

employees absent because of military duty, compensable injury that does not exceed 1 year, and service with international organizations, individuals on a re-employment priority list, and for any other reasons required by law or regulation or determined by the agency. Agencies must give advance notice to OPM of all competitive service positions to be filled for more than 90 days when applications will be accepted from an outside agency's own work force (5 U.S.C. 2301, 2302, 3330, 3402(a)(1)(A), 3582, 7201-7204, and 8151; 38 U.S.C. chapter 43; 5 CFR § 330.102, § 330.706, § 335.105, and part 720).

(d) *Requirement 4.* To be eligible for placement, a candidate must meet an appropriate provision of the applicable OPM qualification manual and any other legal requirements that apply. Evaluation criteria must be based on the requirements of the job to be filled and applied in a fair and consistent manner. In qualification and selection decisions, due weight, as determined by the agency, shall be given to performance appraisals and to any incentive awards or other performance recognition received by applicants. Competitive selection must be from among the best-qualified available candidates. The agency may determine how to identify the best-qualified candidates, but that identification may not be waived (5 U.S.C. 2301, 3301, 3362, 4302, and 5105; 16 U.S.C. 470h-4; 5 CFR part 300, subpart A).

(e) *Requirement 5.* Agency procedures must provide for management's right to select or not select from among properly ranked and certified candidates and to select from other appropriate sources of candidates (5 U.S.C. 7106; 5 CFR part 7.1).

(f) *Requirement 6.* An individual may seek redress, under applicable procedures, of a complaint relating to a promotion decision or action other than nonselection from a group of properly ranked and certified candidates. There is no right of appeal to OPM of individual promotion actions. An agency must take appropriate action to correct violations of the agency's merit selection procedures identified through grievances or any other means and shall follow OPM instructions concerning violations of statute of OPM regulation (5 U.S.C. 1103, 1104, and 7121; 5 CFR part 5).

(g) *Requirement 7.* Each agency shall maintain a record of each competitive action sufficient to allow reconstruction. These records may be destroyed after 2 years or after OPM has evaluated the program, whichever comes first, if the time limit for complaints has expired. The basis for each noncompetitive

promotion must be documented on the personnel action (5 U.S.C. 1103 and 1104; 5 CFR part 5).

§ 335.103 Exceptions.

At the request of an agency head, OPM may approve an exception to any provision in this part when the exception is consistent with applicable statutory provisions and would enable the agency to address more effectively a specific agency need in the administration of merit staffing programs.

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

5. The authority citation for part 338 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218.

6. Subpart C consisting of § 338.301 is added to read as follows:

Subpart C—Accelerated Qualifications

§ 338.301 Accelerated qualifications through intensive training programs.

Agencies are authorized to establish training programs that provide intensive and directly job-related training to employees selected in accordance with parts 335 and 410 of this chapter. Such training may be substituted for all or part of the experience required by an OPM qualification standard. Agencies are not authorized to substitute such intensive training for minimum educational requirements established by OPM, or for licensing, certification, or other specific credentials required by OPM qualification standards.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV95-959-3PR]

Onions Grown in South Texas; Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would change the end of the regulatory period for onions grown in South Texas under Marketing Order 959 from June 15 to June 4 of each year. Terminating the handling regulation on June 4 would relieve restrictions on handlers who

ship late season onions and help them become more competitive with handlers from non-marketing order areas without diminishing South Texas marketing order objectives. A corresponding change in the dates for the import regulation also would be made in a second document.

DATES: Comments which are received by March 21, 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, TX 78501; telephone: 210-682-2833; FAX 210-682-5942; or Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: 202-690-0464; FAX 202-720-5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions 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 proposing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposed 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 requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action 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 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 35 handlers of South Texas onions who are subject to regulation under the marketing order and 89 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (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. The majority of handlers and producers of South Texas onions may be classified as small entities.

At a public meeting on November 8, 1994, the South Texas Onion Committee (committee) unanimously recommended, under the authority of § 959.52(c) of the order, changing the termination date of the regulatory period for all varieties of regulated onions from June 15 to June 4. Currently, order regulations are in effect from March 1 through June 15 each year. The early and mid-season crop is produced in the Lower Rio Grande Valley (District 1), which generally accounts for about 80 percent of the total. The remaining crop, generally 20 percent, is produced in the Laredo-Winter Garden area of South Texas (District 2). These are the last regulated shipments to leave the production area each season.

In April 1994, based on a committee recommendation, the regulatory period was extended from May 20 to June 15

[59 FR 17265; April 12, 1994]. At that time, the committee believed that the application of quality control requirements over a longer time was necessary to enhance the South Texas onion industry's market research and promotion efforts, and protect its quality image. The committee also believed that District 2 handlers should pay assessments on more of their shipments for the research and promotion programs that benefit the entire industry.

After one season's experience, District 2 growers and handlers requested the committee to reconsider the regulatory extension. Although assessment funds are still needed and maintaining the quality of the shipments remains of great importance, experience appears to indicate that the strong competition from other growing areas outweighs these problems.

Shipments made from District 2 compete with onions produced in West Texas and other areas of the United States not regulated under Federal marketing orders. Onion prices are usually quite low during this period and these unregulated areas have a competitive advantage over District 2 because inspection costs for quality control purposes and administrative assessments are not incurred by shippers from these areas. Ending regulations on June 4, rather than June 15, apparently would relieve restrictions on District 2 shippers and help them become more competitive with shippers from these production areas without diminishing program objectives.

Section 8e provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity, subject to concurrence by the United States Trade Representative. The Act further provides that when two or more marketing orders covering the same commodity are concurrently in effect, imports will be subject to the requirements established for the commodity grown in the area with which the imported commodity is in most direct competition. Because this rule would change the regulatory period under the South Texas onion marketing order, corresponding changes would be needed in the onion import regulations. Such changes are to be addressed in a separate onion import rule.

Based on available information, the Administrator of the AMS has determined that this action would not

have a significant economic impact on a substantial number of small entities.

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 proposed to be 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. In § 959.322, the introductory text is revised to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending June 4, no handler shall handle any onions unless they comply with paragraphs (a) through (d), or (e), or (f) of this section. In addition, no handler may package or load onions on Sunday during the period March 1 through May 20.

* * * * *

Dated: February 12, 1996.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 96-3610 Filed 2-16-96; 8:45 am]

BILLING CODE 3410-02-P

7 CFR Part 985

[Docket No. A0-79-2; FV95-985-4]

Spearmint Oil Produced in the Far West; Emergency Final Decision and Referendum Order on Proposed Amendment of Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This emergency final decision would amend the Federal marketing order for spearmint oil produced in the Far West (Order). The amendment was proposed by the Department of Agriculture (Department). The proposed amendment would remove from the regulated production area, the portions of California and Montana currently regulated under the Order.

DATES: A referendum shall be conducted from March 2 through March 15, 1996, for the purpose of determining whether the proposed amendment is favored by producers who were engaged in the production of spearmint oil in the production area during the representative period. The