with a federally insured credit union and barring further participation with that credit union or any federally insured credit union for up to five years. Also, the final rule implements the statute by imposing civil money penalties for violations of up to $250,000. The rule also implements the statutory provision authorizing the NCUA Board to grant waivers if the NCUA Chairman certifies that granting the waiver would not affect the integrity of NCUA's supervisory program.

NCUA received eight comments: Three from national trade groups; one from a state trade group; three from Federal credit unions; and one from a state-chartered credit union. Four of the eight commenters fully supported the proposed rule and believe NCUA properly implemented the new statutory post-employment restrictions.

Two commenters thought the rule should be less restrictive and two commenters thought it should be more restrictive. Since the restrictions are statutory, the regulation cannot be less restrictive. One commenter who thought the post-employment restriction should be more restrictive supported a two-year cooling off period during which a senior examiner could not work for the credit union for which he or she had a substantial role in the supervision. The other commenter who thought the proposed rule should be stricter recommended NCUA expand the proposed ''senior examiner'' definition to include any examiners involved in a credit union in the last 12 months of their NCUA employment and at a minimum, examiners-in-charge. The commenter also proposed NCUA implement additional penalties for NCUA examiners seeking employment with credit unions.

The final rule retains the one-year cooling off period as specified in the statute. The final rule also retains the definition of NCUA senior examiner to whom the restriction will apply with one wording change from ''commissioned'' to ''authorized.'' 12 CFR 796.2. Congress intended the one-year post-employment prohibition to apply to examiners with a ''meaningful'' relationship to the credit union.[1] Consistent with that intent, the final rule defines a ''senior examiner'' as an NCUA employee, authorized as an examiner, who has continuing, broad, and lead responsibility for examining a particular federally insured credit union, routinely interacts with officers or employees of the credit union, and devotes a substantial portion of his or her time to supervising or examining that credit union. Finally, the wording of the final rule in section 796.3 has been slightly modified to reflect that the cooling off period applies to a senior examiner who performed work, including onsite or offsite work, for a federally insured credit union for a total of two months or more in his or her last year of NCUA employment.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities. NCUA considers credit unions having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The final rule prohibits senior examiners from accepting employment with a credit union if they had continuing, broad responsibility for examination of that credit union for two or more months during their last 12 months of NCUA employment. The NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), NCUA may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board has determined that the final rule does not contain any information collections and, therefore, no PRA number is required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on

[1] 150 CONG. REC. S10356 (daily ed. Oct. 4, 2004) (statement of Sen. Levin).