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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Doc. Number AMS-FV-12-0013]

Onions Other Than Bermuda-Granex-Grano/Creole; Bermuda-Granex-Grano

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the U.S. Standards for Grades of Onions (Other Than Bermuda-Granex-Grano (BGG) and Creole Type) and the U.S. Standards for Grades of BGG Type Onions which were issued under the Agricultural Marketing Act of 1946. The Agricultural Marketing Service (AMS) is amending the “similar varietal characteristic” and “one type” requirements to allow mixed colors of onions when designated as a mixed or specialty pack. This revision will update the standards to more accurately represent today’s marketing practices and to provide the industry with greater flexibility.

DATES: Effective [Insert date 30 days after date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Dave Horner, Standardization Branch, Specialty Crops Inspection (SCI) Division, (540) 361-1128 or 1150. The current U.S. Standards for Grades of Onions (Other Than BGG and Creole Type) and the U.S. Standards for Grades of BGG Type Onions are available on the SCI Division website at www.ams.usda.gov/scihome.

SUPPLEMENTARY INFORMATION: The changes in these two sets of standards will permit specified packs of mixed colors of onions to be certified to a U.S. grade. The revisions apply to the U.S. standards for grades for two categories of onions: (1) Other Than BGG and Creole Type and (2) BGG Type. Also, these revisions affect the grade requirements under two marketing orders, 7 C.F.R. parts 958 and 959, issued under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601-674) and applicable imports.

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules and promoting flexibility. This rule has been determined not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of these revisions on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this final regulatory flexibility analysis.

Each of the standards, except the section in the Other Than BGG and Creole Type Standards that affects the U.S. No. 2 grade, currently states that one of the requirements to be certified in a grade is that the onion pack contains “similar varietal characteristics.” The wording will be changed to: “Similar varietal characteristics, except color when designated as a specialty or mixed pack.” In the U.S. No. 2 grade for the Other Than BGG and Creole Type Standards, the wording will be changed to “One type, except when designated as a specialty or mixed pack.” The additional wording will permit onions of different colors in the same pack as long as the pack is appropriately designated as a “specialty or mixed pack.” Allowing the commingling of mixed colors in an onion pack, when designated, will facilitate the marketing of onions by providing the industry with more flexibility that reflects current industry practices, thereby encouraging additional commerce.

A farm-level estimate of the size of the U.S. onion industry can be obtained from National Agricultural Statistics Service (NASS) data. Averaging NASS onion production for the

most recent three years of data available (2010-2012) yields a U.S. production estimate of 73.3 million hundredweight (cwt), of which about 9.6 million cwt (13 percent) are onions for processing. Subtracting 9.6 million for processing from the total 73.3 million cwt yields an estimate of 63.7 million cwt sold for the fresh market. The total 3-year average onion crop value is \$912 million, and the value of onions for processing is \$81.5 million. The difference is a computed estimate of \$830.5 million for the crop value sold into the fresh market. Average onion acreage for the period 2010-2012 is 143,383. Dividing total crop value by acreage yields a 3-year average grower revenue per acre estimate of about \$5,800.

An estimate of the total number of onion farms from the 2007 Agricultural Census (the most recent data available on farm numbers) is 4,074. An onion farm is defined by the Census as a farm from which 50 percent or more of the value of agricultural sales are from onions. The Small Business Administration (SBA) threshold for a large business in farming is \$750,000 in annual sales. With average revenue per acre of \$5,800, 129 acres of onions would generate approximately \$750,000 in crop value. Census data shows that 3,679 out of a total of 4,074 farms (90 percent) are less than 100 acres. Most onion farms would therefore be considered small businesses under the SBA definition, in terms of onion sales only (not including sales of other crops). There is no published data with which to make comparable estimates of the number of packers or shippers of onions. However, we estimate that at least some would be considered small entities under applicable SBA criteria.

With regard to the marketing orders, there are approximately 30 Idaho and Eastern Oregon onion handlers and approximately 30 South Texas onion handlers subject to regulation under marketing orders 958 and 959, respectively. Under both marketing orders, the majority of these handlers would be considered small businesses under the SBA criteria. In addition to these

domestic handlers, in 2013, there were approximately 460 onion importers subject to import regulations.

About 80 percent of the value of production for U.S. onions comes from seven states. In declining order of magnitude, with three year average market shares ranging from 19 to 7 percent, those states are: California, Washington, Oregon, Georgia, Texas, Nevada, and New Mexico. The remaining five states for which NASS reports annual onion production are Idaho, New York, Colorado, Michigan, and Wisconsin, whose combined crop value is 20 percent of total U.S. onion crop value.

In considering alternatives to this rule, benefits of the changes substantially outweigh the costs. The only additional cost borne by packers/shippers, which is expected to be minimal, is when “specialty or mixed packs” are designated by means of labeling. There are no other additional costs to packers/shippers or growers from this change, and smaller entities would not bear a disproportionate cost. The change in the standards reflects a shift in onion packing/shipping practices that is already underway. The additional flexibility in the revised standards will facilitate additional onion sales, to the benefit of growers, packers, and consumers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this rule would not result in a change to the information collection and recordkeeping requirements previously approved and would impose no additional reporting and recordkeeping burden on domestic producers, first handlers, and importers of onions.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, there are marketing programs that regulate the handling of onions under 7 CFR parts 958 and 959. Onions under a marketing order have to meet certain requirements set forth in the grade standards. In addition, onions are subject to section 8e import requirements

under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601-674) which requires imported onions to meet grade, size and quality under the applicable marketing order (7 CFR part 980).

Background

The industry is packing mixed colors of onions, primarily in Idaho, Oregon, Washington, and Texas. In addition, marketing order 958 for Idaho and Oregon Onions, administered by the Idaho-Eastern Oregon Onion Committee, was amended November, 2011, to allow pearl onion packs and experimental shipments of mixed colors. Furthermore, in a May 2012 meeting with the USDA Marketing Order Administration Division, AMS was informed that Washington State, which is outside of marketing order 958, has packed mixed colors of larger Walla Walla type onions for Canada. However, the U.S. Onion Standards do not permit certifying a U.S. grade to mixed color packs.

To address this issue, a rule proposing revisions to U.S. Standards for Grades of Onions (Other Than BGG and Creole Type) and the U.S. Standards for Grades of BGG Type Onions was published in the *Federal Register* on August 22, 2013 (78 FR 52099). The public comment period closed on October 21, 2013. The one response, which came from a large industry trade association, showed full support for the revisions.

Based on the information gathered, the revisions will bring the U.S. Standards for Grades of Onions (Other Than BGG and Creole Type) and the U.S. Standards for Grades of BGG Type Onions in line with current marketing practices and provide shippers and packers with more flexibility. Therefore, AMS will amend the similar varietal characteristic and one type requirements for:

- Onions Other Than BGG and Creole Type in Sections 51.2830, 51.2831, and 51.2832, which affects the U.S. No. 1, U.S. Export No. 1, and U.S. Commercial grades, by adding “except color when designated as a specialty or mixed pack.” Likewise, AMS will amend the one type requirement in Section 51.2835, which affects the U.S. No. 2 grade, by adding “except when designated as a specialty or mixed pack.”
- BGG Type Onions in Sections 51.3195 and 51.3197, which affects the U.S. No. 1, U.S. Combination, and U.S. No. 2 grades, by adding “except color when designated as a specialty or mixed pack.”

In addition, AMS will correct an administrative error from the rule that inadvertently recorded “of” instead of “or” in Section 51.2831.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food Grades and Standards, Fruits, Nuts, Reporting and record keeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR part 51 is to be amended as follows:

PART 51 – [AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621 – 1627.

2. In § 51.2830, paragraph (a)(1) is revised to read as follows:

§ 51.2830 U.S. No. 1.

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

3. In § 51.2831, paragraph (a)(1) is revised to read as follows:

§ 51.2831 U.S. Export No. 1.

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

4. In § 51.2832, paragraph (a)(1) is revised to read as follows:

§ 51.2832 U.S. Commercial.

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

5. In § 51.2835, paragraph (a)(1) is revised to read as follows:

§ 51.2835 U.S. No. 2.

* * * * *

(a) * * *

(1) One type, except when designated as a specialty or mixed pack;

* * * * *

6. In § 51.3195, paragraph (a)(1) is revised to read as follows:

§ 51.3195 U.S. No. 1.

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

7. In § 51.3197, paragraph (a)(1) is revised to read as follows:

§ 51.3197 U.S. No. 2.

* * * * *

(a) * * *

(1) Similar varietal characteristics, except color when designated as a specialty or mixed pack;

* * * * *

Dated: October 17, 2014.

Rex A. Barnes,
Associate Administrator,
Agricultural Marketing Service.

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