

§ 51.1837 Classification of defects.

TABLE I

Factor	Damage	Serious damage	Very serious damage
Ammoniation	Not occurring as light speck type, or detracts more than discoloration permitted in the grade.	Scars are cracked or dark and aggregating more than a circle $\frac{5}{8}$ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Bruises	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Segment walls are collapsed, or rag is ruptured and juice sacs are ruptured.	Fruit is split open, peel is badly water-soaked, or rag is ruptured and juice sacs are ruptured causing a mushy condition affecting all segments more than $\frac{1}{2}$ inch (12.7 mm) at bruised area or the equivalent of this amount, by volume, when affecting more than one area on the fruit.
Buckskin	Aggregating more than a circle $\frac{3}{4}$ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.	Aggregating more than 50 percent of the surface.
Caked melanose	Aggregating more than a circle $\frac{3}{8}$ inch (9.5 mm) in diameter.	Aggregating more than a circle $\frac{5}{8}$ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Creasing	Materially weakens the skin, or extends over more than one-third of the surface.	Seriously weakens the skin, or extends over more than one-half of the surface.	Very seriously weakens the skin, or is distributed over practically the entire surface.
Dryness or mushy condition	Affecting all segments more than $\frac{1}{8}$ inch (3.2 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than $\frac{1}{4}$ inch (6.4 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.	Affecting all segments more than $\frac{1}{2}$ inch (12.7 mm) at stem end, or the equivalent of this amount, by volume, when occurring in other portions of the fruit.
Green spots	Aggregating more than a circle $\frac{1}{2}$ inch (12.7 mm) in diameter.	Aggregating more than a circle $\frac{5}{8}$ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Oil spots	Aggregating more than a circle $\frac{1}{2}$ inch (12.7 mm) in diameter.	Aggregating more than a circle $\frac{3}{4}$ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scab	Materially detracts from the shape or texture, or aggregating more than a circle $\frac{3}{8}$ inch (9.5 mm) in diameter.	Seriously detracts from the shape or texture, or aggregating more than a circle $\frac{5}{8}$ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scale	Aggregating more than a circle $\frac{3}{8}$ inch (9.5 mm) in diameter.	Aggregating more than a circle $\frac{5}{8}$ inch (15.9 mm) in diameter.	Aggregating more than 25 percent of the surface.
Scars, Hail, and Thorn scratches [For smooth or fairly smooth superficial scars see § 51.1828.].	Deep or rough aggregating more than a circle $\frac{1}{4}$ inch (6.4 mm) in diameter; slightly rough with slight depth aggregating more than a circle $\frac{3}{4}$ inch (19.1 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than a circle $1\frac{1}{8}$ inches (28.6 mm) in diameter.	Deep or rough aggregating more than a circle $\frac{1}{2}$ inch (12.7 mm) in diameter; slightly rough with slight depth aggregating more than a circle $1\frac{1}{8}$ inches (28.6 mm) in diameter; smooth or fairly smooth with slight depth aggregating more than 10 percent of fruit surface.	Deep or rough or unsightly that appearance is very seriously affected.
Skin breakdown	Aggregating more than a circle $\frac{1}{2}$ inch (12.7 mm) in diameter.	Aggregating more than a circle $\frac{3}{4}$ inch (19.1 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sprayburn	Skin is hard and aggregating more than a circle $\frac{3}{4}$ inch (19.1 mm) in diameter.	Skin is hard and aggregating more than a circle $1\frac{1}{4}$ inches (31.8 mm) in diameter.	Aggregating more than 25 percent of the surface.
Sunburn	Skin is flattened, dry, darkened, or hard and the affected area exceeds 25 percent of the surface.	Skin is hard and affects more than one-third of the surface.	Aggregating more than 50 percent of the surface.

Note: All references to area or aggregate area, or length are based on a tangerine $2\frac{1}{2}$ inches in diameter (63.5 mm), allowing proportionately greater areas on larger fruit and lesser areas on smaller fruit.

Dated: May 2, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-11457 Filed 5-7-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 900**[Docket No. FV95-900-1FR]****Amendment of General Regulations for Marketing Orders; Adding Stipulation Procedures****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

SUMMARY: This rule amends the general regulations for federal marketing orders and marketing agreements covering fruits, vegetables and nuts, by adding a provision for implementing stipulation procedures to resolve certain violations of marketing orders, marketing agreements, Section 8e import regulations, and provisions regulating nonsignatory peanut handlers. Marketing orders, marketing agreements, and the other regulatory provisions listed above regulate handlers and/or importers of various agricultural commodities and are authorized under the Agricultural Marketing Agreement Act of 1937 (Act). The Act gives the Department of Agriculture (Department) authority to institute formal administrative proceedings against handlers and/or importers who violate marketing orders, marketing agreements, and other regulatory provisions under the Act. This rule would give the Department another tool for enforcement by allowing the Department to enter into a written agreement with a violator who agrees to waive a hearing and pay a civil penalty without a formal administrative proceeding.

EFFECTIVE DATE: May 9, 1996.

FOR FURTHER INFORMATION CONTACT: Barbara Schulke, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC. 20090-6456, telephone (202) 720-4607, facsimile (202) 720-5698.

SUPPLEMENTARY INFORMATION: 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 (1) preempts all State or local laws and regulations that are inconsistent with this rule, (2) has no retroactive effect, and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

The Act provides authority for federal marketing order and marketing agreement programs for various fruits, vegetables and nuts. The programs are initiated by interested industries and

voted on by those in the industry. A marketing order allows an industry to solve marketing problems by establishing grade, size, quality, maturity, quantity and container requirements that apply to all handlers in the industry. Section 8e of the Act requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Thus, handler and importer compliance is essential for marketing order and marketing agreement programs and mandatory import requirements to be effective.

Section 608(c)(14)(B) of the Act authorizes the Department to institute a formal administrative proceeding against a handler or importer who violates a marketing order or other regulatory provision under the Act. This rule provides an alternative tool for enforcement by allowing the Department to enter into a written agreement, or stipulation, with a violator who agrees to waive a hearing and pay a civil penalty without the Department's initiating a formal administrative proceeding.

Under these stipulation procedures, the Administrator of the Agricultural Marketing Service would give the handler or importer notice of the alleged violation and the opportunity for a hearing. The handler or importer would have the option to waive the hearing and agree to pay a specified civil penalty within a prescribed period of time. In turn, the Administrator would agree to accept the civil penalty in settlement of the particular matter involved if the penalty is paid within the specified time frame. If, however, the handler or importer does not pay the civil penalty within that period of time, the Department would institute a formal administrative proceeding. A civil penalty that the Department offers in a stipulation will have no bearing on the civil penalty that the Department may seek in a formal administrative proceeding.

Formal disciplinary proceedings can take up to two years and are costly for both the Department and the violator. The Department is implementing the use of stipulation agreements, where appropriate, to improve marketing order, marketing agreement, and Section 8e compliance. The intended effect of this rule is to resolve certain cases without the cost of going to a hearing. Accordingly, the general regulations for marketing orders and marketing agreements covering fruits, vegetables

and nuts are amended by adding a subpart on stipulation procedures.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that notice and other procedure with respect thereto are impracticable, unnecessary and contrary to the public interest, and there is good cause for making this rule effective less than 30 days after publication in the Federal Register because (1) these procedures are in effect for other Department programs, (2) this action improves the administration of marketing order, marketing agreement, and Section 8e programs because it affords more timely resolution of cases brought by USDA, and (3) no useful purpose would be served by delaying the effective date of implementing the use of stipulation agreements. This rule is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 7 CFR Part 900

Administrative practice and procedures, Freedom of information, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 900 is amended as follows:

PART 900—GENERAL REGULATIONS

Accordingly, in part 900, immediately following § 900.71, a new subpart is added to read as follows:

Subpart—Supplemental Rules of Practice for Marketing Orders, Marketing Agreements, and Requirements Issued Pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e Covering Fruits, Vegetables, and Nuts

Sec.

900.80 Words in the singular form.

900.81 Definitions.

900.82 Stipulation procedures.

Authority: 7 U.S.C. 601-674.

Subpart—Supplemental Rules of Practice for Marketing Orders, Marketing Agreements, and Requirements Issued Pursuant to 7 U.S.C. 608b(b) and 7 U.S.C. 608e Covering Fruits, Vegetables, and Nuts

§ 900.80 Words in the singular form.

Words in this subpart in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

§ 900.81 Definitions.

As used in this subpart, the terms as defined in the act shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) The term *Act* means Public Act No. 10, 73 Congress (48 Stat. 31) as amended and as reenacted and amended by the

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]

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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 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. 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.