



Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-SC-23-0040]

Onions Grown in South Texas; Redistricting and Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on implementing a recommendation from the South Texas Onion Committee (Committee) to reestablish the districts in the production area and reapportion representation on the Committee. This rulemaking would reduce the number of districts from two to one and reapportion membership to reflect changes in the industry, provide equitable representation on the Committee, and create the opportunity for more producers and handlers to serve on the Committee.

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

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be sent to the Docket Clerk electronically by Email: MarketingOrderComment@usda.gov or via the internet at: <https://www.regulations.gov>. Comments should reference the document number and the date and page number of this issue of the **Federal Register**. Comments submitted in response to this proposed rule will be included in the record, will be made available to the public, and can be viewed at: <https://www.regulations.gov>. 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: Delaney Fuhrmeister, Marketing Specialist, or Christian D. Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 291-8614, or E-mail: Delaney.Fuhrmeister@usda.gov or Christian.Nissen@usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, Fax: (202) 720-8938, or Email: Richard.Lower@usda.gov.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes to amend regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions 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 of onions operating within the production area.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866, 13563, and 14094 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. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This proposed action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175 -- Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule has been reviewed under Executive Order 12988 -- Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

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 United States Department of Agriculture (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 redistrict and reapportion the membership of the Committee as prescribed under the Order. This proposal would consolidate the current two districts into a single district and reapportion all membership on the Committee to the single district. These actions reflect changes in the industry and would help provide equitable representation on the Committee and create opportunity for more producers and handlers to serve on the Committee. Further, these changes would better enable Committee staff to conduct nominations and ensure the appointment of a full Committee, allowing for an easier achievement of quorum at assembled meetings. The Committee unanimously recommended these changes when meeting on June 8, 2023.

Section 959.22 provides for the establishment of membership on the Committee and states that the Committee shall consist of thirteen members, eight of whom shall be producers and five of whom shall be handlers. Each member shall have an alternate. Section 959.24 currently defines the counties in Texas that make up District No. 1 and District No. 2 for the purpose of selecting Committee members. Section 959.26 specifies that District No. 1 is represented by five producer members and alternates and three handler members and alternates, and District No. 2 is represented by three producer members and alternates and two handler members and alternates.

Section 959.25 provides the authority for the Committee to recommend, with the approval of the Secretary, reapportionment of members among districts, and the reestablishment of districts within the production area. This section also provides that, in making such recommendations, the Committee shall consider shifts in onion acreage or production within the districts, the importance of new production in relation to existing districts, the equitable relationship of Committee membership in districts, economies to result for producers in promoting efficient administration due to redistricting or reapportionment, and other relevant factors.

This proposed rule would add two new sections to the rules and regulations under the Order using the authority in § 959.25. Section 959.110 would reestablish the districts currently identified in the Order from two districts to one single district, and § 959.111 would reapportion the eight producer seats and five handler seats and their alternates to the new single district.

In 2017, the Committee recommended reducing the Committee size from 34 members to 26 members by removing one producer and one handler from each district. The Committee recommended this change due to the decrease in the number of onion handlers and producers, and believed having a smaller Committee would help fulfill membership and quorum requirements. The final rule reducing the Committee size published in the **Federal Register** on March 22, 2019 (84 FR 10665).

Despite reducing the Committee size in 2019, the Committee continued to face difficulty filling member and alternate seats and meeting quorum. Consequently, at its meeting on June 8, 2023, the Committee reviewed the need to reapportion the membership and/or redistrict the production area. In its discussion, the Committee considered the distribution of production between the two districts and the ongoing difficulty with finding candidates to fill membership positions, with Committee staff reporting that this was a particularly difficult task in District 2. Given the current state of the industry, discussion focused on combining the current two districts into a single district representing the entire production area.

The 2022-2023 fiscal period saw a 39-percent increase in acreage planted from the previous year. However, from 2018-2019 to 2022-2023, industry production decreased by 28 percent. During this time, the percentage of industry acreage has remained stable between the two districts, with District 1 accounting for around 85 percent of industry acreage and District 2 accounting for around 15 percent. Production

totals between the two districts also reflect a similar distribution as the percentages for acreage.

Since the reduction in Committee size in 2019, the industry has also experienced some additional consolidation, with the number of producers and handlers continuing to decline. As with acreage and production, there is also a disparity in the number of producers and handlers between the districts, with District 1 having considerably more producers and handlers (71) than District 2 (9). Consequently, District 2 currently has more representation on the Committee than is supported by either the volume of production or by the numbers of producers and handlers represented.

In addition, because of the limited number of producers and handlers in District 2, it has been difficult to find qualified nominees to fill the available member and alternate seats on the Committee. In its discussion, the Committee recognized this would continue to be a problem, and one that could become more difficult should there be any further consolidation in District 2. The Committee found that this, when combined with the disparity in volume and industry numbers, supports the need to adjust the current membership structure to make the Committee more reflective of the industry.

At the June meeting, there was little interest expressed in considering another reduction in the size of the Committee, or for further reapportioning the membership between the two districts to increase the number of seats available in District 1. Neither of these options received a motion. Committee members discussed that, historically, onion production in South Texas was separated by two distinct seasons with District 1 operating from May to July and District 2 from March to May; however, the Committee recognized the industry has been experiencing a shift, with District 1 and District 2 now aligning as a consolidated industry operationally with a single season from March to July.

Considering this shift in the industry, the distribution of production, and current Committee representation, the Committee recommended combining current Districts 1

and 2 into a new single district representing the entire production area. The Committee also recommended that all member and alternate seats be reapportioned to the reestablished district. By combining both District 1 and District 2 into a single district, the Committee believes it should enable the Committee to fulfill membership and quorum requirements and make the Committee more reflective of the industry.

These changes should also make the representation on the Committee more equitable and create the opportunity for more industry members to serve. Currently, producers and handlers in District 1 that may be interested in serving are not eligible to serve in the seats available in District 2. By combining the two districts, the Committee is addressing the issue of the limited number of producers and handlers in District 2, opening the available seats to all producers and handlers within the production area. In considering these changes, Committee members agreed producers and handlers in District 2 would still have an opportunity to be nominated and elected to serve following this action.

Accordingly, the Committee voted unanimously to reduce the number of districts from two to one, and to reapportion the producer and handler membership to the single district. The Committee believes these changes would make the representation on the Committee more reflective of the South Texas Onion industry and create opportunity for other producers and handlers to serve on the Committee.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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 23 handlers of South Texas onions subject to regulation under the marketing order and approximately 55 producers of South Texas onions in the production area. At the time this analysis was prepared, the Small Business Administration (SBA) defined small agricultural service firms as those having annual receipts of less than \$34,000,000 (North American Industry Classification System (NAICS) code 115114, Postharvest Crop Activities), and small agricultural producers are defined as those having annual receipts of less than \$3,750,000 (NAICS code 111219, Other Vegetable and Melon Farming) (13 CFR 121.201).

Based on data from Market News and production records from the Committee, the average price for South Texas onions during the 2023 season was approximately \$23.25 per 50-pound equivalent with total shipments of around 3.02 million 50-pound equivalents shipped. Using the average price and shipment data, handlers have average annual receipts below \$34 million and could be considered small businesses under SBA's definition (\$23.25 multiplied by 3.02 million 50-pound equivalents equals \$70,215,000, divided by 23 equals \$3.05 million).

In addition, based on data from the National Agricultural Statistics Service and the Committee, the average price producers received for South Texas onions during the 2022–2023 season was approximately \$17 per 50-pound equivalent, with total shipments of around 3.02 million 50-pound equivalents. Using the average price producers received and shipment information, the number of producers, and assuming a normal distribution, the majority of producers have estimated average annual receipts significantly less than \$3.75 million (\$17 multiplied by 3.02 million 50-pound equivalents equals \$51,340,000, divided by 55 producers equals \$933,455 per producer). Therefore, the majority of handlers and producers of South Texas onions may be classified as small entities.

This proposed rule would reduce the number of districts under the Order from two districts to one and reapportion the producer and handler member and alternate seats to the single district. The Committee believes these changes would realign the Committee to reflect the composition of the industry, provide for equitable representation, and create the opportunity for more producers and handlers to serve on the Committee. This rulemaking would establish §§ 959.110 and 959.111 in the rules and regulations under the Order to establish the single district and to allot the members and alternates to the single district. The authority for this proposed action is provided in § 959.25. These proposed changes were unanimously recommended by the Committee at a meeting on June 8, 2023.

It is not anticipated that this action would impose any additional costs on the industry. Given the division of production, the distribution of producers and handlers across the industry, and the difficulty in filling member and alternate seats on the Committee, this action would have a beneficial impact as it would more accurately align the Committee membership to reflect the industry. Redistricting and reapportionment of the membership would also make it easier for Committee staff to conduct nominations, provide nominees for all seats, and readily achieve a quorum when meetings are assembled. These changes would save time and operating resources by making it easier to find candidates to serve on the Committee, improving the efficiency of operations. This would also help avoid the cost associated with travel and assembly of a meeting where a quorum is not achieved.

These changes should also provide for more equitable representation on the Committee and increase diversity by allowing more producers and handlers the opportunity to serve. These proposed changes are intended to make the Committee more representative of the current industry. The effects of this rulemaking would not be disproportionately greater or less for small entities than for larger entities.

The Committee discussed alternatives to these changes, including making no changes, reapportioning the Committee membership, and further reducing the size of the Committee. The Committee recognized there is a disparity in the volume of onions produced and the number of producers and handlers between the districts. The Committee determined changes were needed to make the districts and the apportionment of members more reflective of the current industry. Members agreed further reducing the Committee size could negatively affect industry participation, and that combining the districts rather than reducing the number of seats would allow for a wider participation from candidates who would want to serve on the Committee. Therefore, for the reasons above, these alternatives were rejected.

The Committee's meetings are widely publicized throughout the South Texas onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 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 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 would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any 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.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://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 comment on this proposed rule. All written comments timely received will be considered before a final determination is made on this rulemaking.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agriculture Marketing Service proposes to amend 7 CFR part 959 as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for part 959 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Add § 959.110 to read as follows:

§ 959.110 Reestablishment of districts.

Pursuant to § 959.25, a single district is reestablished to include all counties in the production area as follows: the counties of Aransas, Atascosa, Bee, Brooks, Calhoun, Cameron, DeWitt, Dimmit, Duval, Frio, Goliad, Hidalgo, Jim Hogg, Jim Wells, Karnes, Val Verde, Kenedy, Kinney, Kleberg, La Salle, Live Oak, Maverick, McMullen, Medina,

Nueces, Refugio, San Patricio, Starr, Uvalde, Victoria, Webb, Willacy, Wilson, Zavala and Zapata in the State of Texas.

3. Add § 959.111 to read as follows:

§ 959.111 Reapportionment of Committee membership.

Pursuant to § 959.25, the Committee membership of eight producer members and five handler members and the respective alternates is reapportioned to a single district made up of all counties in the production area.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

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