

postponing the effective date of this rule until 30 days after publication in the Federal Register because (1) the interim rule was published in the Federal Register for public comment, (2) the changes made in this final action are for clarity and are considered non-substantive, and (3) no useful purpose would be accomplished in delaying the effective date of this action.

List of Subjects in 7 CFR Part 97

Novel Seed variety certification, Plant variety and protection.

Accordingly the interim rule amending 7 CFR Part 97, which was published at 60 FR 17188 on April 4, 1995, is adopted as a final rule with the following changes:

PART 97—PLANT VARIETY AND PROTECTION

1. The authority citation for Part 97 is revised to read as follows:

Authority: Plant Variety Protection Act, as amended, 7 U.S.C. 2321 *et seq.*; and Sec. 14, Plant Variety Protection Act amendments of 1994, 7 U.S.C. 2401 note.

2. In § 97.2, the definition for Office or Plant Variety Protection Office is revised to read as follows:

§ 97.2 Meaning of words.

* * * * *

Office or Plant Variety Protection Office. The Plant Variety Protection Office, Science and Technology Division, AMS, USDA.

* * * * *

§ 97.3 [Amended]

3. In § 97.3, paragraph (c), the words "(Pub. L. 92-463)" are removed.

4. In § 97.5, paragraph (b)(4), footnote number (1) is revised to read as follows:

§ 97.5 General requirements.

* * * * *

¹ Copies and translations of foreign laws and regulations will be requested only if they are not in the files of the Plant Variety Protection Office. Applicants may learn whether such a request will be made by writing to the address given in paragraph (c) of this section.

§ 97.5 [Amended]

5. In § 97.5(c), the second sentence is amended by adding the words "and Technology" after the word "Science".

6. In § 97.6, paragraph (d) is revised to read as follows:

§ 97.6 Application for certificate.

* * * * *

(d) The applicant shall submit with the application:

(1) At least 2,500 seeds of the viable basic seed required to reproduce the variety;

(2) With the application for a tuber propagated variety, verification that a viable cell culture has been deposited in a public depository approved by the Commissioner and will be maintained for the duration of the certificate; or

(3) With the application for a hybrid from self-incompatible parents, verification that a plot of vegetative material for each parent has been established in a public depository approved by the Commissioner and will be maintained for the duration of the certificate.

§ 97.19 [Amended]

7. In § 97.19, the introductory text is amended by removing "the" after the words "Journal shall show".

§ 97.21 [Amended]

8. In § 97.21, the second sentence is amended by adding the words "and appropriate fee" immediately following the words "A request for extension".

9. In § 97.140, the last sentence is revised to read as follows:

§ 97.140 After filing.

* * * * *

Where applicable, "PVPA 1994" or "PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited" may be added to the notice.

10. In § 97.141, the last sentence is revised to read as follows:

§ 97.141 After issuance.

* * * * *

Where applicable, "PVPA 1994" or "PVPA 1994—Unauthorized Sales for Reproductive Purposes Prohibited" may be added to the notice.

Dated: December 27, 1995.

Kenneth C. Clayton,
Acting Administrator, Agricultural Marketing Service.

[FR Doc. 96-75 Filed 1-3-96; 8:45 am]

BILLING CODE 3410-02-P

[Docket No. FV95-979-1IFR; Amendment 1]

Melons Grown in South Texas; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative

expenses for the South Texas Melon Committee (Committee) under M.O. No. 979. This interim final rule increases the level of authorized expenses and establishes an assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective October 1, 1995, through September 30, 1996. Comments received by February 5, 1996, will be considered prior to issuance of a final rule.

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

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833.

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 of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas melons are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable melons handled during the 1995-96 fiscal period, which began October 1, 1995,

and ends September 30, 1996. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 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 40 producers of South Texas melons under this marketing order, and approximately 19 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of South Texas melon producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the South Texas Melon Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas melons. They are familiar with the Committee's needs

and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas melons. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of \$234,044 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research projects were to be recommended at a later Committee meeting. The Committee administrative expenses of \$234,044 were published in the Federal Register as an interim final rule October 23, 1995 (60 FR 54294). That interim final rule added § 979.218, authorizing expenses for the Committee, and provided that interested persons could file comments through November 22, 1995. No comments were filed.

The Committee subsequently met on December 12, 1995, and unanimously recommended an increase of \$1,000 for administrative expenses, plus \$160,115 in research expenses, for a total budget of \$395,159. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Manager's salary, \$19,094 (\$15,172), office salaries, \$24,000 (\$22,000), payroll taxes, \$4,000 (\$3,100), insurance, \$8,000 (\$6,250), rent and utilities, \$6,500 (\$6,000), supplies, \$2,000 (\$1,500), postage, \$1,500 (\$1,000), telephone and telegraph, \$4,000 (\$2,500), furniture and fixtures, \$2,000 (\$1,000), equipment rental and maintenance, \$3,500 (\$2,500), contingencies, \$6,000 (\$5,278), Committee expenses, \$2,000 (\$700), manager's travel, \$5,000 (\$3,000), variety evaluation, \$10,875 (\$9,186) and \$3,750 for deferred compensation (manager's retirement), which was not a line item expense last year. Items which have decreased compared to the amount budgeted for 1994-95 (in parentheses) are: field travel, \$4,000 (\$5,000), and field salary, \$5,500 (\$8,000). All other items are budgeted at last year's amounts, including \$86,716 for a disease management program, \$18,700 for an insect management program, \$32,674 for breeding and variety development, and \$11,150 for control of melon diseases.

The initial 1995-96 budget, published on October 23, 1995, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of \$0.07 per carton, the same as last year. This rate, when applied to anticipated shipments of approximately 4,500,000 cartons, will yield \$315,000 in assessment income, which, along with \$80,159 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of October 31, 1995, were \$398,821, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on October 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable melons handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to that taken for the 1994-95 fiscal period; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

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 979.218 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 979.218 Expenses and assessment rate.

Expenses of \$395,159 by the South Texas Melon Committee are authorized and an assessment rate of \$0.07 per carton is established for the fiscal period ending September 30, 1996. Unexpended funds may be carried over as a reserve.

Dated: December 27, 1995

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division,
Agricultural Marketing Service

[FR Doc. 96-74 Filed 1-3-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 3017

RIN 0503-AA12

Nonprocurement Debarment and Suspension

AGENCY: Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This final rule amends the USDA regulations that implement Executive Order (E.O.) 12549, "Debarment and Suspension." E.O. 12549 required executive departments and agencies to issue regulations, consistent with guidelines issued by the Office of Management and Budget (OMB), to establish governmentwide effect for an agency's nonprocurement debarment and suspension actions. These changes will enhance USDA participation in the governmentwide nonprocurement debarment and suspension system by making appropriate modifications to the coverage of the regulations and clarifying the relationship of the regulations to other USDA procedures for establishing participant ineligibility for specific programs.

EFFECTIVE DATE: February 5, 1996.

FOR FURTHER INFORMATION CONTACT: Gary W. Butler, Deputy Assistant General Counsel, Office of the General Counsel, (202) 720-2577.

SUPPLEMENTARY INFORMATION: As part of the Federal Government's initiatives to curb fraud, waste, and abuse, E.O. 12549, "Debarment and Suspension," was signed on February 18, 1986. E.O. 12549 required executive departments and agencies to issue regulations to establish governmentwide effect for each agency's nonprocurement debarment and suspension actions. Section 3 of E.O. 12549 required that such regulations be consistent with guidelines issued by OMB.

On October 20, 1987, 20 executive departments and agencies published a proposed common rule (52 FR 39035-39042) which implemented the final OMB guidelines that had been published on May 29, 1987 (52 FR 20360-20369). USDA did not join the proposed common rule, but rather published a proposed rule that addressed some problems peculiar to USDA while being consistent with the OMB guidelines.

On May 26, 1988, 27 executive departments and agencies published a final common rule (53 FR 19159-19211) and OMB adopted the final common rule as its amended final guidelines. Upon reconsideration of the issue of joining the common rule, USDA published a final rule on January 30, 1989 (54 FR 4729), which followed the text of the final common rule published on May 26, 1988. However, USDA limited the scope of coverage of the rule (7 CFR part 3017) to domestic assistance transactions and added material generally to reflect internal organization and procedures. Following extended consultations with OMB, USDA has determined that the coverage of this rule should be amended by removing the provision that limits the coverage of the rule to domestic assistance transactions.

Accordingly, on September 26, 1995, USDA published in the Federal Register (60 FR 49519-49523) a notice of proposed rule making (NPRM) to amend 7 CFR part 3017 to make the scope of the USDA rule consistent with the scope of the common rule as adopted by most other agencies. USDA, however, proposed making additional specific exceptions from coverage of the common rule, as implemented by USDA, that are deemed in the public interest. The rationale for such additional specific exceptions from coverage was explained fully in the NPRM.

USDA solicited comments concerning our proposal for 60 days ending November 27, 1995. We received no timely comments in response to the NPRM. We, however, did receive one subsequent comment that was wholly supportive of the USDA proposal. Therefore, based on the rationale set

forth in the NPRM, USDA is adopting the provisions of the proposal as the final rule.

Impact Analysis

Executive Order 12866

This rule has been determined to be "significant," and it has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that, for each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impact on the small entities.

USDA certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

USDA certifies that this rule will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

List of Subjects in 7 CFR Part 3017

Administrative practice and procedure, Grant administration, Grant programs (Agriculture).

For the reasons set forth in the preamble, USDA amends 7 CFR part 3017 as follows:

PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The authority citation for part 3017 is revised to read as follows:

Authority: 5 U.S.C. 301; 41 U.S.C. 701 *et seq.*; E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189.

2. Section 3017.110 is amended by revising paragraph (a) (3) to read as follows:

§ 3017.110 Coverage.

(a) * * *

(3) *Department of Agriculture covered transactions.* (i) With respect to paragraph (a)(1) of this section, for USDA's export and foreign assistance programs, covered transactions will include only primary covered transactions. Any lower tier transactions with respect to USDA's export and foreign assistance programs will not be