Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 355

Endangered and threatened species, Exports, Imports, Law enforcement, Plants (Agriculture), Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR part 355 is amended as follows:

PART 355—ENDANGERED SPECIES REGULATIONS CONCERNING TERRESTRIAL PLANTS

■ 1. The authority citation for part 355 continues to read as follows:

Authority: 16 U.S.C. 1532, 1538, and 1540; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 355.2 is amended by adding, in alphabetical order, a definition of *protected plant permit* to read as follows.

§ 355.2 Definitions.

* * * * *

Protected plant permit. PPQ Form 622, ''Protected Plant Permit to Engage in the Business of Importing, Exporting, or Reexporting Terrestrial Plants Regulated by 50 CFR 17.12 and 23.23.''

* * * * *

§ 355.10 [Amended]

■ 3. Section 355.10 is amended by removing the word ''general'' and adding the words ''protected plant'' in its place.

■ 4. Section 355.11 is amended as follows:

■ a. By removing footnote 3 and revising the section heading and the introductory text of paragraph (b) to read as set forth below.

■ b. By removing the word ''general'' and adding in its place the words ''protected plant'' in the following places:

i. Paragraph (a).

ii. Paragraph (b).

iii. Paragraph (c).

iv. Paragraph (d), both times it appears.

v. Paragraph (e), all three times it appears.

vi. Paragraph (h), all three times it appears.

vii. Paragraph (i)(1), first sentence, both times it appears.

viii. Paragraph (i)(2), introductory text, both times it appears.

■ c. In paragraph (b)(5), by correcting the word ''similiar'' to read ''similar''.

§ 355.11 Protected plant permits.

* * * * *

(b) An application for a protected plant permit shall be submitted to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Permit Services, 4700 River Road Unit 133, Riverdale, MD 20737–1236. The completed application shall include the following information: [3]

* * * * *

§ 355.20 [Amended]

■ 5. In § 355.20, footnote 5 is redesignated as footnote 4.

§ 355.22 [Amended]

■ 5. In § 355.22, footnote 6 is redesignated as footnote 5.

Done in Washington, DC, this 29th day of September 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–19944 Filed 10–4–05; 8:45 am]

BILLING CODE 3410–34–P

[3] Application forms are available on the Internet (*http://www.aphis.usda.gov/ppq/permits*), by calling (877) 770–5990, or by writing to the address in this paragraph. Application forms may also be obtained from local offices at any of the ports designated in 50 CFR part 24. Telephone numbers and addresses of local offices are listed in telephone directories.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV05–979–2 IFR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule continues in effect indefinitely a suspension of 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 reporting requirements under the order. These requirements were initially suspended for the 2004–05 fiscal period to allow the South Texas melon industry to evaluate the need for the marketing order. This action also suspends one remaining reporting requirement in effect. 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 will relieve handlers of regulatory requirements while the Department of Agriculture (USDA) evaluates the Committee's recommendation to terminate the order.

DATES: Effective October 6, 2005. Comments received by November 4, 2005 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

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.''

The Department of Agriculture (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 a suspension of assessment collection and reporting requirements under the order, and suspends one remaining reporting requirement currently in effect concerning planted acreage. 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 evaluate the need for the marketing order. A final rule was published in the **Federal Register** on February 23, 2005 (70 FR 8709). 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 after a year of evaluation. This rule will relieve handlers of regulatory requirements 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 ends 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 expires on September 30, 2005. The process to terminate a marketing order takes several months to complete; therefore, this action will continue the suspension of regulations during this process, consistent with the intent of the Committee. This action also suspends the one remaining reporting requirement under the order regarding planted acreage. Because the industry has continued to decline, the Committee believes there is no need to incur any costs or gather any additional data.

Initial 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 initial 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 wished 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 expires on September 30,

2005. Therefore, this action will continue the suspension of regulations indefinitely as USDA evaluates the Committee's recommendation to terminate the order.

This action also suspends the one remaining reporting requirement under the order regarding planted acreage. Because the industry has continued to decline, the Committee believes there is no need to incur any costs or gather any additional data.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being 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 are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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.

This rule invites comments on continued suspension of the handling, assessment collection, and all reporting regulations currently prescribed under the South Texas melon marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that the regulations suspended by this interim final rule, as hereinafter set forth, no longer 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 rule until 30 days after publication in the **Federal Register** because: (1) The rule continues to suspend the handling, assessment collection, reporting requirements, and related regulations for South Texas melons indefinitely; (2) termination of the order was recommended by the Committee at an open public meeting and all interested persons had an opportunity to express their views and provide input; (3) South Texas melon handlers are aware of this rule and need no additional time to comply with the relaxed requirements; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule. For these same reasons, a thirty-day comment period is deemed appropriate for interested persons to comment.

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. In part 979, §§ 979.106, 979.112, 979.152, 979.155, 979.180, 979.219, and 979.304 are suspended indefinitely in their entirety effective October 6, 2005.

Dated: October 3, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–20088 Filed 10–3–05; 12:38 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22585; Directorate Identifier 2005–NM–041–AD; Amendment 39–14328; AD 2005–20–31]

RIN 2120–AA64

Airworthiness Directives; Honeywell Flight Management System (FMS) One Million Word (1M or 700K) Data Bases (9104 Cycle or Earlier), as Installed in, but Not Limited to, McDonnell Douglas Model MD–11 and MD–11F Airplanes, Boeing Model 747–400 Series Airplanes, and Boeing Model 757 and 767 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission; request for comments.

SUMMARY: The FAA is rescinding an existing airworthiness directive (AD) that applies to Honeywell FMS one million word (1M or 700K) data bases (9104 cycle or earlier) as installed in, but not limited to McDonnell Douglas Model MD–11 and MD–11F airplanes, Boeing Model 747–400 series airplanes, and Boeing Model 757 and 767 airplanes. That AD requires a revision to the FAA-approved Airplane Flight Manual (AFM) and installation of a placard to prohibit the use of Nondirectional Beacon (NDB) approaches for landing. That AD was prompted by an anomaly in the Honeywell FMS one million word (1M or 700K) data bases (9104 cycle or earlier). We issued that AD to prevent an airplane deviating from the published approach to the runway, which could lead to premature ground contact before reaching the runway. Since we issued that AD, we have determined that the Honeywell FMS one million word (1M or 700K) databases (9104 cycle or earlier) no longer exist on any of the affected airplanes.

DATES: This AD becomes effective October 5, 2005.

We must receive comments on this AD by December 5, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this rescission.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-Wide Rulemaking Web site: Go to *http://www.regulations.gov*