



Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-SC-23-0086]

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 2023-2024 and subsequent fiscal periods from \$0.05 to \$0.08 per 50-pound container or equivalent for South Texas onions. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

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 and 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 Nissen, Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324-3375 or Email: 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, 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 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 of onions operating within the area of production.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866, 13563, and 14094. 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. 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 Federal 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. 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 proposed assessment rate would be applicable to all assessable onions for the 2023-2024 fiscal period, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under sec. 608c(15)(A) of the Act, any handler subject to an order may file with the 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 for South Texas onions handled under the Order from \$0.05 per 50-pound container or equivalent, the rate that

was established for the 2020-2021 and subsequent fiscal periods, to \$0.08 per 50-pound container or equivalent for the 2023-2024 and subsequent fiscal periods.

Sections 959.41 and 959.42 authorize the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are familiar with the Committee's needs and with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2020-2021 and subsequent fiscal periods, the Committee recommended, and AMS approved, an assessment rate of \$0.05 per 50-pound container or equivalent of South Texas onions within the production area. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on November 1, 2023, and unanimously recommended 2023-2024 fiscal period expenditures of \$280,657 and an assessment rate of \$0.08 per 50-pound container or equivalent of South Texas onions handled for the 2023-2024 and subsequent fiscal periods. In comparison, last fiscal period's budgeted expenditures were \$177,657. The proposed assessment rate of \$0.08 per 50-pound container or equivalent is \$0.03 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to better align assessment revenue with budgeted expenses and to replenish reserves which were depleted between March 2021 and December 2022 when the Committee ceased collecting assessments during a temporary suspension of the Order. The Committee estimates shipments for the 2023-2024 season to be around

3,600,000 50-pound containers or equivalents, an increase from the 3,020,000 50-pound containers or equivalents handled for the 2022-2023 fiscal period.

The major expenditures recommended by the Committee for the 2023-2024 fiscal period include \$92,000 for research and marketing; \$80,000 for the compliance program; and \$37,050 for administrative expenses. By comparison, budgeted expenses for these items during the 2022-2023 fiscal period were \$20,000; \$50,000; and \$37,050, respectively.

At the current assessment rate of \$0.05, the expected 3,600,000 50-pound containers or equivalents would generate \$180,000 in assessment revenue (3,600,000 50-pound containers or equivalents multiplied by \$0.05 assessment rate), which would not cover budgeted expenses. The Committee recommended increasing the assessment rate to meet necessary expenses, fund marketing research, and restore reserves. By increasing the assessment rate by \$0.03 to \$0.08, assessment income would generate \$288,000 in assessment revenue (3,600,000 50-pound containers or equivalents multiplied by \$0.08 assessment rate). This amount should be appropriate to ensure the Committee has sufficient revenue to fully fund its recommended 2023-2024 fiscal period budgeted expenditures and to begin replenishing the Committee's reserve funds.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses, expected shipments of onions, and the amount of funds available in the financial reserve. Income derived from handler assessments (\$288,000), and other sources including interest income, would be adequate to cover budgeted expenses (\$280,657). Funds available in the financial reserve (currently about \$78,000) would be kept within the maximum permitted by the Order (approximately two fiscal periods' expenses as authorized in § 959.43).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by AMS 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 AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS will 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 2023-2024 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

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 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 of onions as those having annual receipts of less than \$3,750,000 (NAICS code 111219, Other Vegetable farming) (13 CFR 121.201).

According to data from Market News and production records from the Committee, the average price for South Texas onions handled during the 2022-2023 season was approximately \$23.25 per 50-pound container or equivalent, with total shipments of around 3,020,000 50-pound containers or equivalents shipped. Based on the average terminal market price and shipment information, the number of handlers, and assuming a normal distribution, the majority of South Texas onion handlers have estimated average annual receipts of significantly less than \$34,000,000 (\$23.25 multiplied by 3,020,000 50-pound containers or equivalents equals \$70,215,000, divided by 23 handlers equals \$3,052,826 per handler).

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 container or equivalent, with total shipments of around 3,020,000 million 50-pound containers or 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 of significantly less than \$3,750,000 (\$17 multiplied by 3,020,000 50-pound containers or equivalents equals \$51,340,000, divided by 55 producers equals \$933,455 per producer). Thus, the majority of handlers and producers of South Texas onions may be classified as small entities.

This proposal would increase the assessment rate collected from handlers for the 2023-2024 and subsequent fiscal periods from \$0.05 to \$0.08 per 50-pound container or equivalent of South Texas onions. The Committee unanimously recommended 2023-2024 fiscal period expenditures of \$280,657 and an assessment rate of \$0.08 per 50-pound container or equivalent of South Texas onions. The proposed assessment rate of

\$0.08 is \$0.03 higher than the current rate. The Committee expects the industry to handle 3,600,000 50-pound container or equivalent of South Texas onions during the 2023-2024 fiscal period. Thus, the \$0.08 per 50-pound container or equivalent rate should provide \$288,000 in assessment income (3,600,000 50-pound containers or equivalents multiplied by \$0.08 assessment rate). Income derived from handler assessments and other sources including interest income, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2023-2024 fiscal period include \$92,000 for research and marketing; \$80,000 for the compliance program; and \$37,050 for administrative expenses. By comparison, budgeted expenses for these items during the 2022-2023 fiscal period were \$20,000; \$50,000; and \$37,050, respectively.

The Committee recommended increasing the assessment rate to meet necessary expenses, fund marketing research, and restore reserves, which were depleted between March 2021 and December 2022 when the Committee ceased collecting assessments during a temporary suspension of the marketing order. The Committee estimates shipments for the 2023-2024 season to be around 3,600,000 50-pound containers or equivalents. Given the estimated number of shipments, the current assessment rate of \$0.05 would generate \$180,000 in assessment income (3,600,000 50-pound containers or equivalents multiplied by \$0.05 assessment rate), which would not cover budgeted expenses. By increasing the assessment rate by \$0.03 to \$0.08, assessment income would be \$288,000 (3,600,000 50-pound containers or equivalents multiplied by \$0.08 assessment rate). This amount should provide sufficient funds to meet anticipated 2023-2024 expenses, while adding money to the financial reserve.

Prior to arriving at this budget and proposed assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.05 per 50-pound container or equivalent or increasing the assessment rate to \$0.06.

However, neither of these assessment rates would provide enough income to cover budgeted expenses. Consequently, these alternative assessment rates were rejected.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates the average grower price for the 2023-2024 season should be approximately \$16.00 per 50-pound container or equivalent of South Texas onions. Therefore, the estimated assessment revenue for the 2023-2024 crop year as a percentage of total grower revenue would be about 0.5 percent ($\$0.08$ assessment rate divided by $\$16.00$ multiplied by 100).

This proposed action would increase the assessment obligation imposed on South Texas onion handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

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 November 1, 2023, 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 information collection 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.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this proposed rule is consistent with and would effectuate the purposes of the Act.

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 Agricultural 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. Revise § 959.237 to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2023, an assessment rate of \$0.08 per 50-pound container or equivalent is established for South Texas onions.

Erin Morris,

Associate Administrator,

Agricultural Marketing Service.

[FR Doc. 2024-08679 Filed: 4/23/2024 8:45 am; Publication Date: 4/24/2024]