

\$39,500, and \$122,200, respectively. In addition, \$30,435 was expended for a retirement package for the outgoing Committee manager.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to \$52,576. The Committee believes that a reserve that low is not adequate for its operations.

The Committee reviewed and recommended 2001–02 expenditures of \$449,189, which included an increase in its promotion program. 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 and promotion projects to the onion industry. The assessment rate of \$0.05 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 2001–02 fiscal period. This is approximately \$74,190 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the 2002 shipping season indicates that the grower price for the 2001–02 fiscal period could range between \$6 and \$11 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.45 and 0.83 percent.

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 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 October 10, 2001, 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 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.

USDA 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, 2002 (67 FR 1317). Copies of the proposed rule were also mailed or sent via facsimile to all onion handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 11, 2002, 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: <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 the 2001–02 fiscal period began August 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. 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 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, 2001, an assessment rate of \$0.05 per 50-pound container or equivalent is established for South Texas onions.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6146 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV02–979–1 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 2001–02 and subsequent fiscal periods from \$0.05 to \$0.06 per carton of melons handled. The Committee locally administers the marketing order which regulates the handling of melons 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: March 15, 2002.

FOR FURTHER INFORMATION CONTACT:

Belinda G. Garza, Regional Manager, 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, 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. 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 October 1, 2001, and continuing 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 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. Such 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 increases the assessment rate established for the Committee for

the 2001-02 and subsequent fiscal periods from \$0.05 to \$0.06 per carton of melons handled.

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

The Committee met on September 25, 2001, and unanimously recommended 2001-02 expenses of \$90,888 for personnel, office, compliance, and partial market development expenses. 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 November 8, 2001, and unanimously recommended 2001-02 expenditures of \$314,388 and an assessment rate of \$0.06 per carton of melons. In comparison, last year's budgeted expenditures were \$241,460. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to \$194,687, which is lower than what the Committee needs for operations. This amount is derived by taking the current reserve (\$327,200), adding the \$166,875 in assessment income based on the old rate (3,337,500 cartons x \$0.05 per carton) and anticipated interest totaling \$15,000, and then subtracting the 2001-02 budget of \$314,388. With the new rate, \$200,250 in assessment income would be generated, and the reserve fund would only drop to \$228,062.

The major expenditures recommended by the Committee for the 2001-02 fiscal period include \$60,888

for administrative expenses, \$20,000 for compliance, \$137,000 for market development, and \$96,500 for research projects. Budgeted expenses for these items in 2000-01 were \$70,351, \$21,604, \$25,000, and \$96,500, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected shipments of South Texas melons, anticipated interest income, and the amount of funds in the Committee's operating reserve. Melon shipments for the fiscal period are estimated at 3,337,500 cartons, which should provide \$200,250 in assessment income at the \$0.06 per carton rate. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses for the 2001-02 fiscal period. Funds in the reserve (currently \$327,200) 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 USDA 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2001-02 budget has been approved and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to the 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 33 growers of melons in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts less than \$750,000, 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 growing, shipping, and marketing melons. For the 2000–01 marketing year, the industry's 22 handlers shipped melons produced on 6,979 acres with the average and median volume handled being 192,450 and 84,532 cartons, respectively. In terms of production value, total revenue for the 22 handlers was estimated to be \$37,478,447, with the average and median revenues being \$1,703,566 and \$748,273, respectively.

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 crops, like onions.

Based on the SBA's definition of small entities, the Committee estimates that half of the 22 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 33 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.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2001–02 and subsequent fiscal periods from \$0.05 to \$0.06 per carton of melons. The Committee unanimously recommended

2001–02 expenditures of \$314,388 and an assessment rate of \$0.06 per carton of melons. In comparison, last year's budgeted expenditures were \$241,460. The assessment rate of \$0.06 is \$0.01 higher than the rate currently in effect. At the rate of \$0.06 per carton and an estimated 2001–02 melon production of 3,337,500 cartons, the projected income derived from handler assessments (\$200,250), along with interest and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$327,200) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; \$ 979.44).

The major expenditures recommended by the Committee for the 2001–02 fiscal period include \$60,888 for administrative expenses, \$20,000 for compliance, \$137,000 for market development, and \$96,500 for research projects. Budgeted expenses for these items in 2000–01 were \$70,351, \$21,604, \$25,000, and \$96,500, respectively.

The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas melons, without having to draw a large amount from reserves. Without the increase, the Committee's reserve fund would drop to \$194,687, which is lower than what the Committee needs for operations. With the increased rate, the reserve fund would drop to \$228,062.

The Committee voted to increase its assessment rate because the current rate would reduce the Committee's reserve funds beyond the level acceptable to the Committee. Assessment income, along with interest and funds from the Committee's authorized reserve, will provide the Committee with adequate funds to meet its 2001–02 fiscal period's expenses.

The Committee reviewed and unanimously recommended 2001–02 expenditures of \$314,388, which included an increase in its market development program. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research and market development projects to the melon industry. The assessment rate of \$0.06 per carton of assessable melons was then determined by considering the total recommended budget, the quantity of assessable melons estimated at 3,337,500 cartons for the 2001–02 fiscal period, anticipated interest income, and

the funds in the Committee's operating reserve. The recommended rate will generate \$200,250, which is \$114,138 below the anticipated expenses. The Committee found this acceptable because interest and reserve funds will be used to make up the deficit.

A review of historical information and preliminary information pertaining to the 2002 shipping season indicates that the grower price for the 2001–02 fiscal period could range between \$7 and \$11 per carton of cantaloupes and between \$6 and \$10 per carton of honeydew melons. Therefore, the estimated assessment revenue for the 2001–02 fiscal period as a percentage of total grower revenue could range between 0.9 and 0.5 percent for cantaloupes and between 1.0 and 0.6 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 growers. 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 8, 2001, 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.

USDA 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, 2002 (67 FR 1319). 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 and USDA. A 30-day comment period ending February 11, 2002, 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: <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 the 2001–02 fiscal period began on October 1, 2001, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable melons handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. 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, 2001, an assessment rate of \$0.06 per carton is established for South Texas melons.

Dated: March 11, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–6140 Filed 3–13–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV02–982–1 IFR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim Final and Final Free and Restricted Percentages for the 2001–2002 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes interim final and final free and restricted percentages for domestic inshell hazelnuts for the 2001–2002 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The interim final free and restricted percentages are 4.9363 and 95.0637 percent, respectively, and the final free and restricted percentages are 6.1048 and 93.8952 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

DATES: This interim final rule is effective March 15, 2002. Comments received by May 13, 2002, 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, or E-mail: moab.docketclerk@usda.gov. All 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: Teresa L. Hutchinson, Northwest

Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, 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 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. 115 and Marketing Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, 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. It is intended that this action apply to all merchantable hazelnuts handled during the 2001–2002 marketing year (July 1, 2001, through June 30, 2002). 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