

9701.706(k)(3)(iii), the Board must consider requests for additional discovery under the “necessity and good cause” standard.

*Suggestion 4:* The language regarding the right to a hearing set out in 5 CFR 1210.19(b) should be modified to make it clear that, absent summary judgment, a hearing must be held.

*MSPB’s Response to Suggestion 4:* Read together, subparts (a) and (b) of 5 CFR 1210.19 make it clear that, absent summary judgment, there is a right to a hearing but that the form of hearing to be held is within the administrative judge’s discretion.

*Suggestion 5:* The summary judgment provision, at 5 CFR 1210.20, should be stricken in its entirety or, in the alternative, subsection (d), which provides that an administrative judge may initiate summary judgment sua sponte if he or she determines that material facts may not be in dispute, should be stricken.

*MSPB’s Response to Suggestion 5:* In order to reconcile its regulations with DHS’s regulations, at 5 CFR 9701.706(k)(5), MSPB’s regulations must require an administrative judge to render summary judgment on the law without a hearing when there are no material facts in dispute. That is the case whether summary judgment is initiated by a party or by the judge.

*Suggestion 6:* The mitigation of penalty standard in 5 CFR 1210.21(b) should be stricken in its entirety.

*MSPB’s Response to Suggestion 6:* In order to reconcile its regulations with DHS’s regulations, at 5 CFR 9701.706(k)(6), MSPB’s regulations must contain DHS’s standard for mitigation of penalties.

*Suggestion 7:* All references to mandatory removal offenses should be stricken from 5 CFR Part 1210.

*MSPB’s Response to Suggestion 7:* The Board lacks authority to revoke the appeals process for mandatory removal offenses established by DHS. However, as explained above, the Board is adopting the suggestion of NTEU that 5 CFR 1210.41(a) be clarified to reflect that a de novo standard of review applies to allegations of discrimination contained in mixed case appeals of MRP decisions.

#### List of Subjects in 5 CFR Parts 1201, 1210, and 1215

Administrative practice and procedure, Civil rights, Government employees.

■ For reasons set forth in the preamble, the interim rule published October 5, 2007 (72 FR 56883) is adopted as final with the following changes:

#### PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Section 1201.11 is amended by adding a new sentence at the end of the section to read as follows:

##### § 1201.11 Scope and policy.

\* \* \* It is the Board’s policy that these rules will be applied in a manner that ensures the fair and efficient processing of each case.

#### PART 1210—DEPARTMENT OF HOMELAND SECURITY HUMAN RESOURCES MANAGEMENT SYSTEM

■ 3. The authority citation for part 1210 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701.

■ 4. Section 1210.10(a)(4) is revised to read as follows:

##### § 1210.10 Notice of appeal rights.

(a) \* \* \*

(4) Notice of any right the employee has to file a grievance, including notice that the election of any applicable grievance procedure may result in a waiver of the employee’s right to file an appeal with the Board and as to whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.154(d); and

\* \* \* \* \*

■ 5. Section 1210.14 is amended by revising paragraphs (a)(1)(ii) and (a)(2)(ii) to read as follows:

##### § 1210.14 Initial disclosures; scope of discovery.

(a) \* \* \*

(1) \* \* \*

(ii) The name, work address and work telephone number, if known, of each individual likely to have discoverable information that the Department may use in support of its claims or defenses, identifying the subjects of such information.

(2) \* \* \*

(ii) The name, address and telephone number, if known, of each individual likely to have discoverable information that the appellant may use in support of his or her claims or defenses, identifying the subjects of the information. Each party must make its initial disclosure based on the information then reasonably available to the party. Each party has an ongoing obligation to supplement and update its initial disclosure as relevant documents and information are discovered or

become available. A party is not excused from making its disclosures because it has not fully completed the investigation of its case, because it challenges the sufficiency of the other party’s disclosures or because the other party has not made its disclosures.

■ 6. Section 1210.21 is amended by adding a new sentence to the end of paragraph (a) to read as follows:

##### § 1210.21 Initial decision by the adjudicating official.

(a) *General.* \* \* \* For purposes of this subsection only, a document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it.

\* \* \* \* \*

■ 7. Section 1210.41 is amended by adding a sentence to paragraph (a)(3) to read as follows:

##### § 1210.41 Decision of the Board.

(a) \* \* \*

(3) \* \* \* The Board will apply a de novo standard of review to allegations of discrimination contained in mandatory removal appeal actions.

\* \* \* \* \*

Dated: April 10, 2008.

**William D. Spencer,**

*Clerk of the Board.*

[FR Doc. E8–8092 Filed 4–17–08; 8:45 am]

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#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 959

[Docket No. AMS–FV–07–0151; FV08–959–1 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 2007–08 and subsequent fiscal periods from \$0.02 to \$0.03 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Assessments upon onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate will remain

in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* April 21, 2008.

**FOR FURTHER INFORMATION CONTACT:**

Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682-2833, Fax: (956) 682-5942, or E-mail: [Belinda.Garza@usda.gov](mailto:Belinda.Garza@usda.gov).

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 Order No. 959, 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, 2007, 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 2007-08 and subsequent fiscal periods from \$0.02 to \$0.03 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 2004-05 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 November 16, 2007, and unanimously recommended 2007-08 expenditures of \$202,315 and an assessment rate of \$0.03 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were \$193,315. The assessment rate of \$0.03 is \$0.01 higher than the rate currently in effect. The Committee recommended the increased rate to continue to support the increased budget for research started last season, while reducing the amount of funds drawn from the Committee's authorized reserve. Without the increase, the Committee's reserve funds would drop to \$114,728. The Committee believes a reserve that low is not adequate for its operations.

The major expenditures recommended by the Committee for the 2007-08 fiscal period include \$64,315 for personnel and office expenses, \$45,000 for compliance, \$25,000 for promotion, and \$30,000 for research. Budgeted expenses for these items in 2006-07 were \$62,315, \$43,000, \$25,000, and \$25,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions.

Onion shipments for the fiscal period are estimated at 5,775,000 fifty-pound equivalents, which should provide \$173,250 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. Funds in the reserve (currently \$196,543) will 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 2007-08 budget and 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 (5 U.S.C. 601-612) (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.

There are approximately 118 producers of onions in the production area and approximately 34 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 \$6,500,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2006–07 marketing year, the industry's 34 handlers shipped onions produced on 12,460 acres with the average and median volume handled being 179,457 and 171,537 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 34 handlers were estimated to be \$86.7 million, with average and median revenues being \$2.55 million and \$2.35 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 32 of the 34 (94 percent) 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 \$6,500,000 annual receipt threshold. All of the 118 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 2007–08 and subsequent fiscal periods from \$0.02 to \$0.03 per 50-pound equivalent. The Committee unanimously recommended 2007–08 expenditures of \$202,315 and an assessment rate of \$0.03 per 50-pound equivalent. The assessment rate of \$0.03 is \$0.01 higher than the current rate. The quantity of assessable onions for the 2007–08 fiscal period is estimated at 5,775,000 fifty-pound equivalents. Thus, the \$0.03 rate should provide \$173,250 in assessment

income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be more than adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2007–08 fiscal period include \$64,315 for personnel and office expenses, \$45,000 for compliance, \$25,000 for promotion, and \$30,000 for research. Budgeted expenses for these items in 2006–07 were \$62,315, \$43,000, \$25,000, and \$25,000, respectively.

The Committee recommended the increased rate to continue funding a research project begun last year without having to draw a large amount from reserves. Without the increase, the Committee's reserve funds would drop to \$114,728. The Committee believes a reserve that low is not adequate for its operations.

The Committee reviewed and unanimously recommended 2007–08 expenditures of \$202,315, which included increases in the management fee, compliance, and research. Numerous alternative expenditure levels were discussed based upon the relative value of the research project to the onion industry. The assessment rate of \$0.03 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 5,775,000 fifty-pound equivalents for the 2007–08 fiscal period. The assessment rate should generate \$173,250 in income. Considering income from interest and assessments, total income will be approximately \$24,065 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2007–08 fiscal period could range between \$10.00 and \$28.00 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2007–08 fiscal period as a percentage of total grower revenue could range between .11 and .30 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 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 November 16, 2007, meeting was a public meeting 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.

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.

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 February 29, 2008 (73 FR 11060). Committee staff mailed copies of the proposed rule to all South Texas onion handlers and producers. In addition, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending March 17, 2008, was provided for interested persons to respond to the proposal. Two comments were received. One supported the proposed increase and one opposed the proposal.

The commenter in support of the assessment rate increase stated that the proposed increase is very modest in light of constantly increasing costs. The commenter noted that planted South Texas onion acreage remains volatile, but has shown an overall decline, which further impacts on the Committee's revenues.

The commenter opposing the increase did not state the reason why he was not in favor of the increase, only that it should remain the same. However, we believe that the assessment increase, as recommended by the Committee, is reasonable and necessary.

Accordingly, no changes will be made to the rule as 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 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 2007–08 fiscal period began on August 1, 2007, and the marketing order requires that the rate of assessment for each fiscal period apply to all 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 unanimously recommended at a public meeting and is similar to other assessment rate actions issued in past fiscal periods. Also, a 15-day comment period was provided for in the proposed rule.

#### 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, 2007, an assessment rate of \$0.03 per 50-pound equivalent is established for South Texas onions.

Dated: April 15, 2008.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 08–1149 Filed 4–15–08; 12:13 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 14 CFR Part 250

[Docket No. DOT–OST–01–9325]

RIN No. 2105–AD63

#### Oversales and Denied Boarding Compensation

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The Department of Transportation (DOT or Department) is amending its rules relating to oversales and denied boarding compensation to increase the limits on the compensation paid to “bumped” passengers, to cover flights by certain U.S. and foreign air carriers operated with aircraft seating 30 through 60 passengers, which are currently exempt from the rule, and to make other changes. These changes are intended to maintain consumer protection commensurate with developments in the aviation industry. This action is taken on the Department’s initiative and in response to a petition from the Air Transport Association.

**DATES:** This rule is effective May 19, 2008.

**FOR FURTHER INFORMATION CONTACT:** Tim Kelly, Aviation Consumer Protection Division, Office of the General Counsel, Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, 202–366–5952 (voice), 202–366–5944 (fax), [tim.kelly@dot.gov](mailto:tim.kelly@dot.gov) (e-mail).

#### SUPPLEMENTARY INFORMATION:

##### Background

Part 250 establishes minimum standards for the treatment of airline passengers holding confirmed reservations on certain U.S. and foreign carriers who are involuntarily denied boarding (“bumped”) from flights that are oversold. In most cases, bumped passengers are entitled to compensation. Part 250 sets the minimum amount of compensation that is required to be provided to passengers who are bumped involuntarily. Until now the rule has not applied to flights operated with aircraft with a design capacity of 60 or fewer passenger seats.

In adopting the original rule in the 1960s, the Civil Aeronautics Board (CAB), the Department’s predecessor in aviation economic regulation, recognized the inherent unfairness in carriers selling more “confirmed” reservations for a flight than they have seats. Therefore, the CAB sought to reduce the number of passengers

involuntarily denied boarding to the smallest practicable number without prohibiting deliberate overbooking or interfering unnecessarily with the carriers’ reservations practices. Air travelers receive some benefit from controlled overbooking because it allows flexibility in making and canceling reservations as well as buying and refunding tickets. Overbooking makes possible a system of confirmed reservations that can almost always be honored. It allows airlines to fill more seats, reducing the pressure for higher fares, and makes it easier for people to obtain reservations on the flights of their choice. On the other hand, overbooking is the major cause of oversales, and the people who are inconvenienced are not those who do not show up for their flights, but passengers who have conformed to all carrier rules. The current rule allocates the risk of being denied boarding among travelers by requiring airlines to solicit volunteers and use a boarding priority procedure that is not unjustly discriminatory.

In 1981, the CAB amended the oversales rule to exclude from the rule all operations using aircraft with 60 or fewer passenger seats. (ER–1237, 46 FR 42442, August 21, 1981.) At the time of that proceeding, the impact of the rule on carriers operating small aircraft was found to be significant. If a passenger was denied boarding on a typical small-aircraft short-haul flight and subsequently missed a connection to a long-haul flight, the short-haul carrier usually had to compensate the passenger in an amount equal to twice the value of the passenger’s remaining ticket coupons to his or her destination, subject to a maximum limitation. For example, if the short-haul fare was \$50 and the connecting long-haul fare was \$500, the first carrier often had to pay the passenger denied boarding compensation in an amount far greater than \$50, depending on whether alternate transportation could be arranged to arrive within a short time, despite the minimal fare that the first carrier received for its flight. The problem was exacerbated by the fact that most commuter airline flights at the time were on small turboprop and piston engine aircraft which were affected by weight limitations in high temperature/humidity conditions to a greater extent than jets and, therefore, might require bumping even when the carrier did not book beyond the seating capacity of the aircraft.

Part 250 has tended to reduce passenger inconvenience and financial loss occasioned by overbooking without imposing heavy burdens on the airlines or significant costs on the traveling