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**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 959**

[Doc. No. **AMS-FV-15-0036; FV15-959-1 FR**]

**Onions Grown in South Texas; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule implements a recommendation from the South Texas Onion Committee (Committee) to increase the assessment rate established for the 2015-16 and subsequent fiscal periods from \$0.03 to \$0.05 per 50-pound equivalent of onions handled under the marketing order (order). The Committee locally administers the order and is comprised of producers and handlers of onions operating within the area of production. 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 November 27, 2015.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and

Agreement Division, Specialty Crops Program, AMS, USDA;  
Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail:  
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, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: 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 Orders 12866, 13563, and 13175.

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 August 1, 2015, 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 by the Committee for the 2015-16 and subsequent fiscal periods from \$0.03 to \$0.05 per 50-pound equivalent of onions.

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 2012-13 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 upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 25, 2015, and unanimously recommended 2015-16 expenditures of \$149,807 and an assessment rate of \$0.05 per 50-pound equivalent of onions. Budgeted expenditures for the 2014-15 fiscal period were the same. The assessment rate of \$0.05 is \$0.02 higher than the rate currently in effect. With the 2015-16 crop estimated to be four million 50-pound equivalents, one million less than last year's estimate, the current assessment rate would be insufficient to cover the Committee's anticipated expenditures. Further, due to a crop failure during the 2014-15 season, the Committee has depleted its reserve funds. With the Committee's recommended \$0.02 increase, assessment income should approximate \$200,000. This should provide sufficient funds to cover anticipated 2015-16 expenses and add funds to the Committee's authorized reserve.

The major expenditures recommended by the Committee for the 2015-16 year include \$50,000 for compliance, \$37,050 for administrative, and \$32,942 for management. Budgeted expenses for these items were the same in 2014-15.

The assessment rate recommended by the Committee was derived by considering anticipated expenses, expected

shipments of South Texas onions, and the level of funds in reserve. As mentioned earlier, onion shipments for the year are estimated at four million 50-pound equivalents which should provide \$200,000 in assessment income. Income derived from handler assessments, along with interest income, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$23,906) will be kept within the maximum permitted by the order (approximately two fiscal periods' expenses as authorized in § 959.43).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon 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 2015-16 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 businesses 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 60 producers of onions in the production area and approximately 20 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 2013-2014 season was around \$12.00 per 50-pound equivalent and total shipments were approximately 4.4 million 50-pound equivalents. Based on this information and data on acreage and yield, the majority of South Texas onion producers would have annual receipts of less than \$750,000. In addition, based on available information, more than 50 percent of 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 2015-16 and subsequent fiscal periods from \$0.03 to \$0.05 per 50-pound equivalent of Texas onions. The Committee unanimously recommended 2015-16 expenditures of \$149,807

and an assessment rate of \$0.05 per 50-pound equivalent. The assessment rate of \$0.05 is \$0.02 higher than the 2012-13 rate. The quantity of assessable onions for the 2015-16 fiscal period is estimated at four million 50-pound equivalents. Thus, the \$0.05 rate should provide \$200,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2015-16 fiscal period include \$50,000 for compliance, \$37,050 for administrative, and \$32,942 for management. Budgeted expenses for these items were the same during the 2014-15 fiscal period.

With the 2015-16 crop estimated to be four million 50-pound equivalents, one million less than last year's estimate, the current assessment rate would be insufficient to cover the Committee's anticipated expenditures. Further, due to a crop failure during the 2014-15 season, the Committee has depleted its reserve funds. The Committee recommended the \$0.02 increase to provide sufficient funds to cover anticipated 2015-16 expenses and add funds to the Committee's authorized reserve.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee. Alternative expenditure levels were discussed by this group, based upon the relative value of various activities to the South Texas onion industry. The Committee ultimately determined that 2015-16 expenditures of \$149,807 were appropriate, and the recommended assessment rate, along with interest income, would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the grower price for the 2015-16 season should average around \$9.55 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2015-16 fiscal period as a percentage of total grower revenue could be approximately 0.52 percent for the season.

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. 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 25, 2015, 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.

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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this action.

A proposed rule concerning this action was published in the **Federal Register** on September 18, 2015 (80 FR 56399). 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 30-day comment period ending October 19, 2015, 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: <http://www.ams.usda.gov/rules-regulations/moa/small-businesses>. 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 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 crop year began on August 1, 2015, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such period. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 60-day comment period was provided for in the proposed rule.

**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, 2015, an assessment rate of \$0.05 per 50-pound equivalent is established for South Texas onions.

Dated: November 20, 2015.

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