

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.

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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

has its 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.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the orders regulating the handling of milk in the New York-New Jersey and Middle Atlantic marketing areas.

Notice of proposed rulemaking was published in the Federal Register on April 2, 1996 (64 FR 14514) concerning the proposed suspension of certain provisions of the orders. Interested persons were afforded opportunity to file written data, views and arguments thereon.

Two comments supporting and one comment opposing the proposed suspension were received.

After consideration of all relevant material, including the proposals in the notice, the comments received, and other available information, it is hereby found and determined that for the months of May 1, 1996, through September 30, 1996, the following provisions of the orders do not tend to effectuate the declared policy of the Act:

1. In § 1002.14 of the New York-New Jersey order, paragraph (d); and
2. In § 1004.92(c) of the Middle Atlantic order, the words "and who held such status in all or part of the 2 months of August and September and who otherwise was a producer only under this part for all of the remaining August through December period".

Statement of Consideration

This rule suspends a pooling provision of the New York-New Jersey order (Order 2) and suspends a provision in the Middle Atlantic order (Order 4) base-excess plan. The suspension will allow handlers regulated under Order 2 and Order 4 to assemble and transport the milk of dairy farmers more efficiently and thereby reduce costs. Suspension of these provisions in the two orders would permit handlers to freely shift the milk of individual dairy farmers located in a common supply area between the two markets. Proponents claim that this added flexibility would enable Order 2 and 4 handlers to furnish the fluid needs of bottling plants more effectively. Handlers will be obligated to change the pooling status of individual producers to achieve this efficiency.

Under the terms of Order 2, an individual dairy farmer's milk may not be pool milk during the months of December through June if any of the

dairy farmer's milk was producer milk pooled by the same handler under another Federal order in the preceding months of July through November. Under the Order 4 base-excess plan provisions, a dairy farmer's milk deliveries to handlers regulated under Orders 2 and 4 during August and September would be used to compute the producer's Order 4 base only if the dairy farmer's milk was pooled on Order 4 during the remaining months (October-December) of such base-forming period. Suspending these order provisions would allow milk to be shifted to Order 2 from Order 4 and would also allow Order 2 milk to be shifted to Order 4 without negative consequences to producers.

Several handlers (cooperative and proprietary) who market the milk of dairy farmers under Orders 2 and 4 requested the suspension. Proponents asked that the provisions be suspended for the months of May through September 1996.

In support of the action, proponents indicated that the State of Pennsylvania has become a common milkshed for Orders 2 and 4. In June 1995 there were 3,836 Pennsylvania dairy farmers pooled on Order 2 and 3,717 Pennsylvania producers pooled on Order 4. These dairy farmers represented 37 percent of the total producers on Order 2 and 73 percent of the total producers on Order 4. They produced 27 percent of the Order 2 pool milk and 67 percent of the Order 4 producer receipts. There is significant overlap of producers supplying the two markets in the Pennsylvania counties of Lancaster, Lebanon, Chester, and Berks, proponents stated.

Proponents also indicated in their request that a large percentage of the milk that is picked up in the common supply area of Pennsylvania is delivered to Order 4 fluid milk plants located at Wawa, Spring City, Royersford, and Fort Washington, Pennsylvania, and Florence, New Jersey. Some of the milk produced in this same area is delivered to the Order 2 pool plants located at Lansdale and Reading.

Proponents of the suspension have made plans to combine their milk routes in Pennsylvania to assemble and haul the milk from farms that are most advantageously located to plants where the milk is needed for processing. The commingling of the milk supply of these proponents is scheduled to begin on May 1, 1996, which is the first month the suspension is to be effective.

In their comments the proponents indicated that the number of producers that will be shifted between orders will be small. During April and May of 1996,

two of the proponents intend to change the farm pickup routes of approximately 865 dairy farmers serviced by 41 milk haulers. However, according to one comment, it is expected that 183 producers currently pooled under Order 2 will be changed to Order 4 and that 48 producers currently pooled on Order 4 will be changed to Order 2. Among the producers who will have their hauler changed on May 1 are those picked up on routes which primarily service proponents' pool distributing plants.

Concerns arose regarding the timing of this suspension action and the advisability of loosening the pooling restrictions of the New York-New Jersey order that could result in additional reserve supplies of milk pooled on the orders as a consequence of suspending these order provisions. In comments received from a proprietary handler who distributes Class I, Class II, and Class III products in the Order 2 marketing area and who opposes the suspension, it was stated that there is a potential for a lowering of the blend price to producers historically pooled on the respective orders, although the specific concern was for the lowering of the blend price to Order 2 producers. Similar concerns were expressed by a major cooperative in the Order 2 marketing area who nevertheless supports the suspension because it would help in lowering the costs of doing business to dairy farmers.

In light of the small number of producers who will have their pooling status shifted, it is reasonable to conclude that the changes in producer blend prices will not be significantly affected given the increased efficiencies gained by cost savings in transportation. Additionally, the suspension action is supported by producers who market the majority of milk in the Middle Atlantic and the New York-New Jersey marketing areas.

Accordingly, it is appropriate to suspend the aforesaid provisions from May 1, 1996, through September 30, 1996.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing areas, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who historically supplied the markets without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or

extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties and they were afforded the opportunity to file written data, views and arguments concerning these suspension actions. Two comments supporting and one comment opposing the action were received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the Federal Register.

List of Subjects in 7 CFR Parts 1002 and 1004

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, parts 1002 and 1004 are amended as follows:

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. The authority citation for 7 CFR part 1002 continues to read as follows:

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

§ 1002.14 [Suspended in part]

2. In § 1002.14, paragraph (d) is suspended.

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

3. The authority citation for 7 CFR part 1004 continues to read as follows:

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

§ 1004.92 [Suspended in part]

4. In § 1004.92(c), the words "and who held such status in all or part of the 2 months of August and September and who otherwise was a producer only under this part for all of the remaining August through December period" is suspended.

Dated: May 2, 1996.

Michael V. Dunn,

Assistant Secretary, Marketing and Regulatory Programs.

[FR Doc. 96-11463 Filed 5-7-96; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34-37159]

Delegation of Authority to Director of Division of Enforcement

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to delegate authority to the Director of the Division of Enforcement to authorize staff to appear in federal bankruptcy court where the debtor is involved with the subject matter of a Commission investigation, and to take necessary action therein to preserve potential Commission claims. This amendment will expedite and enhance the effectiveness of the enforcement process by enabling staff to meet bankruptcy court deadlines that affect potential Commission claims and to preserve and protect such claims.

EFFECTIVE DATE: May 8, 1996.

FOR FURTHER INFORMATION CONTACT:

Judith R. Starr, Division Bankruptcy Counsel, Division of Enforcement, 202/942-4868.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced amendments to its rules governing delegation of authority to the Division of Enforcement ("Division").

The amendment to Rule 30-4¹ authorizes the Director of Division of Enforcement to approve staff appearances in federal bankruptcy court where the debtor is involved with the subject matter of a Commission investigation. This delegation will expedite and enhance the effectiveness of the enforcement process by enabling prompt action to protect and preserve potential claims. Notwithstanding this delegation of authority, in instances where contemplated action in a bankruptcy case raises any close or controversial issues, the Division may consult with the Commission before the action is filed in federal court.

The Commission finds, in accordance with Section 553(b)(3)(A) of the Administrative Procedure Act,² that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice and opportunity for public comment are unnecessary, and publication of the amendment 30 days before its effective date is also unnecessary.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

¹ 17 CFR 200.30-4.

² 5 U.S.C. 553(b)(3)(A).

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. Section 200.30-4 is amended by adding paragraph (a)(11) to read as follows:

§ 200.30-4 Delegation of authority to Director of Division of Enforcement.

* * * * *

(a) * * *

(11) To authorize staff to appear in federal bankruptcy court to preserve Commission claims in connection with investigations pursuant to section 19(b) of the Securities Act of 1933 (15 U.S.C. 77s(b)), section 21(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(b)), section 18(c) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79r(c)), section 42(b) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(b)) and section 209(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-9(b)).

* * * * *

By the Commission.

Dated: May 2, 1996.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-11451 Filed 5-7-96; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 1, 4, 7, 16, 19, 20, 21, 22, 24, 25, 53, 55, 71, 170, 178, 179, 194, 197, 200, 250, 251, 252, 270, 275, 285, 290, and 296

[T.D. 372]

RIN 1512-AB47

Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF) Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision makes technical amendments and conforming changes to chapter I of title 27 Code of Federal Regulations (CFR). All changes are to provide clarity and uniformity throughout title 27 Code of Federal Regulations.

EFFECTIVE DATE: May 8, 1996.