

Under the marketing order, cranberries are defined as all varieties of the fruit *Vaccinium macrocarpon* grown in the production area. In 1995, the cranberry industry experienced a short crop coupled with increased demand. To replace the shortage of *Vaccinium macrocarpon*, handlers have supplemented their inventories with *Vaccinium oxycoccus* which is a European species of cranberry, recognized by the Food and Drug Administration as a cranberry. Because of the increase in volume of this species of cranberry, it is important to the cranberry industry to know the amount of *Vaccinium oxycoccus* that is being acquired and utilized by handlers.

The order authorizes the committee to recommend limiting the quantities of cranberries which may be handled during any fiscal period. The Secretary would establish a volume regulation based on information received from the committee if the Secretary found that such regulation would effectuate the declared policy of the Act. The committee is considered by the industry as the source for comprehensive cranberry related data, primarily data relating to production, supplies, utilization and inventories. Therefore, it is critical to the committee to receive comprehensive information on cranberries.

The committee will be able to use this information on *Vaccinium oxycoccus* when considering its decisions to implement volume regulation within the industry. Since this species is not regulated under the order, the committee needs to know the quantities and which handlers have acquired *Vaccinium oxycoccus* in order to keep the data on the non-regulated species separate and apart from the data on the regulated species, *Vaccinium macrocarpon*.

Therefore, the committee recommended that section 929.105 be revised by adding a new subparagraph (c) that requires that handlers also report on the same form as currently filed with the committee, the total quantity of *Vaccinium oxycoccus* cranberries the handler acquired and the disposition of such cranberries. Also, the handler are required to report the respective quantities of *Vaccinium oxycoccus* cranberries and cranberry products held by the handler.

The committee and its staff are responsible for keeping information on individual handlers' inventories and receipt confidential. Information gathered by the committee, including information relating to supplies of this non-regulated species of cranberries, will only be reported in the aggregate,

along with other pertinent cranberry data.

The proposed rule concerning this action was published in the August 21, 1996, Federal Register (61 FR 43186), with a 30-day comment period ending September 20, 1996. No comments were received. The proposed rule also announced AMS's intention to request a revision to the currently approved information collection requirements issued under the marketing order. The information collection requirements contained in the referenced sections have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581-0103.

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.

#### List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: 7 U.S.C. 601-674.

#### **PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK**

##### **§ 929.105 [Amended]**

2. In § 929.105, paragraphs (b) (1) and (2) are amended by adding the words "and *Vaccinium oxycoccus* cranberries" after the word "cranberries" everywhere they appear and paragraph (b)(2) is amended by adding the words "and *Vaccinium oxycoccus* cranberry products" after the words "cranberry products".

Dated: December 31, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-276 Filed 1-6-97; 8:45 am]

BILLING CODE 3410-02-P

#### **7 CFR Part 959**

[Docket No. FV96-959-1 IFR]

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

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

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

**SUMMARY:** This interim final rule establishes an assessment rate for the South Texas Onion Committee (Committee) under Marketing Order No. 959 for the 1996-97 and subsequent fiscal periods. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in South Texas. Authorization to assess Texas onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program.

**DATES:** Effective on August 1, 1996. Comments received by February 6, 1997, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, FAX 202-720-5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Marketing Specialist, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210-682-2833, FAX 210-682-5942, or Martha Sue Clark, Program Assistant, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone 202-720-9918; FAX 202-720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone 202-720-2491; FAX 202-720-5698.

**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 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 of Agriculture (Department) 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. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning August 1, 1996, and continuing 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 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 request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing 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 the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

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.

The purpose of the RFA is to fit regulatory action to the scale of businesses subject to such action 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 48 producers of South Texas onions in the production area and approximately 36 handlers subject to regulation under the marketing order. 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 annual receipts are less than \$5,000,000. The majority of South Texas onion producers and handlers may be classified as small entities.

Texas onion producers and handlers may be classified as small entities.

The Texas onion marketing order provides authority for the Committee, with the approval of the Department, 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 of 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.

The Committee, in a telephone vote, unanimously recommended 1996-97 administrative expenses of \$100,000 for personnel, office, and the travel portion of the compliance budget. These expenses were approved in October 1996. The assessment rate and funding for research and promotion projects, and the road guard station maintenance portion of the compliance budget were to be recommended at a later Committee meeting.

The Committee subsequently met on November 19, 1996, and unanimously recommended 1996-97 expenditures of \$448,000 and an assessment rate of \$0.07 per 50-pound container or equivalent of onions. In comparison, last year's budgeted expenditures were \$585,250. The assessment rate of \$0.07 is \$0.03 lower than last year's established rate. Major expenditures recommended by the Committee for the 1996-97 fiscal period include \$80,000 for personnel and administrative expenses, \$120,000 for compliance, \$150,000 for promotion, and \$98,000 for onion breeding research. Budgeted expenses for these items in 1995-96 were \$96,250, \$144,000, \$246,000, and \$99,000, 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 year are estimated at 5 million 50-pound equivalents, which should provide \$350,000 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. Funds in the reserve will be kept within the maximum permitted by the order.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on all 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 AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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 1996-97 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

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 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 rule until 30 days after publication in the Federal Register because: (1) The Committee needs to

have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1996–97 fiscal period began on August 1, 1996, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this 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. A new subpart titled “Assessment Rates” consisting of a new § 959.237 and a new subpart heading titled “Handling Regulations” are added immediately preceding § 959.322, to read as follows:

Note: This section will appear in the Code of Federal Regulations.

#### **Subpart—Assessment Rates**

##### **§ 959.237 Assessment rate.**

On and after August 1, 1996, an assessment rate of \$0.07 per 50-pound container or equivalent is established for South Texas onions.

#### **Subpart—Handling Regulations**

\* \* \* \* \*

Dated: December 31, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

[FR Doc. 97–282 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–02–P

#### **7 CFR Parts 1011 and 1046**

[Docket No. DA–96–15]

#### **Milk in the Tennessee Valley and Louisville-Lexington-Evansville Marketing Area**

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

**ACTION:** Final rule, correction.

**SUMMARY:** The Agricultural Marketing Service is correcting FR Doc. 96–33000, published December 31, 1996, pertaining to the termination of base-excess payment plan provisions contained in five Federal milk marketing orders.

**EFFECTIVE DATE:** January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Washington, DC 20090–6456, (202) 690–1932.

**SUPPLEMENTARY INFORMATION:** The final rule that is the subject of this correction inadvertently omitted regulatory language terminating the base-excess payment plan provisions of five Federal milk marketing orders.

#### **Need for Correction**

As published, the final rule contains errors in amendatory instructions 24 and 32 which may prove to be misleading and are in need of clarification.

#### **Correction of Publication**

Accordingly, amendatory instructions 24 and 32, respectively, as published on December 31, 1996 (61 FR 69018), are corrected as follows:

##### **§ 1011.61 [Corrected]**

24. In § 1011.61, paragraph (a) introductory text is amended by removing the words “of July through February”, paragraph (a)(6) is amended by removing the words “for the months of July through February”, paragraph (b) is removed, and the section heading is revised as follows:

##### **§ 1046.61 [Corrected]**

32. In § 1046.61, paragraph (a) introductory text is amended by removing the words “of July through February”, paragraph (a)(6) is amended by removing the words “for the months of July through February”, paragraph (b) is removed, and the section heading is revised to read as follows:

Dated: December 30, 1996.

Richard M. McKee,

*Director, Dairy Division.*

[FR Doc. 97–280 Filed 1–6–97; 8:45 am]

BILLING CODE 3410–02–M

#### **7 CFR Part 1079**

[DA–96–16]

#### **Milk in the Iowa Marketing Area; Temporary Revision of Rule**

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

**ACTION:** Final rule.

**SUMMARY:** This document revises certain provisions of the Iowa Federal milk marketing order for the months of December 1996 through March 1997. This action decreases the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order. The applicable percentage will be decreased 10 percentage points, from 30 percent to 20 percent, for the months of December 1996 through March 1997. The revision is being made in response to a request by a pool supply plant that is regulated under the Iowa order. This action is necessary to prevent the uneconomic shipment of milk.

**EFFECTIVE DATES:** Amendment 1 is effective January 8, 1997. Amendment 2 is effective December 1, 1996, through March 31, 1997.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, USDA/AMS/Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas\_X\_Memoli@usda.gov.

**SUPPLEMENTARY INFORMATION:** Prior document in this proceeding:

Notice of Proposed Temporary Revision: Issued December 6, 1996; published December 12, 1996 (61 FR 65366).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the “Act”), as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a 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 its principal place of business, has jurisdiction in equity to