



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-SC-17-0067; SC17-959-4]

**Onions Grown in South Texas; Order Amending Marketing Order
959**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Marketing Order No. 959, which regulates the handling of onions grown in South Texas. The amendments will reduce the size of the South Texas Onion Committee (Committee) and make necessary conforming changes.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Geronimo Quinones, Marketing Specialist, 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: Geronimo.Quinones@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 action, pursuant to 5 U.S.C. 553, finalizes amendments to 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, which is responsible for the local administration of the Order, is comprised of onion producers and handlers operating within the area of production. The applicable rules of practice and procedure governing the formulation of Marketing Agreements and Orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action.

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. This rule is not intended to have retroactive effect. This rule shall not be deemed to preclude, preempt, or supersede any State program covering onions grown in South Texas.

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. A 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 no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 8c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendment, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

The Agricultural Marketing Service (USDA-AMS) considered the nature and complexity of the proposed amendment, the potential regulatory and economic impacts on affected entities, and other relevant matters, and determined that amending the Order as proposed by the Committee could appropriately be accomplished through informal rulemaking.

The amendments were unanimously recommended by the Committee following deliberations at a public meeting held on June 7, 2017. This final rule will amend the Order by reducing the size of the Committee from 34 to 26 members. The change will remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts. Conforming and clarifying changes will also be made to §§ 959.24, 959.26, 959.32, and §§ 959.110 and 959.111 will be removed and reserved.

A proposed rule and referendum order were issued on July 19, 2018 and published in the *Federal Register* on July 30, 2018 (83 FR 36479). That document also directed that a referendum among Texas onion growers be conducted August 6, 2018 through August 27, 2018 to determine whether they favored the proposals. To become effective, the amendment had to be approved by either two-thirds of the growers

voting in the referendum or by those representing at least two-thirds of the volume of onions produced by those voting in the referendum. The amendment was favored by 100 percent of the growers voting and by 100 percent of the volume represented, the second of which exceeds the two-thirds volume requirement.

The amendment in this final rule reduces the size of the Committee from 34 to 26 members. The reduction will remove one voting producer and one voting handler member, and one producer and one handler alternate member from each of the two districts (eight members total). As a result, conforming changes need to be made to Order language regarding the definition of Districts, the selection of Committee nominees and Committee voting procedures. Additionally, two sections will be rendered obsolete and will be removed.

Final 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 action 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 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 approximately \$12.30 per 50-pound equivalent. Furthermore, according to Committee data, total shipments were approximately three million 50-pound equivalents for the 2015-16 season with a total 2015-16 crop value estimated at \$37 million. Dividing the crop value by the estimated number of

producers (60) yields an estimated average receipt per producer of \$617,000. This is below the \$750,000 SBA definition of small producers. The average handler price for South Texas onions during the 2015-16 season was approximately \$14.05 per 50-pound equivalent. Multiplying the average handler price by shipment information of 3 million 50-pound equivalent results in an estimated handler-level value of \$42 million. Dividing this figure by the number of handlers (30) yields an estimated average annual handler receipts of \$1.4 million, which is below the SBA definition of small agricultural service firms. Assuming a normal distribution, most producers and handlers of South Texas onions may be classified as small entities.

The Committee's proposed amendment to reduce the size of the Committee from 34 to 26 members under the Order by removing one voting producer and one voting handler member, and one producer and one handler alternate member, from each of the two districts was unanimously recommended at a meeting on June 7, 2017.

Over the past 15 years there has been a 31-percent decrease in the number of onion producers, and a 34-percent decrease in the number of handlers in the production area.

Many seats on the Committee remain vacant, as it has been challenging to find sufficient nominees. Having a smaller size Committee will enable it to fulfill those membership and quorum requirements.

AMS believes this change will serve the needs of the Committee and the industry thereby ensuring a more efficient and orderly flow of business. No economic impact is expected because amendments would not establish any regulatory requirements on handlers, nor does it contain any assessment or funding implications. There will be no change in financial costs, reporting, or recordkeeping requirements because of this action.

Alternatives to this proposal, including making no changes at this time, were considered. However, the Committee believes that given reductions in the size of the industry, a smaller Committee size is necessary in order to ensure its ability to locally administer the program. Reducing the size of the Committee would enable it to fulfill membership and quorum requirements, thereby ensuring a more efficient and orderly flow of business.

Paperwork Reduction Act

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 are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

This amendment will 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this 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 citizens to access Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the South Texas onion production area. All

interested persons were invited to attend the meeting and encouraged to participate in Committee deliberations on all issues. Like all Committee meetings, the June 7, 2017, meeting was public, and all entities, both large and small, were encouraged to express their views on the proposal.

A proposed rule concerning this action was published in the *Federal Register* on March 1, 2018 (83 FR 8804). Copies of the rule were mailed or sent via facsimile to all Committee members and South Texas onion handlers. The proposed rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending April 30, 2018, was provided to allow interested persons to respond to the proposal.

Although two comments were received, no changes were made to the proposed amendments.

A proposed rule and referendum order was then issued on July 19, 2018 and published in the *Federal Register* on July 30, 2018 (83 FR 36476). That document directed that a referendum among Texas growers be conducted during the period of August 6, 2018 through August 27, 2018 to determine whether they favored the proposed amendment to the Order. To become effective, the amendment had to be

approved by at least two-thirds of the growers voting, or two-thirds of the volume of Texas onions represented by voters in the referendum. The amendment was favored by 100 percent of the growers voting and by 100 percent of the volume represented, the second of which exceeds the two-thirds volume requirement.

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.

Order Amending the Order Regulating the Handling of Onions Grown in South Texas¹

Findings and Determinations

(a) Findings and Determinations Upon the Basis of the Rulemaking Record.

The findings hereinafter set forth are supplementary to the findings and determinations which were previously

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

made in connection with the issuance of the Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order, as amended, and as hereby further amended, and all the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

2. The Order, as amended, and as hereby further amended, regulates the handling of onions grown in South Texas in the same manner as, and is applicable only to, persons in the respective classes of commercial and industrial activity specified in the Order;

3. The Order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different

terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions produced in the production area; and

5. All handling of onions produced or packed in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.*

It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of walnuts covered under the Order) who during the period August 1, 2016, through July 31, 2017, handled not less than 50 percent of the volume of such onions covered by said Order, as hereby amended, have not signed an amended marketing agreement; and

2. The issuance of this amendatory Order, amending the aforesaid Order, is favored or approved by producers representing at least two-thirds of the volume of onions produced by those voting in a referendum on the question of approval and who, during the period of August 1, 2016, through July 31, 2017, have

been engaged within the production area in the production of such onions.

3. The issuance of this amendatory Order advances the interests of growers of onions in the production area pursuant to the declared policy of the Act.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, all handling of onions grown in South Texas shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions amending the Order contained in the proposed rule issued by the Administrator on February 23, 2018 and published in the *Federal Register* (83 FR 8804) on March 1, 2018, will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Dated: March 13, 2019.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

BILLING CODE 3410-02 P

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. Revise § 959.22 to read as follows:

§ 959.22 Establishment and membership.

The South Texas Onion Committee, consisting of thirteen members, eight of whom shall be producers and five of whom shall be handlers, is hereby established. For each member of the Committee there shall be an alternate. Producer members and alternates shall not have a proprietary interest in or be employees of a handler organization.

3. Revise § 959.24 to read as follows:

§ 959.24 Districts.

To determine a basis for selecting Committee members, the following districts of the production area are hereby established:

(a) *District No. 1.* (Coastal Bend-Lower Valley) The Counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live

Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy in the State of Texas.

(b) *District No. 2.* (Laredo-Winter Garden) The Counties of Zapata, Webb, Jim Hogg De Witt, Wilson, Atascosa, Karnes Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and La Salle in the State of Texas.

4. Revise § 959.26 to read as follows:

§ 959.26 Selection.

The Secretary shall select members and respective alternates from districts established pursuant to § 959.24 or § 959.25. Selections shall be as follows:

(a) *District No. 1.* Five producer members and alternates; three handler members and alternates.

(b) *District No. 2.* Three producer members and alternates; two handler members and alternates.

5. Amend § 959.32 by revising paragraph (a) to read as follows:

§ 959.32 Procedure.

(a) Nine members of the Committee shall be necessary to constitute a quorum. Seven concurring votes, or two-

thirds of the votes cast, whichever is greater, shall be required to pass any motion or approve any Committee action. At assembled meetings all votes shall be cast in person.

* * * * *

§§ 959.110 and 959.111 [Removed and Reserved]

6. Remove and reserve §§ 959.110 and 959.111.

[FR Doc. 2019-05435 Filed: 3/21/2019 8:45 am; Publication Date: 3/22/2019]