



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-SC-17-0040; SC17-959-1 PR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the South Texas Onion Committee (Committee) to increase the assessment rate established for the 2017-18 and subsequent fiscal periods from \$0.05 to \$0.065 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 would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet:

<http://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

<http://www.regulations.gov>. All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

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 Richard Lower, 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: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed 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 proposed rule in conformance with Executive Orders 13563 and 13175. This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866 and is not subject to review by the Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a

significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This proposed 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 proposed herein would be applicable to all assessable onions beginning on August 1, 2017, 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 proposed rule would increase the assessment rate established for the Committee for the 2017-18 and subsequent fiscal periods from \$0.05 to \$0.065 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 2015-16 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 7, 2017, and unanimously recommended 2017-18 expenditures of \$149,807, the same as budgeted last fiscal year, and an assessment rate of \$0.065 per 50-pound equivalent of onions. The assessment rate of \$0.065 is \$0.015 higher than the rate currently in effect. The Committee recommended the increase so assessments would be sufficient to cover the Committee's anticipated expenditures while providing additional funds to help replenish the Committee's reserve fund, which has been depleted due to declines in production. With the Committee's recommended \$0.015 increase and estimated shipments of approximately three million 50-pound equivalents, assessment income should be approximately \$195,000.

The major expenditures recommended by the Committee for the 2017-18 fiscal year include \$50,000 for compliance, \$37,050 for administrative, and \$32,942 for management costs. Budgeted expenses for these items were the same in 2016-17.

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 three million 50-pound equivalents, which should provide \$195,000 in assessment income. Income derived from handler assessments would be adequate to cover budgeted expenses. The Committee currently has no money in reserves.

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2017-18 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial 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 proposed rule on small entities. Accordingly, AMS has prepared this initial 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 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,500,000 (13 CFR 121.201).

Based on information from the National Agricultural Statistics Service, the weighted grower price for South Texas onions during the 2015-16 season was around \$12.30 per 50-pound equivalent. According to Committee data, total shipments were around three million 50-pound equivalents. Using the weighted average price and shipment information, and assuming a normal distribution, the majority of producers would have annual receipts of less than \$750,000. The average handler price for South Texas onions during the 2015-16 season was around \$14.05 per 50-pound equivalent. Using the average price and shipment information, the number of handlers, and assuming a normal distribution, the majority of handlers would have average

annual receipts of less than \$7,500,000. Thus, the majority of South Texas onion producers and handlers may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2017-18 and subsequent fiscal periods from \$0.05 to \$0.065 per 50-pound equivalent of Texas onions. The Committee unanimously recommended 2017-18 expenditures of \$149,807 and an assessment rate of \$0.065 per 50-pound equivalent. The proposed assessment rate of \$0.065 is \$0.015 higher than the 2016-17 rate. The quantity of assessable onions for the 2017-18 fiscal period is estimated at three million 50-pound equivalents. Thus, the \$0.065 rate should provide \$195,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2017-18 year include \$50,000 for compliance, \$37,050 for administrative, and \$32,942 for management. Budgeted expenses for these items were the same in 2016-17.

With the 2017-18 crop estimated to be three million 50-pound equivalents, the current assessment rate would be sufficient to cover the Committee's anticipated expenditures but would not provide any additional monies to

help replenish the Committee's reserve fund, which has been depleted due to declines in production. The Committee considered the proposed expenses and the state of the reserve fund and recommended the assessment increase. With the Committee's recommended \$0.015 increase, assessment income should be approximately \$195,000 and be adequate to cover anticipated expenses and add funds to the 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 these groups, based upon the relative value of various activities to the South Texas onion industry. The Committee ultimately determined that 2017-18 expenditures of \$149,807 were appropriate, and the recommended assessment rate would generate sufficient revenue to meet its expenses.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2017-18 season could be around \$12.00 per 50-pound equivalent of Texas onions. Therefore, the estimated assessment revenue for

the 2017-18 fiscal period as a percentage of total grower revenue could be about 0.5 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be 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 7, 2017, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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 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 proposed rule would impose 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 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 Richard Lower at the

previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2017-18 fiscal period begins on August 1, 2017, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

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.

SUBPART A - [AMENDED]

2. Designate the subpart labeled "Order Regulating Handling" as subpart A.

SUBPART B - Administrative Provisions

3. Designate the subpart labeled "Rules and Regulations" as subpart B and revise the heading as shown above.

SUBPARTS "ASSESSMENT RATES" AND "HANDLING REGULATIONS" - [AMENDED]

4. Remove the subpart headings "Assessment Rates" and "Handling Regulations".

5. Transfer §§ 959.237 and 959.322 to subpart B.

6. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2017, an assessment rate of \$0.065 per 50-pound equivalent is established for South Texas onions.

Dated: September 12, 2017.

Bruce Summers,
Acting Administrator
Agricultural Marketing Service

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