



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-SC-20-0019; SC20-959-1 FR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the South Texas Onion Committee (Committee) to decrease the assessment rate established for the 2019-20 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Abigail Campos, 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 Email: Abigail.Campos@usda.gov or Christian.Nissen@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 Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in south Texas. Part 959, (referred to as "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 Committee locally administers the Order and is comprised of producers and handlers operating within the area of production.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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 will be applicable to all assessable onions for the 2019-20 fiscal year, 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 decreases the assessment rate from \$0.065, the rate that was established for the 2017-18 and subsequent fiscal periods, to \$0.05 per 50-pound equivalent of onions handled for the 2019-20 and subsequent fiscal years.

The 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 are familiar with the Committee's needs and with the costs of 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 2017-18 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.

On November 19, 2019, the Committee unanimously recommended 2019-20 expenditures of \$174,807 and an assessment rate of \$0.05 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were \$169,807. The assessment rate of \$0.05 is \$0.015 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to help reduce the Committee's reserve fund and reduce the assessment burden on handlers.

The major expenditures recommended by the Committee for the 2019-20 year include \$69,992 for management and administration, \$50,000 for compliance, and \$20,000 for research. Budgeted expenses for these items in 2018-19 were \$69,992, \$50,000, and \$20,000, respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, expected shipments of 3,960,000 50-pound bags, and the amount of funds available in the authorized reserve. Income derived from handler

assessments calculated at \$198,000 (3.96 million multiplied by \$0.05), along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses of \$174,807. Funds in the reserve (currently \$201,844) will be kept within the maximum permitted by the Order (approximately two fiscal period's expenses as stated in § 959.43) at the end of the 2019-20 fiscal period.

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 2019-20 budget and those for subsequent fiscal periods will 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 30 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than \$1,000,000, and

small agricultural service firms are defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the weighted producer price for South Texas onions during the 2018-19 season was around \$9.09 per 50-pound equivalent. The Committee reports total onion shipments were approximately 4.2 million 50-pound equivalents. Using the weighted average price and shipment information, the total 2018-19 crop value is estimated at \$38.2 million. Dividing the crop value by the estimated number of producers (60) yields an estimated average receipt per producer of \$636,700, so the majority of producers would have annual receipts of less than \$1,000,000.

The average handler price for south Texas onions during the 2018-19 season was approximately \$11.00 per 50-pound equivalent. Using the price average and shipment information, the total 2018-19 handler crop value is estimated at \$46.2 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of \$1.54 million, which is below the SBA threshold for small agricultural service firms. Thus, the

majority of onion producers and handlers may be classified as small entities.

This final rule decreases the assessment rate collected from handlers for the 2019-20 and subsequent fiscal periods from \$0.065 to \$0.05 per 50-pound equivalent of Texas onions. The Committee unanimously recommended 2019-20 expenditures of \$174,807 and an assessment rate of \$0.05 per 50-pound equivalent. The assessment rate of \$0.05 is \$0.015 lower than the 2017-18 rate. The quantity of assessable onions for the 2019-20 fiscal period is estimated at 3.96 million 50-pound equivalents. Thus, the \$0.05 rate should provide \$198,000 in assessment income (3.96 million multiplied by \$0.05). Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2019-20 year include \$69,992 for management and administration, \$50,000 for compliance, and \$20,000 for research. Budgeted expenses for these items in 2018-19 were \$69,992, \$50,000, and \$20,000, respectively.

The Committee recommended decreasing the assessment rate to reduce the assessment burden on handlers and utilize funds from the authorized reserve to help cover Committee expenses.

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. Based on the estimated shipments, the recommended assessment rate of \$0.05 would provide \$198,000 in assessment income. The Committee determined that assessment revenue, along with interest income and funds from authorized reserves would be adequate to cover budgeted expenses for the 2019-20 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the average producer price for the 2019-20 season should be approximately \$10.15 per 50-pound equivalent of Texas onions. Therefore, the estimated assessment revenue for the 2019-20 fiscal period as a

percentage of total producer revenue would be about 0.49 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on producers.

The Committee's meeting was widely publicized throughout the South Texas onion industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 19, 2019, 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 OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements would be necessary as a result of this action. 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

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.

A proposed rule concerning this action was published in the *Federal Register* on March 19, 2020 (85 FR 15743). Copies of the proposed rule were also mailed or sent via e-mail to all South Texas onion handlers. The proposal was made available through the Internet by USDA and the Office of the Federal Register. A 30-day comment period ending April 20, 2020, was provided for interested persons to respond to the proposal.

Four comments were received. One was in support, one considered both maintaining the current assessment rate and lowering the assessment rate, and two comments did not address the merits of the proposal.

One comment received in support of the regulation stated the assessment rate should be decreased given the state of the national economy. The comment received that addressed both maintaining and reducing the assessment rate expressed that the proposed action would not be a significant benefit to producers. The commenter also recognized the indirect burden of assessments on producers and stated that maybe the assessment rate should be lowered. The Committee recommended the decrease in the assessment rate to help reduce the assessment burden on handlers. This change reduces the assessment burden on the industry handlers by around \$60,000, a reduction in total assessments of nearly 23 percent. The decreased assessment rate still covers the budgeted expenses for the Committee and reduces the assessment burden for handlers. It may also reduce the burden on producers.

Accordingly, no changes will be made to the rule as proposed, based on the comments 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 Richard Lower 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 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

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, 2019, an assessment rate of \$0.05 per 50-pound equivalent is established for South Texas onions.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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