

Rules and Regulations

Federal Register

Vol. 61, No. 40

Wednesday, February 28, 1996

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV95-959-2FIR]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

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 amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses under Marketing Order No. 959 for the 1995-96 fiscal period. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers. **EFFECTIVE DATE:** August 1, 1995, through July 31, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833.

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 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995-96 fiscal period, which began August 1, 1995, and ends July 31, 1996. 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. A 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 89 producers of South Texas onions under this

marketing order, and approximately 35 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural Service firms are defined as those whose receipts are less than \$5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. 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 of goods and services in their local areas and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of \$239,250 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of \$239,250 were published in the Federal Register as an interim final rule August 17, 1995 (60 FR 42774). That interim final rule added § 959.236, authorizing expenses for the Committee, and provided that interested persons could file comments through September 18, 1995. No comments were filed.

The Committee subsequently met on November 14, 1995, and unanimously recommended an increase of \$1,000 for insurance in the recently approved 1995-96 budget. The Committee also unanimously recommended \$246,000 for promotion and \$99,000 for onion breeding research. Budget items for

1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Manager's salary, \$19,094 (\$15,172), office salaries, \$24,000 (\$22,000), payroll taxes, \$4,000 (\$3,100), insurance, \$8,000 (\$6,250), rent and utilities, \$6,500 (\$5,000), supplies, \$2,000 (\$1,500), postage, \$1,500 (\$1,000), telephone and telegraph, \$4,000 (\$2,500), furniture and fixtures, \$2,000 (\$1,000), equipment rental and maintenance, \$3,500 (\$2,500), contingencies, \$6,706 (\$3,978), manager travel, \$5,000 (\$3,000), Canadian onion promotion, \$5,000 (\$4,450), \$226,000 for promotion (\$200,000), onion breeding research, \$99,000 (\$88,028), and \$3,750 for deferred compensation (manager's retirement), and \$5,000 for miscellaneous promotion expenses, which were not line item expenses last year. All other items are budgeted at last year's amounts.

The initial 1995-96 budget, published on August 17, 1995, did not establish an assessment rate. Therefore, by a vote of 11 to 1, the Committee also recommended an assessment rate of \$0.10 per 50-pound container or equivalent of onions, \$0.06 more than last year's assessment rate. The no vote came from a grower who thought increasing the assessment rate from \$0.04 to \$0.10 cents was too great an increase. This rate, when applied to anticipated shipments of approximately 6,000,000 50-pound containers or equivalents, will yield \$600,000 in assessment income, which will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1995, were \$408,314, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the Federal Register on December 12, 1995 (60 FR 63610). That interim final rule amended § 959.236 to increase the level of authorized expenses to \$585,250 and establish an assessment rate of \$0.10 per 50-pound container or equivalent of onions for the Committee. That rule provided that interested persons could file comments through January 11, 1996. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations 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.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1995-96 fiscal period began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and published in the Federal Register as an amended interim final rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 959—ONIONS GROWN IN SOUTH TEXAS

Accordingly, the interim final rule amending 7 CFR part 959 which was published at (60 FR 63610) on December 12, 1995, is adopted as a final rule without change.

Dated: February 22, 1996.
Martha B. Ransom,
Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 96-4502 Filed 2-27-96; 8:45 am]
BILLING CODE 3410-02-P

7 CFR Part 979

[Docket No. FV96-979-1IFR]

Melons Grown in South Texas; Change in Cantaloup Container Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the container requirements for cantaloups grown in South Texas under Marketing Order No. 979. This rule increases the depth of cantaloup cartons from 10 $\frac{3}{8}$ to 11 $\frac{3}{8}$ inches. The South Texas Melon Committee (committee), the agency that locally administers the marketing order for melons grown in South Texas, unanimously

recommended this change. This change will allow handlers to use deeper cartons in shipping larger cantaloups. The use of deeper cartons is expected to result in less damage during packing and shipment and foster buyer confidence. This change should be in effect as soon as possible, to give handlers adequate time to order cartons, and manufacturers an opportunity to make them, for the 1996 shipping season. This rule also corrects telephone area codes, and removes out-of-date handler assessment information.

DATES: Effective on February 28, 1996. Comments which are received by March 29, 1996, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456, FAX 202-720-5698. 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.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: 210-682-2833; FAX: 210-682-5942; or Mark Kreaggor, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: 202-720-2431; FAX: 202-720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." This 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This interim final 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