

Rules and Regulations

Federal Register

Vol. 60, No. 38

Monday, February 27, 1995

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV94-959-1FIR]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of an amended interim final rule that increased the level of authorized expenses and established an assessment rate that generated funds to pay those expenses. This final rule further increases authorized expenses. Authorization of this budget enables the South Texas Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1994, through July 31, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833.

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. This marketing agreement and order are 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1994-95 fiscal period, which began August 1, 1994, and ends July 31, 1995. 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 the Secretary 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 requesting 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 the Secretary 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 47 producers of South Texas onions under this

marketing order, and approximately 34 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural Service firms are defined as those whose receipts are less than \$5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1994-95 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. 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 of goods and services in their local areas and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of \$80,000 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of \$80,000 were published in the Federal Register as an interim final rule August 12, 1994 (59 FR 41382). That interim final rule added \$959,235, authorizing expenses for the Committee, and provided that interested persons could file comments through September 12, 1994. No comments were filed.

The Committee subsequently met on November 8, 1994, and unanimously recommended increases of \$8,900 for personnel expenses, \$2,300 for office expenses, and \$126,000 for compliance activities in the recently approved 1994-95 budget. The compliance increase provided funds to operate road

guard stations surrounding the production area. The Committee also unanimously recommended \$164,450 in market development activities and \$88,028 in production research. Budget items for 1994-95 which increased compared to those budgeted for 1993-94 (in parentheses) were: Office salaries, \$22,000 (\$15,600), insurance, \$6,250 (\$5,250), accounting and audit, \$2,600 (\$2,300), rent and utilities, \$5,000 (\$4,000), field travel, \$6,000 (\$5,000), onion breeding research, \$88,028 (\$88,000), and \$4,450 for Canadian onion promotion for which no funding was budgeted last year. Items which decreased compared to the amount budgeted for 1993-94 (in parentheses) were: Market development program, \$150,000 (\$200,000) and (\$7,000) for screening for resistance and tolerance to purple blotch, (\$2,000) for leaf wetness, (\$2,600) for variety evaluation, (\$4,000) for thrips monitoring and control, and (\$2,000) for the Integrated Pest Management program, for which no funding was budgeted this year. All other items were budgeted at last year's amounts.

The initial 1994-95 budget, published on August 12, 1994, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of \$0.04 per 50-pound container or equivalent of onions, \$0.06 less than last year's assessment rate. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield \$200,000 in assessment income, which, along with \$269,678 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of December 31, 1994, were \$607,767, which is within the maximum permitted by the order of two fiscal periods' expenses.

An amended interim final rule was published in the Federal Register on December 15, 1994 (59 FR 64557). That interim final rule amended § 959.235 to increase the level of authorized expenses to \$469,678 and establish an assessment rate of \$0.04 per 50-pound container or equivalent of onions for the Committee. That rule provided that interested persons could file comments through January 17, 1995. No comments were received.

The Committee, in a telephone vote completed January 16, 1995, unanimously recommended an increase of \$50,000 in the funding for the market development program, increasing expenditures from \$150,000 to \$200,000. This increase is necessary to cover additional expenses that will be incurred in conducting the program,

and will result in total promotion expenses of \$214,250 and a total budget of \$519,678. There are adequate funds in the Committee's reserve to cover this additional expenditure, so no increase in the assessment rate was recommended.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations 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.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994-95 fiscal period began on August 1, 1994, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period. In addition, handlers are aware of this rule which was unanimously recommended by the Committee at a public meeting and published in the Federal Register as an amended interim final rule. No comments were received concerning that amended interim final rule, which is being adopted as a final rule, with appropriate changes.

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:

Accordingly, the interim final rule amending 7 CFR part 959 which was published at (59 FR 64557) on December 15, 1994, is adopted as a final rule with the following change:

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 959.235 is revised to read as follows:

§ 959.235 Expenses and assessment rate.

Expenses of \$519,678 by the South Texas Onion Committee are authorized and an assessment rate of \$0.04 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1995. Unexpended funds may be carried over as a reserve.

Dated: February 21, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-4739 Filed 2-24-95; 8:45 am]

BILLING CODE 3410-02-W

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

Replacement and Modification Parts; Enhanced Enforcement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of policy on enforcement.

SUMMARY: This is a notice of the FAA's policy to enforce full compliance with certain regulations on producing modification or replacement parts for sale for installation on type certificated products.

DATES: Preliminary applications for parts manufacturer approvals must be submitted by May 30, 1995.

FOR FURTHER INFORMATION CONTACT: Production and Airworthiness Certification Division, AIR-200, FAA, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-8361.

Background

In the past few years, there has been increased awareness of, and concern about, the use of unapproved parts on aircraft. It is not acceptable for persons to produce parts without complying with Federal Aviation Regulations (14 CFR 21.3030(a)). It is the FAA's intention to ensure that all persons who produce parts for sale for installation on type certificated products comply with the regulations. The FAA recognizes that some producers may have relied on previous FAA statements and practices regarding enforcement of the rule.