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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV98-959-2 FIR]

#### Onions Grown in South Texas; Removal of Sunday Packing and Loading Prohibitions

**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 which changed the handling regulation prescribed under the South Texas onion marketing order by removing the Sunday packing and loading prohibitions. The marketing order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule allows the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace.

**EFFECTIVE DATE:** July 6, 1998.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, TX 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) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, 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) 205-6632.

**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 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. 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 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 in effect modifications to language in the order's handling regulation to remove the Sunday packaging and loading prohibitions. It also continues in effect modifications to § 959.322(f)(5) to remove all references to the Sunday packaging and loading prohibitions. This rule will continue to provide handlers with greater flexibility and additional time to prepare onions for market.

Section 959.322 of the order formerly prohibited the packaging or loading of onions on Sunday during the period March 1 through May 20 of each season. This prohibition had been in place for 35 years to foster orderly marketing conditions. Handlers were permitted to move onions that were already inspected and billed, but were not prevented from harvesting onions or taking them to the packing shed for storage or to the dryers. The onions, however, could not be packaged or loaded on Sunday during that time period.

At a Committee meeting on November 6, 1997, producers and handlers expressed the view that the Sunday holiday had outlived its usefulness. In recent seasons, the Sunday packaging and loading prohibition had hindered the movement of South Texas onions by not allowing producers and handlers to harvest and pack each day of the week. Last year, the South Texas area received record amounts of rainfall and producers had difficulty harvesting their onions. The packaging and loading restriction prevented handlers from packaging or loading onions, even when it was dry by Sunday. These heavy periods of rain disrupted the normal pattern of harvesting, packing, and loading.

Due to these severe conditions last season, the Committee unanimously recommended relief from the Sunday packing and loading restriction in April through May 20 of the onion season. The restriction was removed and handlers had the flexibility to package and load onions on Sunday, which helped them to salvage some of their crop. According to the Committee's pre-season estimate, five million fifty-pound bags were expected to be harvested last season. However, due to the inclement weather, only 2.78 million fifty-pound bags were shipped.

At its November 6, 1997, meeting, the Committee unanimously recommended revising the current handling regulation to remove the restriction on packaging and loading onions on Sundays. This recommendation was intended to allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace.

Continuing to prohibit the packaging and loading of onions on Sunday could

have prevented the South Texas onion industry from marketing more of their onions. Producers objected to the Sunday restriction because if the shed was full of onions, they were prevented from sending more onions to the sheds. Removing the Sunday restriction allowed handlers to package and load onions on Sunday and salvage the producers' crops if there were a threat of adverse weather conditions.

The Committee noted that competing areas pack and load on Sundays, and that the restrictive Sunday holiday had prevented the South Texas onion industry from competing effectively with other areas that do not restrict packing or loading on Sundays. The South Texas onion industry wanted the same opportunity. Continuing to prohibit the packing and loading of onions on Sunday would have presented an unreasonable and unnecessary hardship on handlers in the production area. If the prohibitions had continued, the Committee believed that Texas markets would have been taken by competing areas, and that the Texas onion industry would not have been able to meet their buyers' needs.

The Committee's recommendation was intended to improve producers' and handlers' returns by allowing them to package and load onions on Sunday when their operations were curtailed for some reason during the previous week. There had been times when handlers had been packing onions on Saturday night, and had to stop at 12:01 a.m. even though the packing had not been completed. This restriction was unacceptable to the South Texas onion industry. The producers and handlers needed the flexibility to pack and ship each day of the week to effectively meet their competition.

This action continues to allow handlers to package and load onions on Sunday, and permits producers to harvest and deliver their onions to packing sheds each day of the week. This provides producers and handlers more flexibility in meeting buyer needs and additional time for preparing onions for market.

Removing the Sunday packing and loading prohibitions also required that all references to the Sunday restrictions be removed from § 959.322(f)(5). Prior to the issuance of the interim final rule, the prohibition against packing or loading onions on Sunday could have been modified or suspended to permit the handling of onions for export provided that such handling complied with safeguard procedures. In addition, whenever the handler graded, packaged, and shipped onions for export on any Sunday, such handler was required to

cease all grading, packaging, and shipping on the first weekday following shipment for the same length of time as the handler operated on Sunday. The Committee recommended the removal of such references. Thus, § 959.322(f)(5) was revised to remove all references to the Sunday prohibition.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 38 handlers of South Texas onions who are subject to regulation under the order and approximately 70 onion producers in the regulated area. Small agricultural service firms 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.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 1996-97 marketing year, onions produced on 12,175 acres were shipped by the industry's 38 handlers; with the average acreage and median acreage handled being 310 acres and 177 acres, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be \$23.6 million; with average and median revenue being \$620,000 and \$146,000, respectively. The industry is highly concentrated as the largest 8 handlers (largest 25 percent) controlled 62 percent of the acreage and 77 percent of onion production.

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 the 38 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 70 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenue from all sources is considered, a majority of the producers would not be considered small entities because many of the producers would exceed the \$500,000 figure.

This rule continues to relieve the Sunday ban on packing and loading onions from South Texas allowing individual firms the flexibility to modify operations to effectively compete with production areas not bound by such restrictions, to fill customer orders, and to take advantage of available transportation.

The Committee recommended this rule change for the purpose of ensuring a timely flow of available supplies, and thus help to maintain stability in the onion market. Being reasonably assured of a stable price and market provides South Texas onion producers and handlers with added flexibility to maintain proper cash flow and to meet annual expenses. The market and price stability provided by the order potentially benefits the smaller handlers more than such provisions benefit large handlers. Smaller producers and handlers are more dependent upon stable prices. Larger handlers are more diversified and not as dependent upon price stability. Therefore, the relief of packing and loading restrictions on Sundays has small entity orientation.

While the level of benefits of removing the Sunday packing and loading prohibitions are difficult to quantify, this action continues to allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace. Last season, the South Texas onion industry expected to ship 5 million 50-pound bags of onions with a production value of \$45.6 million. However, inclement weather during a substantial part of the shipping season limited shipments. Late in the season, the packing and loading restrictions were removed to help producers and handlers salvage their

crops. Industry shipments totaled 2.8 million bags with a production value of \$25.4 million. The suspension for last season provided producers and handlers more flexibility in meeting the needs of their buyers.

The Committee believes that providing handlers the ability to pack and load on Sundays will continue to benefit the industry. Removal of the prohibitions provided producers with an additional window of opportunity to harvest and deliver their onions to handlers for sorting, grading, packaging, and loading. The continued use of this self-imposed restriction could have caused the South Texas area to lose its markets to other competing areas, because these areas can package and load onions on Sunday. Removing the Sunday packaging and loading prohibitions positively impacted both small and large handlers by helping them maintain markets.

This action is intended to improve producers' and handlers' returns by allowing them to package and load onions on Sunday if their operations were curtailed for some reason during the previous week. The ability to pack and load on Sunday has helped handlers fill unexpected rush orders made at the end of the normal packing week. There have been times when handlers were packing onions on Saturday night, and at 12:01 a.m. had to stop even though the packing had not yet been completed. This hindered handler operations and unduly delayed the packing and shipping of onions to meet buyer needs.

The Committee considered not removing the Sunday packing and loading prohibitions. However, not relaxing the regulation could have resulted in significant crop losses, as occurred last season, prior to the emergency suspension of the prohibition. Also, the cessation in harvesting activity last season resulted in increased unemployment among onion field workers and employees at handlers' facilities. In addition, reduced supplies could result in consumers paying higher prices for onions. The opportunity to pack and load onions seven days a week gives producers and handlers more time to harvest and prepare onions for market. This increased flexibility enables the industry to better meet buyer needs and compete more effectively with its competition.

This rule will not impose any 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 collection requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, 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. Like all Committee meetings, the November 6, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on February 24, 1998 (63 FR 9128). The interim final rule was made available through the Internet by the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on April 27, 1998, and no comments were received.

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 finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 9128, February 24, 1998), will tend to effectuate the declared policy of the Act.

#### 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

Accordingly, the interim final rule amending 7 CFR part 959 which was published at 63 FR 9128 on February 24, 1998, is adopted as a final rule without change.

Dated: June 1, 1998.

**Sharon Bomer Lauritsen,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-15016 Filed 6-4-98; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 985

[Docket No. FV98-985-2 FIR]

#### Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1997-98 Marketing Year

**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 increasing the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1997-98 marketing year. This rule was recommended by the Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West. The Committee recommended this rule to avoid extreme fluctuations in supplies and prices and thus help to maintain stability in the Far West spearmint oil market.

**EFFECTIVE DATE:** June 8, 1998.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724; Fax: (503) 326-7440; or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 720-2491; Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR Part 985), 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