

2491; Fax: (202) 720-5698; E-mail: George.Kelhart@usda.gov.

**SUPPLEMENTARY INFORMATION:** Marketing Order No. 932, as amended (7 CFR Part 932), regulates the handling of olives grown in California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601-674).

AMS published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order No. 932, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612). Accordingly, AMS published a notice of review and request for written comments on the California olive marketing order in the August 5, 1999, issue of the **Federal Register** (64 FR 42619). No written comments were received.

The review was undertaken to determine whether the California marketing order for olives should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

Currently, there are about 1,000 olive growers in California and two handlers processing canned olives under the marketing order.

AMS has determined that the marketing order should be continued without change. The marketing order was established in 1965 to eliminate inconsistencies in and to improve the quality of canned ripe olives in the marketplace, and to assure that the growers are paid a fair return for the olives delivered by them to canners. The marketing order's regulations on the uniform application of size and quality requirements, through third party inspection continue to be beneficial to growers, canners, and end-users.

The AMS has received no complaints about the marketing order regulations. The marketing order is not unduly complex, and AMS has not identified

any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the California olive marketing order.

AMS and the California olive industry monitor marketing operations on a continuing basis. Changes in regulations are implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of these evaluations is to assure that the marketing order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

Over the years, regulation changes have been made to address industry operation changes and to improve program administration.

AMS plans to continue working with the California olive industry in maintaining an effective marketing order program.

Dated: March 21, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01-7529 Filed 3-26-01; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV01-959-1 IFR]

#### Onions Grown in South Texas; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule decreases the assessment rate established for the South Texas Onion Committee (Committee) for the 2000-2001 and subsequent fiscal periods from \$0.04 to \$0.03 per 50-pound container or equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective March 28, 2001. Comments received by May 29, 2001, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@usda.gov. 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### FOR FURTHER INFORMATION CONTACT:

Cynthia Cavazos, Marketing Assistant, McAllen Marketing Field Office, Marketing Order Administration Branch, 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. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions 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 onion 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 onions beginning August 1, 2000, 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 decreases the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from \$0.04 to \$0.03 per 50-pound container or equivalent of onions.

The South Texas onion 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 producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for 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 1999–2000 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 2000–2001 expenses of \$142,000 for personnel, office, compliance, and partial promotion expenses. These expenses were approved on July 31, 2000. The assessment rate and specific funding for

research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on December 27, 2000, and unanimously recommended 2000–2001 expenditures of \$306,740 and an assessment rate of \$0.03 per 50-pound container of onions. In comparison, last year's budgeted expenditures were \$301,000. The assessment rate of \$0.03 is \$0.01 lower than the rate currently in effect. The Committee voted to lower its assessment rate to reduce handler costs by about \$75,000 (\$0.01 assessment rate reduction X 7,500,000 containers of assessable onions), and because the Committee believes the projected reserve on July 31, 2001 (\$279,814), would be higher than needed to administer the program.

The Committee recently entered into an agreement with the Texas Produce Association (Association) for management services. The Association also manages the Texas citrus and melon administrative committees (7 CFR Parts 906 and 979) and several other State marketing organizations. The sharing of costs (staff, office space, and equipment) is expected to foster economy and efficiency. Each organization's share of the costs is based upon the amount of work performed and time devoted to its activities.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include \$117,544 for administrative expenses, \$27,496 for compliance, \$39,500 for promotion, and \$122,200 for research projects. Budgeted expenses for these items in 1999–2000 were \$97,200, \$34,800, \$36,000, and \$133,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the year are estimated at 7.5 million 50-pound equivalents, which should provide \$225,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$346,554) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, \$ 959.43).

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 is effective 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 2000–2001 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 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.

There are approximately 82 producers of onions in South Texas and approximately 34 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (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 onions. For the 1999–2000 marketing year, the industry's 34 handlers shipped onions produced on 15,867 acres with the average and median volume handled being 168,387 and 139,237 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 34 handlers were estimated to be \$48.7 million, with average and median revenues being \$1.4 million, and \$1.2 million, respectively.

The South Texas onion industry is characterized by producers 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 onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all the 34 handlers regulated by the order would be considered small entities if only their spring onion 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. All of the 82 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed \$500,000.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from \$0.04 to \$0.03 per 50-pound container or equivalent of onions. The Committee unanimously recommended 2000–2001 expenditures of \$306,740 and an assessment rate of \$0.03 per 50-pound container or equivalent. The assessment rate of \$0.03 is \$0.01 lower than the 1999–2000 rate. The quantity of assessable onions for the 2000–2001 fiscal period is estimated at 7.5 million 50-pound containers or equivalents.

The Committee recently entered into an agreement with the Texas Produce Association (Association) for management services. The Association also manages the Texas citrus and melon administrative committees (7 CFR Parts 906 and 979) and several other State marketing organizations. The sharing of costs (staff, office space, and equipment) is expected to foster economy and efficiency. Each organization's share of the costs is based upon the amount of work performed and time devoted to its activities. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include \$117,544 for administrative expenses, \$27,496 for compliance, \$39,500 for promotion, and \$122,200 for research projects. Budgeted expenses for these items in 1999–2000 were \$97,200, \$34,800, \$36,000, and \$133,000, respectively.

The Committee voted to lower its assessment rate to lower handler costs by about \$75,000 and because the Committee believes the projected reserve on July 31, 2001 (\$279,814), would be higher than needed to administer the program.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of \$306,739, which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee, the Research Subcommittee, and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the onion industry. The assessment rate of \$0.03 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 7.5 million 50-pound equivalents for the 2000–2001 fiscal period. This is approximately \$81,740 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2001-marketing season could range between \$7.00 and \$12.00 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period as a percentage of total grower revenue could range between .43 and .25 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, the assessment rate decrease reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 27, 2000, meeting was a public meeting and

all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large South Texas onion 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 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.

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 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 2000–2001 fiscal period began on August 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) this action decreases the assessment rate for assessable onions beginning on August 1, 2000; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; 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 959**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

#### **PART 959—ONIONS GROWN IN SOUTH TEXAS**

1. The authority citation for 7 CFR part 959 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

##### **§ 959.237 Assessment rate.**

On and after August 1, 2000, an assessment rate of \$0.03 per 50-pound container or equivalent is established for South Texas onions.

Dated: March 21, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–7531 Filed 3–26–01; 8:45 am]

BILLING CODE 3410–02–P

#### **DEPARTMENT OF AGRICULTURE**

##### **Agricultural Marketing Service**

##### **7 CFR Part 989**

[Docket No. FV01–989–1 FIRA]

#### **Raisins Produced from Grapes Grown in California; Reduction in Production Cap for 2001 Diversion Program**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule reducing the production cap for the 2001 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.5 tons per acre. The cap is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates for reserve raisins from the RAC. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap brings the figure in line with anticipated 2001 crop yields.

**EFFECTIVE DATE:** April 26, 2001.

#### **FOR FURTHER INFORMATION CONTACT:**

Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; 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](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, 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 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 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 continues to reduce the production cap for the 2001 RDP for NS raisins from 2.75 to 2.5 tons per acre. The cap is specified in the order. Under an RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates for reserve raisins from the RAC. The production cap limits the yield per acre that a producer can claim in an RDP. Reducing the cap for the 2001 RDP brings the figure in line with anticipated 2001 crop yields. This action was recommended by the RAC at a meeting on November 29, 2000.

#### **Volume Regulation Provisions**

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

#### **Raisin Diversion Program**

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction. Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order’s administrative rules and regulations.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market needs, it can decide to implement a