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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–FV–12–0039; FV12–959–1 FR]

Onions 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 Onion Committee (Committee) for the 2012–13 and subsequent fiscal periods from $0.025 to $0.03 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order that regulates the handling of onions grown in South Texas. Assessments upon onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* April 23, 2013.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions 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 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 on August 1, 2012, and continue until amended, suspended, or terminated.

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 2012–13 and subsequent fiscal periods from $0.025 to $0.03 per 50-pound equivalent of onions handled.

The South Texas onion 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 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 2009–10 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 based upon a recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 26, 2012, and unanimously recommended 2012–13 expenditures of $145,467 and an assessment rate of $0.03 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were $190,467. The assessment rate of $0.03 is $0.005 higher than the rate currently in effect. The Committee's 2012–13 crop estimate of five million 50-pound equivalents is lower than the six million estimated for last year, and would not generate adequate assessment income to cover budgeted expenses at the $0.025 rate. With the recommended $0.005 increase, assessment income should approximate $150,000. The increased assessment rate should provide sufficient funds to cover anticipated 2012–13 expenses.

The major expenditures recommended by the Committee for the 2012–13 fiscal period include $46,610 for compliance, $37,050 for administration, and $32,942 for management. Budgeted expenses for these items were the same in 2011–12. The reduction in overall budgeted expenses from $190,467 to $145,467 is due to the elimination of market development programs.

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 five million 50-pound equivalents, which should provide $150,000 in assessment income. Income derived from handler assessments, along with interest income, should be adequate to cover budgeted expenses. Funds in the reserve (currently $107,162) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses as stated in § 959.43).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a 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 2012–13 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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.

There are approximately 85 producers of onions in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service (NASS), the average price for South Texas onions during the 2010–11 season was around $7.35 per 50-pound equivalents and total shipments were approximately 5.4 million 50-pound equivalents. Using the average price and shipment information and assuming a normal distribution, the majority of South Texas onion producers would have annual receipts of less than $750,000. In addition, based on available information, approximately 80 percent South Texas onion handlers could be considered small businesses under SBA's definition. Thus, the majority of South Texas onion producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2012–13 and subsequent fiscal periods from $0.025 to $0.03 per 50-pound equivalent of onions. The Committee unanimously recommended 2012–13 expenditures of $145,467 and an assessment rate of $0.03 per 50-pound equivalent. The assessment rate of $0.03 is $0.005 higher than the 2011–12 rate. The quantity of assessable onions for the 2012–13 fiscal period is estimated at five million 50-pound equivalents, compared to an estimated six million 50-pound equivalents last year. The current assessment rate of $0.025 would not generate sufficient revenue to meet expenses, however the $0.03 rate should provide $150,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2012–13 fiscal period include $46,610 for compliance, $37,050 for administration, and $32,942 for management. Budgeted expenses for these items were the same in 2011–12. The reduction in overall budgeted expenses from $190,467 to $145,467 is due to the elimination of market development programs.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee and the Marketing Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various promotional projects to the South Texas 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 five million 50-pound equivalents for the 2012–13 fiscal period. Assessment income should approximate $150,000, $5,333 above 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 2012–13 fiscal period could range between $6.60 and $9.80 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2012–13 fiscal period, as a percentage of total grower revenue, could range between .3 and .45 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 June 26, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal**

Register on February 5, 2013 (78 FR 8047). 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 USDA and the Office of the Federal Register. A 10-day comment period ending February 15, 2013, 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: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny 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 2012–13 fiscal period began on August 1, 2012, and the marketing order requires that the assessment rate for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 10-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, 2012, an assessment rate of $0.03 per 50-pound equivalent is established for South Texas onions.

Dated: April 16, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09381 Filed 4–19–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. Nos. AMS–FV–11–0088; FV12–985–1A FIR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 1 (Scotch) and Class 3 (Native) Spearmint Oil for the 2012–2013 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that revised the quantity of Class 1 (Scotch) and Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2012–2013 marketing year under the Far West spearmint oil marketing order. The interim rule increased the Scotch spearmint oil salable quantity from 782,413 pounds to 2,622,115 pounds and the allotment percentage from 38 percent to 128 percent. In addition, the interim rule increased the Native spearmint oil salable quantity from 1,162,473 pounds to 1,348,270 pounds and the allotment percentage from 50 percent to 58 percent. This change is expected to moderate extreme fluctuations in the supply and price of spearmint oil. Also, this change will help maintain stability in the Far West spearmint oil market.

DATES: Effective June 1, 2012, through May 31, 2013.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), 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.

The handling of spearmint oil produced in the Far West is regulated by the order and is administered locally by the Spearmint Oil Administrative Committee (Committee). Under the authority of the order, salable quantities and allotment percentages were established for both Scotch and Native spearmint oil for the 2012–2013 marketing year. However, early in the 2012–2013 marketing year, it became evident to the Committee and the industry that demand for spearmint oil was greater than previously projected and an intra-seasonal increase in the salable quantity and allotment percentage for each class of oil was warranted.

Therefore, this rule continues in effect the action that increased the Scotch spearmint oil salable quantity from 782,413 pounds to 2,622,115 pounds, and allotment percentage from 38 percent to 128 percent. In addition, this rule continues in effect the action that increased the Native spearmint oil salable quantity from 1,162,473 pounds to 1,348,270 pounds, and allotment percentage from 50 percent to 58 percent.

In an interim rule published in the **Federal Register** on December 28, 2012, and effective June 1, 2012, through May 31, 2013, (77 FR 76341, Doc. No. AMS–FV–11–0088, FV12–985–1A IR), § 985.230 was amended to reflect the aforementioned increases in the salable quantities and allotment percentages for Scotch and Native spearmint oil for the 2012–2013 marketing year.