

# Rules and Regulations

Federal Register

Vol. 70, No. 57

Friday, March 25, 2005

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV05-959-1 FIR]

#### Onions Grown in South Texas; Decreased Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the South Texas Onion Committee (Committee) for the 2004-05 and subsequent fiscal periods from \$0.03 to \$0.02 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* April 25, 2005.

**FOR FURTHER INFORMATION CONTACT:**

Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry; McAllen, Texas 78501; Telephone (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 143 and Order No. 959, both 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."

USDA is issuing this rule in conformance with Executive Order 12866.

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, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 continues in effect the action that decreased the assessment rate established for the Committee for the 2004-05 and subsequent fiscal periods from \$0.03 to \$0.02 per 50-pound equivalent of onions handled.

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 2003-04 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 3, 2004, and unanimously recommended 2004-05 fiscal period expenditures of \$145,291 and an assessment rate of \$0.03 per 50-pound equivalent of onions. The Committee subsequently met on October 28, 2004, and unanimously recommended a revised budget of \$141,819 and a reduced assessment rate of \$0.02 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were \$139,661. The assessment rate of \$0.02 is \$0.01 lower than the rate previously in effect. The decrease in the assessment rate is primarily due to the 2005 onion crop expected to be larger than previously estimated (5 million 50-pound equivalents vs. 4 million 50-pound equivalents). The reduced assessment rate and budget will lower handler costs by about \$50,000 and will keep the Committee's reserves at an acceptable level. At the previous rate of assessment, assessment and interest income would exceed anticipated expenses by about \$11,000, and the projected reserve on July 31, 2005,

would exceed the level authorized by the order.

The major expenditures recommended by the Committee for the 2004–05 fiscal period include \$76,819 for personnel and office expenses, \$30,000 for compliance, and \$35,000 for promotion expenses. Budgeted expenses for these items in 2003–04 were \$74,661, \$30,000, and \$35,000, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and production levels of South Texas onions, and additional pertinent factors. In its recommendation, the Committee utilized an estimate of 5 million 50-pound equivalents of assessable onions for the 2004–05 fiscal period. If realized, this will provide estimated assessment revenue of \$100,000 from all handlers. In addition, it is anticipated that \$41,819 will be provided by interest income and reserve funds. When combined, revenue from these sources will be adequate to cover budgeted expenses. Funds in the reserve (currently \$228,168) will be kept within the maximum of approximately two fiscal periods' expenses as required by § 959.43 of the order.

The assessment rate 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 is effective 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 2004–05 budget has been approved by USDA, and those for subsequent fiscal periods also will be reviewed and, as appropriate, approved by USDA.

#### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 business 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 113 producers of onions in the production area and approximately 37 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2003–04 marketing year, the industry's 37 handlers shipped onions produced on 14,436 acres with the average and median volume handled being 137,530 and 111,545 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 37 handlers were estimated to be \$42.5 million, with average and median revenues being \$1.14 million and \$931,400, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 37 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the \$5,000,000 annual receipt threshold. All of the 113 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When

revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed \$750,000.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2004–05 and subsequent fiscal periods from \$0.03 to \$0.02 per 50-pound equivalent of onions handled. The Committee unanimously recommended 2004–05 expenditures of \$141,819 and an assessment rate of \$0.02 per 50-pound equivalent of onions handled. The assessment rate of \$0.02 is \$0.01 lower than the assessment rate previously in effect. The quantity of assessable onions for the 2004–05 fiscal period is estimated at 5 million 50-pound equivalents. Thus, the \$0.02 rate should provide \$100,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2004–05 fiscal period include \$76,819 for personnel and office expenses, \$30,000 for compliance, and \$35,000 for promotion expenses. Budgeted expenses for these items in 2003–04 were \$74,661, \$30,000, and \$35,000, respectively.

The Committee reviewed and unanimously recommended 2004–05 expenditures of \$141,819, which included a decrease in administrative expenses. The assessment rate of \$0.02 per 50-pound equivalent of assessable onions recommended by the Committee was determined by considering anticipated expenses and production levels of South Texas onions. The Committee utilized an estimate of 5 million 50-pound equivalents of assessable onions for the 2004–05 fiscal period, which, if realized, will provide estimated assessment revenue of \$100,000 from all handlers. In addition, it is anticipated that \$41,819 will be provided by interest income and reserve funds. When combined, revenue from these sources will be adequate to cover budgeted expenses.

The Committee discussed alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Other assessment rates were not considered because the Committee had substantially lowered its assessment rate the previous fiscal year.

A review of historical information and preliminary information pertaining to

the upcoming fiscal period indicates that the season average f.o.b. price for the 2004–05 fiscal period could range between \$9.25 and \$19.05 per 50-pound equivalent of onions (range of Texas f.o.b. onion prices for 2001 through 2003). Therefore, the estimated assessment revenue for the 2004–05 fiscal period as a percentage of total f.o.b. revenue could range between .10 and .22 percent.

This action continues in effect the action that decreased 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 reduce the burden on producers. 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 October 28, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action 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.

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

An interim final rule concerning this action was published in the **Federal Register** on December 30, 2004 (69 FR 78296). Copies of that rule were also mailed or sent via facsimile to all onion handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on February 28, 2005, and 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/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber 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.

#### List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 959 which was published at 69 FR 78296 on December 30, 2004, is adopted as a final rule without change.

Dated: March 21, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–5897 Filed 3–24–05; 8:45 am]

BILLING CODE 3410–02–P

#### DEPARTMENT OF AGRICULTURE

##### Commodity Credit Corporation

##### Natural Resources Conservation Service

##### 7 CFR Part 1469

RIN 0578–AA36

##### Conservation Security Program

**AGENCY:** Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This document establishes an amendment to the interim final rule governing activities under the Conservation Security Program (CSP) which is administered by the Natural Resources Conservation Service (NRCS). The CSP sets forth a mechanism to provide financial and technical assistance to agricultural producers who, in accordance with certain requirements, conserve and improve the quality of soil, water, air, energy, plant and animal life, and support other conservation activities. The CSP regulations implement provisions of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our Nation.

**DATES:** *Effective date:* March 25, 2005. Comments must be received by July 25, 2005.

**ADDRESSES:** Send comments by mail to Financial Assistance Programs Division,

Natural Resources Conservation Service, P.O. Box 2890, or by e-mail to [FarmBillRules@usda.gov](mailto:FarmBillRules@usda.gov); Attn: Conservation Security Program. You may access this interim final rule via the Internet through the NRCS homepage at <http://www.nrcs.usda.gov>. Select “Farm Bill. The rule may also be reviewed and comments submitted via the Federal Government’s centralized rulemaking Web site at <http://www.regulations.gov>.”

#### FOR FURTHER INFORMATION CONTACT:

Craig Derickson, Conservation Security Program Manager, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013–2890, telephone: (202) 720–1845; fax: (202) 720–4265.

**SUPPLEMENTARY INFORMATION:** This document establishes an amendment to the interim final rule governing activities under the Conservation Security Program (CSP). The CSP is a voluntary program administered by NRCS, using the authorities and funds of the Commodity Credit Corporation (CCC). CSP provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and rangeland, as well as forested land and other non-cropped areas that are an incidental part of an agricultural operation. The amendment may be reviewed via the Federal Government’s centralized rulemaking Web site at <http://www.regulations.gov>.

The CSP regulations implement provisions set out in Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.*, as amended by the Farm Security and Rural Investment Act of 2002, Public Law 107–171, and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our Nation.

The CSP helps support those farmers and ranchers who reach the pinnacle of good land stewardship, and encourage others to conserve natural resources on their farms and ranches. During 2004, NRCS held a CSP sign-up in 18 watersheds covering 22 states. This phased-in approach to CSP implementation brought forth several issues and concerns that encompass the broad range of agricultural production at all scales including mainstream commodity production and small-scale niche producers. Additional questions are incorporated below with a request for public comment in order to more