

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### 7 CFR Part 652

#### Technical Service Provider Assistance: Correction

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Interim final rule; correction.

**SUMMARY:** The Natural Resources Conservation Service published in the **Federal Register** of March 24, 2003, a document concerning payment rates for technical service providers, and clarification of the Department's use of technical service providers. The dates paragraph was incorrect. This document corrects that paragraph.

**DATES:** This correction is effective on March 31, 2003.

**FOR FURTHER INFORMATION CONTACT:** Melissa Hammond, Technical Service Provider Coordinator, Strategic Natural Resource Issues Staff, NRCS, P.O. Box 2890, Washington, DC 20013-2890; telephone (202) 720-6731; fax: (202) 720-3052; submit e-mail to: [gary.gross@usda.gov](mailto:gary.gross@usda.gov), Attention: Technical Service Provider Assistance.

**SUPPLEMENTARY INFORMATION:** The Natural Resources Conservation Service published a document in the **Federal Register** of March 24, 2003, (68 FR 14131) amending an interim rule published on November 21, 2002 (67 FR 70119). We intended to reopen the comment period on the November interim rule, but inadvertently omitted that reopening information. This corrects the error. On page 14131, in the second column, the dates paragraph is corrected to read as follows:

**DATES:** Effective date: March 31, 2003. Comments on this amendment must be received by June 30, 2003. In addition, the comment period for the Technical

Service Provider Assistance Interim Final Rule published on November 21, 2002 (67 FR 70119) is hereby reopened. Comments must be received by April 30, 2003.

Dated: March 26, 2003.

**Helen V. Huntington,**

*NRCS Federal Register Liaison.*

[FR Doc. 03-7694 Filed 3-26-03; 3:46 pm]

**BILLING CODE 3410-16-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV03-959-1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the South Texas Onion Committee (Committee) for the 2002-03 and subsequent fiscal periods from \$0.05 to \$0.085 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.

**EFFECTIVE DATE:** April 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Regional Manager, McAllen 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."

The Department of Agriculture (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 on August 1, 2002, 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 increases the assessment rate established for the Committee for the 2002-03 and subsequent fiscal

periods from \$0.05 to \$0.085 per 50-pound equivalent of onions.

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, where all persons directly affected have an opportunity to participate and provide input.

For the 2001–02 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 July 11, 2002, and unanimously recommended 2002–03 expenses of \$127,002 for personnel, office, compliance, and partial promotion expenses. The assessment rate and specific funding for research and promotion projects were to be recommended at a later Committee meeting.

The Committee subsequently met on October 8, 2002, and recommended 2002–03 expenditures of \$463,297 and an assessment rate of \$0.085 per 50-pound equivalent of onions. Ten of the 13 Committee members present voted in support of the \$0.035 per 50-pound equivalent increase and three voted against it. The three Committee members voting against the recommendation were producer handlers who basically did not approve of the research and promotion budgets. In comparison, last year's budgeted expenditures were \$449,190. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions. Without the increase, the Committee's reserve fund would drop to \$16,053. The Committee believes a reserve that low would not be adequate for its operations.

The major expenditures recommended by the Committee for the 2002–03 fiscal period included \$72,002 for administrative expenses, \$35,000 for compliance, \$260,500 for promotion, and \$95,795 for research projects. Budgeted expenses for these items in

2001–02 were \$75,190, \$30,000, \$254,000, and \$90,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. At the October 2002 meeting, onion shipments for the fiscal period were estimated at 5.5 million 50-pound equivalents, which would have provided \$467,500 in assessment income.

Since then, however, the Committee has become aware that the South Texas onion acreage is approximately 26 percent less than last season's 16,148-planted acres. The Committee met January 6, 2003, to discuss reports of the reduced acreage. Based on the estimated 26 percent reduced production, shipments are estimated to be 4,070,000 fifty-pound equivalents. The Committee recommended a 40 percent reduction to a market development program previously funded at \$225,000 and a 50 percent cut to three onion research projects. The revised \$325,400 budget for 2002–03 includes reductions of \$90,000 and \$47,898 in promotion and research, respectively. The Committee did not recommend a change in the proposed assessment rate.

With shipments of 4,070,000 fifty-pound equivalents, assessment income in 2002–03 should total \$345,950. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve (currently \$204,350) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, § 959.43).

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 2002–03 budget has been reviewed and approved by USDA. 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), 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 90 producers of onions in the production area and approximately 35 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 2001–02 fiscal period, the industry's 35 handlers shipped onions produced on 16,148 acres with the average and median volume handled being 152,446 and 136,810 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 35 handlers were estimated to be \$39.9 million, with average and median revenues being \$1.1 million and \$1.0 million, 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 35 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 90 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 increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from \$0.05 to \$0.085 per 50-pound equivalent of onions. The Committee recommended 2002–03 expenditures of \$463,297 and an assessment rate of \$0.085 per 50-pound equivalent. The assessment rate of \$0.085 is \$0.035 higher than the 2001–02 rate.

In October 2002, the major expenditures recommended by the Committee for the 2002–03 fiscal period included \$72,002 for administrative expenses, \$35,000 for compliance, \$260,500 for promotion, and \$95,795 for research projects. Budgeted expenses for these items in 2001–02 were \$75,190, \$30,000, \$254,000, and \$90,000, respectively. The Committee recommended the increased rate to fund a major market development program to promote the consumption of South Texas onions without having to draw a large amount from reserves.

The Committee reviewed and recommended 2002–03 expenditures of \$463,297, which included increases in research and promotion programs. Prior to arriving at this budget, the Committee considered information from various sources, including the Executive Committee and the Research and Market Development Subcommittees. Numerous alternative expenditure levels were discussed by these groups based upon the relative value of various research and promotion projects to the onion industry. The assessment rate of \$0.085 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 5.5 million 50-pound equivalents for the 2002–03 fiscal period.

The quantity of assessable onions for the 2002–03 fiscal period was initially estimated at 5.5 million 50-pound equivalents. Thus, the \$0.085 rate would have provided \$467,500 in assessment income, and income derived from handler assessments would have been adequate to cover the \$463,297 budget. This is approximately \$4,203

above the anticipated expenses, which the Committee determined to be acceptable.

As mentioned earlier, the Committee met again on January 6, 2003, to discuss reports of a 26 percent onion acreage reduction, and recommended an amended budget totaling \$325,400, based on a revised production estimate of 4,070,000 fifty-pound equivalents. The revised budget includes reduced promotion and research expenditures of \$170,500 and \$47,898, respectively. The Committee did not recommend changes to the proposed assessment rate.

With shipments of 4,070,000 fifty-pound equivalents, assessment income in 2002–03 should total \$345,950. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve (currently \$204,350) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses, \$959.43).

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 fiscal period could range between \$8.60 and \$9.25 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2002–03 fiscal period as a percentage of total grower revenue could be about 1 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the October 8, 2002, and January 6, 2003, meetings were public meetings and all entities, both large and small, were able to express views on this issue.

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.

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

A proposed rule concerning this action was published in the **Federal Register** on December 26, 2002 (67 FR 78751). Copies of the proposal were also mailed to all onion handlers on December 26, 2002, by the Committee staff. Finally, the proposed rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending January 27, 2003, was provided for interested persons to respond to the proposal. Eight comments were received during the comment period; six were in support of the assessment rate increase as published, and two comments opposed the proposed assessment rate increase.

One commenter in support of the increased assessment rate noted that the Committee, recognizing tight economic conditions in recent years, reduced the assessment rate two years ago and budgeted a deficit by setting an artificially low assessment rate. This commenter, as well as another commenter, believes the Committee allowed its reserves to get too low, and both fully support the assessment rate increase. The commenter also noted that the projected volume of onions would be low due to decreased plantings. Both commenters state that in spite of the Committee making further cuts in the original budget, decreased production dictates that the assessment rate be increased.

Another comment in support of the increased assessment rate noted that, without the increase the Committee would not be able to meet its research and marketing program obligations the industry has always funded. Two other favorable comments expressed the need for continuing to promote Texas onions in order to be able to compete with other onion-producing areas.

One comment, representing a grower and shipper in District 2 (Laredo-Winter Garden) of the South Texas onion order production area, stated that over half of District 2's season is not covered by the order. The commenter opposes the increased assessment rate because he believes that the Rio Grande Valley growers and shippers gain more from the Committee's research and marketing program activities. While it is true that the regulatory period, which the Committee approved, ends June 4 each year and only includes part of District 2's season, District 2 handlers do not pay assessments during the latter part of their onion season. District 2 growers and shippers continue to receive the benefit of the assessment because all Texas onions grown in the production area covered by the marketing order are promoted. Consequently, USDA

disagrees with the commenter's statement that Rio Grande Valley growers and shippers would gain more from the increased assessment than those from the Laredo-Winter Garden area.

The second commenter opposing the increase expressed concern regarding a possible conflict of interest with some producers and handlers on the Committee who also produce and handle onions not assessed under the South Texas marketing order. The commenter stated that increasing the assessment rate should be determined by those who are directly affected, not handlers that either attain most of their onion business outside the jurisdiction of the order, or pass on the assessment to growers under the jurisdiction of the order. The commenter was concerned that such Committee members could unduly shape the decision-making of the Committee, that their decisions could be biased against their South Texas competitors, and that being on the Committee could enable them to raise the production costs (*i.e.* assessments) of their South Texas competition.

The Committee, which is composed of six producer and four handler members from District 1 (Coastal Bend—Lower Valley) and four producer and three handler members from District 2, is representative of the entire production area. The Committee is established and selected in accordance with the provisions of the order. The producer and handler members and alternates on the Committee are nominated by their peers and are eligible to serve based on their qualifications. The fact that some of the Committee members also grow and handle onions outside the South Texas onion production area does not disqualify them from serving on the Committee. Further, only South Texas onions grown in the 35-county production area may be assessed for marketing order purposes.

Based on the foregoing, no changes are being made to the rule as it was proposed.

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, the comments received, 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.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2002–03 fiscal period began August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period. In addition, the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and all of the comments received have been considered.

#### 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, 2002, an assessment rate of \$0.085 per 50-pound equivalent is established for South Texas onions.

Dated: March 24, 2003.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–7633 Filed 3–26–03; 1:47 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 966

[Docket No. FV03–966–03 C]

#### Tomatoes Grown in Florida; Decreased Assessment Rate; Correction

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

**ACTION:** Correcting amendment.

**SUMMARY:** The Agricultural Marketing Service (AMS) published an interim

final rule in the **Federal Register** on November 9, 2001 (66 FR 56599), which decreased the assessment rate for tomatoes grown in Florida. The interim final rule fixed the assessment rate at \$0.20 per 25-pound container or equivalent of assessable tomatoes for the 2001–02 and subsequent fiscal periods. The rate should have been fixed at \$0.02 per 25-pound container or equivalent. This document corrects the assessment rate.

**EFFECTIVE DATE:** March 31, 2003.

#### FOR FURTHER INFORMATION CONTACT:

Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375; Fax: (863) 325–8793; E-Mail: [Doris.Jamieson@usda.gov](mailto:Doris.Jamieson@usda.gov); or George

Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Ave, SW., STOP 0237, Washington, DC 20250–0237, telephone: (202) 720–2491, Fax: (202) 720–8938; E-Mail: [George.Kelhart@usda.gov](mailto:George.Kelhart@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

AMS published an interim final rule in the **Federal Register** on November 9, 2001 (66 FR 56599), decreasing the assessment rate for tomatoes grown in Florida [7 CFR part 966]. The interim final rule was subsequently finalized without change in a document published on March 13, 2002 (67 FR 11213).

##### Need for Correction

As published, the assessment rate was incorrectly identified as \$0.20 per 25-pound container or equivalent. This correction document replaces the incorrect assessment rate with the correct assessment rate of \$0.02 per 25-pound container or equivalent for Florida tomatoes.

#### List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

■ Accordingly, 7 CFR part 966 is corrected by making the following amendment:

#### PART 966—TOMATOES GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 966 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.