

DEPARTMENT OF AGRICULTURE**Agricultural Marketing Service****7 CFR Part 51****[Docket Number FV-98-301]****Cantaloups; Grade Standards****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This rule will revise the United States Standards for Grades of Cantaloups. The standards are issued under the Agricultural Marketing Act of 1946, and are voluntary. This rule will revise the definition of decay in the definitions section of the standards. The change will provide that dry type decays will not be scored against the decay tolerance unless penetrating the rind and extending into the edible flesh of the melon. The regulation of cantaloups under the Marketing Order for Melons Grown in South Texas that is issued under the Agricultural Marketing Agreement Act of 1937 also will be affected by this change. This revision will result in a benefit to handlers and producers of cantaloups by allowing a more accurate scoring of dry type decays.

DATES: This rule is effective April 28, 1998. Comments must be received by June 26, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2065 South Building, Washington, D.C. 20090-6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Frank O'Sullivan, at the above address or call (202) 720-2185.

SUPPLEMENTARY INFORMATION: 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. This action 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. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule.

The Agricultural Marketing Service (AMS) recently received a request from the Texas Produce Association (Association) to eliminate the definition of decay from the cantaloup standards in 7 CFR 51.490. The definition of decay in the present standards is as follows: "Decay means breakdown, disintegration or fermentation of the flesh or rind of the cantaloup caused by bacteria or fungi." The current tolerances are one-half of one percent at shipping point for cantaloups affected by decay or mold and two percent en route or at destination for cantaloups affected by decay. Under Section 979.304 of the regulations (7 CFR 979.304) issued under Marketing Order No. 979, shipping point tolerances are applied. The Association is particularly concerned with the decay tolerances as they relate to Fusarium Rot, which may occur either as a soft or dry type decay. Currently, the restrictive decay tolerances are applied to both types of Fusarium Rot.

The Association contends that dry type decays, dry type Fusarium Rot specifically, affecting the rind of the melon when marketed under normal conditions, progress at a very slow rate and has not caused significant marketing problems. They do not suggest that dry type Fusarium Rot be ignored as it is recognized that, under certain circumstances, this disorder has the potential to become a significant marketing factor. However, in their opinion, this disorder, when found in the initial stages not penetrating into the edible flesh of the cantaloup, should not be covered under the same restrictive scoring guidelines as more destructive decays. This would permit shipments of additional marketable melons. Under the current definition of decay, a melon affected by Fusarium Rot is scored against the restrictive decay tolerance in all instances. The Association feels that scoring melons as decayed when Fusarium has not, and quite possibly may never affect the edible portion of the melon before it is consumed, is extremely harsh and accounts for unjustified rejections and adjustments.

According to the Agricultural Research Service of the USDA, as long as the dry rot lesion does not penetrate into the orange flesh and the epidermis is not split, the melon should hold, provided it is maintained at the recommended temperature and consumed within about 14 days.

The 1997 crop of Texas cantaloups was heavily infected with dry type

Fusarium Rot. A major portion of the crop, when graded in accordance with the standard, failed a basic grade requirement under the current definition of decay and caused significant economic losses to Texas growers and handlers as a result. The Department seeks to promote a more accurate procedure to grade cantaloups so that melons which are affected by dry type decays are scored differently than those infected with more destructive types.

In reviewing the Association's request for removal of the definition of decay from the standards, AMS has concluded that a change to the definition is more appropriate and practicable and will accomplish the result requested by the Association.

Therefore, based on the request made by the Association, and to keep the grade standards current with marketing trends and commodity characteristics, this interim final rule will revise the definition of decay in the U.S. Standards for Grades of Cantaloups, § 51.490.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The United States standards issued pursuant to the Agricultural Marketing Act of 1946, and 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 compatibility.

There are approximately 450 cantaloup handlers and producers in the United States. Of these 450 handlers and producers, approximately 70 are from the State of Texas and produce/handle approximately 5 percent of the total crop. Approximately 16 handlers are regulated under the Marketing Order for Melons Grown in South Texas and there are approximately 33 producers in the production area. Approximately 320 growers and handlers are from the State of California and produce/handle approximately 60 percent of the crop, and, approximately 31 handlers and producers from the State of Arizona produce/handle 15 percent of the total crop. The remaining commercial

production of cantaloups is distributed throughout other various growing regions of the United States. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) (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 cantaloup industry is characterized by producers and handlers whose farming operations involve more than one commodity, and whose income from farming operations is not exclusively dependent on cantaloup production. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the cantaloup production season is complete. Typical cantaloup producers and handlers either produce multiple crops or alternate crops within a single year. Therefore, it is difficult to obtain an exact number of cantaloup producers and handlers that can be classified as small entities based on the SBA's definition. However, it is estimated that the majority of handlers and producers of cantaloups may be classified as small entities.

This rule will revise the U.S. Standards for Grades of Cantaloups that was issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). In addition, the regulations under Marketing Order No. 979 (7 CFR Part 979), as issued under the Agricultural Marketing Act of 1937 (7 U.S.C. 601-674) references the U.S. Standards for Grades of Cantaloups, including the term "decay" and accordingly, the regulation of cantaloups grown in South Texas is affected. In the standards, the definition of decay applies to all four grades; U.S. Fancy, U.S. No. 1, U.S. Commercial and U.S. No. 2. This action changes the definition of decay to provide that dry type decays will not be scored against the decay tolerance unless penetrating the rind and extending into the edible flesh of the melon. This revision will be a benefit to producers and handlers by allowing a more accurate scoring of dry type decays. As a result, more melons are expected to be marketed that would otherwise be graded as defective.

It is estimated that total commercial cantaloup production in the U.S. was approximately 67 million cartons with an estimated value of \$401 million. Cantaloup production covered under the Marketing Order for Melons Grown in South Texas comprises approximately 5 percent of the domestic market share.

AMS has determined that this action would not impose an additional reporting or recordkeeping requirement on either small or large cantaloup growers and handlers.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule, except that the regulation of cantaloups grown in South Texas under 7 CFR Part 979 would be affected by this action.

With regard to alternatives to this action, if no action were taken by the Agency, this could result in continued scoring of marketable melons with possible revenue loss by growers, shippers or handlers of these melons.

Accordingly, this action will make the standards more consistent and uniform with marketing trends and commodity characteristics.

Pursuant to 5 U.S.C. 553, it is 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 30 days after publication in the **Federal Register** because: (1) Harvesting of the year's crop will begin in late April; (2) this revision should be made as soon as possible to make the standards more consistent and uniform with marketing trends and commodity characteristics; (3) cantaloup production is increasing on a yearly basis and further delaying the standards revision would result in the increased loss of marketable melons and subsequent revenue loss by growers and handlers; and, (4) this interim final rule provides a 60 day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621-1627.

2. In part 51, § 51.490 is revised to read as follows:

§ 51.490 Decay.

Decay means breakdown, disintegration or fermentation of the flesh or rind of the cantaloup caused by bacteria or fungi; except that *dry type*

decays will only be scored when penetrating the rind and extending into the edible flesh of the melon.

Dated: April 20, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV97-930-6 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 1997-98 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule establishes final free and restricted percentages for the 1997-98 crop year. The percentages are 55 percent free and 45 percent restricted. These percentages establish the proportion of cherries from the 1997 crop which may be handled in normal commercial outlets and are intended to stabilize supplies and prices, and strengthen market conditions. The percentages were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

EFFECTIVE DATE: April 28, 1998 through June 30, 1998, and applies to all tart cherries handled from the beginning of the 1997-98 crop year.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, 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. Small businesses may request information on compliance 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.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing