

productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**Paperwork Reduction Act of 1995**

The amended regulation contains no additional information collection or record keeping requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*

**List of Subjects in 5 CFR Part 2430**

Administrative practice and procedure, Equal access to justice, Government employees, Labor-management relations.

For the reasons stated in the preamble, the FLRA amends 5 CFR part 2430 as follows:

**PART 2430—AWARDS OF ATTORNEY FEES AND OTHER EXPENSES**

1. The authority citation for part 2430 is revised to read as follows:

Authority: 5 U.S.C. 504.

2. Revise § 2430.4(a) to read as follows:

**§ 2430.4 Allowable fees and expenses.**

(a)(1)(i) No award for the fee of an attorney or agent under this part may exceed \$125.00 per hour, or for adversary adjudications commenced prior to March 29, 1996, \$75.00 per hour, indexed to reflect cost of living increases as follows:

$$\frac{\text{CPI-U-Year of Service}}{\text{CPI-U-Base Year}} \times \$125 \text{ (or } \$75) / \text{hr} = \text{Adjusted Rate}$$

(ii) The cost of living index to be used is the Consumer Price Index, All Urban Consumers, U.S. City Average, All Items (CPI-U). If legal services are provided during more than one year, each year shall be calculated separately. If an annual average CPI-U for a particular year is not yet available, the prior year's annual average CPI-U shall be used.

(2) No award to compensate an expert witness may exceed the highest rate that the Authority pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent, or witness ordinarily charges clients separately for such expenses.

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3. Revise § 2430.5 to read as follows:

**§ 2430.5 Rulemaking on maximum rates for attorney fees.**

If warranted by special factors, attorney fees may be awarded at a rate higher than that established in § 2430.4. Any such increase in the rate for attorney fees shall be made only upon a petition submitted by the applicant, pursuant to § 2430.6. Determinations regarding fee adjustments are subject to Authority review as specified in § 2430.13.

Dated: February 23, 2000.

**Solly Thomas,**

*Executive Director.*

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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 979**

[Docket No. FV00-979-1 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 1999-2000 and subsequent fiscal periods from \$0.04 to \$0.05 per carton of melons handled. The Committee is responsible for local administration of the marketing order which regulates the handling of melons (cantaloupes and honeydews) 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 October 1 and ends September 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** February 29, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Cavazos, Marketing Assistant, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 156 and Order No. 979, both as amended (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are 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 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, 1999, 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 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 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.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from \$0.04 to \$0.05 per carton of melons handled.

The South Texas melon marketing order provides authority for the Committee, with the approval of the Department, 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 of 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 1997–1998 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a mail vote, unanimously recommended 1999–2000 expenses of \$219,148 for personnel, office, compliance, promotion, and research expenses. These expenses were approved in September 1999. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee met on November 4, 1999, and unanimously recommended 1999–2000 expenditures of \$265,500 and an assessment rate of \$0.05 per carton of melons. In comparison, last year's budgeted expenditures were \$219,148. The assessment rate of \$0.05 is \$0.01 higher than the rate currently in effect. The Committee voted to increase its assessment rate because the current

rate would not have generated the income needed to administer the marketing order and would have reduced the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with funds from the Committee's authorized reserve, should provide the Committee with adequate funds to meet its 1999–2000 fiscal period's expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include \$98,800 for personnel and administrative expenses, \$31,200 for compliance activities, \$110,500 for research projects, and \$25,000 for promotional activities. Budgeted expenses for these items in 1998–1999 were \$97,600, \$32,400, \$79,148, and \$10,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas melons, and the amount of funds in the Committee's operating reserve. Melon shipments for the year are estimated at 4,200,000 cartons, which should provide \$210,000 in assessment income at the \$0.05 per carton rate. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses for the 1999–2000 fiscal period. Funds in the reserve (currently \$316,208) 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 the Secretary 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 budget and those for subsequent fiscal periods will be

reviewed and, as appropriate, approved by the Department.

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 20 growers of South Texas melons in the production area and 20 handlers subject to regulation under the marketing order. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$500,000, 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 producing, shipping, and marketing melons. For the 1998–99 marketing year, melons produced on 8,364 acres were shipped by the industry's 20 handlers with the average acreage being 418 acres and the median volume handled was 193,867 cartons. In terms of production value, average revenues for the 20 handlers were estimated to be \$2.9 million.

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 commodities, like onions.

Based on the SBA's definition of small entities, the Committee estimates that a majority of the 20 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the \$5,000,000 annual receipt

threshold. Of the 20 growers within the production area, few have sufficient acreage to generate sales in excess of \$500,000; 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 1999–2000 and subsequent fiscal periods from \$0.04 to \$0.05 per carton of melons. The Committee unanimously recommended 1999–2000 expenditures of \$265,500 and an assessment rate of \$0.05 per carton of melons. In comparison, last year's budgeted expenditures were \$219,148. The assessment rate of \$0.05 is \$0.01 higher than the 1998–1999 rate. At the rate of \$0.05 per carton and an estimated 2000 melon production of 4,200,000 cartons, the projected income derived from handler assessments (\$210,000), along with funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include \$98,800 for personnel and administrative expenses, \$31,200 for compliance activities, \$110,500 for research projects, and \$25,000 for promotional activities. Budgeted expenses for these items in 1998–1999 were \$97,600, \$32,400, \$79,148, and \$10,000, respectively.

The Committee voted to increase its assessment rate because the current rate would not have generated the income needed to administer the marketing order and would have reduced the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with funds from the Committee's authorized reserve, should provide the Committee with adequate funds to meet its 1999–2000 fiscal period's expenses.

The Committee reviewed and unanimously recommended 1999–2000 expenditures of \$265,500, which included increases in personnel, promotion, and research projects. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and Post Harvest Subcommittees. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the melon industry. The assessment rate of \$0.05 per carton of assessable melons was then determined by considering the total recommended budget, the quantity of assessable melons, estimated at 4,200,000 cartons for the 1999–2000 fiscal period, and the amount of funds in the Committee's operating reserve. The recommended

rate will generate \$210,000, which is \$55,500 below the anticipated expenses. The Committee found this acceptable because reserve funds will be used to make up the deficit.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 1999–2000 marketing season could range between \$9.00 and \$12.00 per carton of cantaloupes and between \$6.00 and \$9.00 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue could range between .55 and .42 percent for cantaloupes and between .83 and .55 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 producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas melon industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 4, 1999, meeting was a public meeting 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.

The Department 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 January 10, 2000 (65 FR 1347). 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 the Office of the Federal Register. A 30-day comment period ending February 9, 2000, 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 the following web site: <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 is 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 1999–2000 fiscal period began on October 1, 1999, 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) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) the handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting. Also, a 30-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, 1999, an assessment rate of \$0.05 per carton is established for South Texas melons.

Dated: February 23, 2000.

**Robert C. Keeney,**  
Deputy Administrator, Fruit and Vegetable Programs.

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