

# Proposed Rules

Federal Register

Vol. 64, No. 227

Friday, November 26, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV00-959-1 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would decrease the assessment rate established for the South Texas Onion Committee (Committee) for the 1999-2000 and subsequent fiscal periods from \$0.05 to \$0.04 per 50-pound container or equivalent of onions handled. The Committee is responsible for local administration of 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 would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by December 27, 1999.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. 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, Regional Manager, McAllen Marketing Field Office, 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: 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 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. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable onions beginning on August 1, 1999, 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 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. 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 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.

This rule would decrease the assessment rate established for the Committee for the 1999-2000 and subsequent fiscal periods from \$0.05 to \$0.04 per 50-pound container or equivalent of onions handled.

The South 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 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 1997-98 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of \$0.05 per 50-pound container or equivalent that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee, in a mail vote, unanimously recommended 1999-2000 expenses of \$271,000 for personnel, office, compliance, promotion, and research expenses. These expenses were approved in July 1999. 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 September 16, 1999, and recommended 1999-2000 expenditures of \$301,000 and an assessment rate of \$0.04 per 50-pound container or equivalent of onions. In comparison, last year's budgeted expenditures were \$271,000.

The assessment rate of \$0.04 is \$0.01 lower than the rate currently in effect. The Committee voted to lower its assessment rate because at the current rate of assessment, income would exceed anticipated expenses by about \$74,000 and the projected reserve on July 31, 2000 (\$458,720), would exceed the level the Committee believes to be adequate to administer the program.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include \$97,200 for administrative expenses, \$34,800 for compliance, \$36,000 for promotion, and \$133,000 for research projects. Budgeted expenses for these items in 1998–99 were \$94,000, \$36,000, \$33,000, and \$108,000, 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 7.5 million 50-pound equivalents, which should provide \$300,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve (currently \$384,720) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses; § 959.43).

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

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 initial 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 80 producers of South Texas onions in the production area and approximately 37 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than \$500,000, 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 1998–99 marketing year, onions produced on 13,782 acres were shipped by the industry's 37 handlers with the average and median volume handled being 147,669 and 102,478 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 37 handlers were estimated to be \$43.7 million, with average and median revenues being \$1.1 million, and \$820,000, 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 the 37 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 80 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 is considered, a majority of the producers would not be considered small entities because receipts would exceed \$500,000.

This rule would decrease the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from \$0.05 to \$0.04 per 50-pound container or equivalent of onions. The Committee recommended 1999–2000 expenditures of \$301,000 and an assessment rate of \$0.04 per 50-pound container or equivalent. The proposed assessment rate of \$0.04 is \$0.01 lower than the 1998–99 rate. The quantity of assessable onions for the 1999–2000 fiscal period is estimated at 7.5 million 50-pound equivalents. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include \$97,200 for administrative expenses, \$34,800 for compliance, \$36,000 for promotion, and \$133,000 for research projects. Budgeted expenses for these items in 1998–99 were \$94,000, \$36,000, \$33,000, and \$108,000, respectively.

The Committee voted to lower its assessment rate because at the current rate of assessment, income would exceed anticipated expenses by about \$74,000 and the projected reserve on July 31, 2000 (\$458,720), would exceed the level the Committee believes to be adequate to administer the program.

The Committee reviewed and recommended 1999–2000 expenditures of \$301,000, which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Committee considered information from various sources, including the Research Subcommittee and the Market Development Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the onion industry. The assessment rate of \$0.04 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 7.5 million 50-pound equivalents for the 1999–2000 fiscal period. This is approximately \$1,000 below the anticipated expenses, which the Committee determined to be acceptable. Funds from the Committee's reserve

will be used to make up the expected deficit.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 1999 marketing season could range between \$7.00 and \$12.00 per 50-pound container or equivalent of onions. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total grower revenue could range between .571 and .333 percent.

This action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate would reduce the burden on handlers, and may reduce the burden on producers. 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 September 16, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose 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.

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

A small business guide on complying with fruit, vegetable, and speciality crop marketing agreements and orders may be viewed at the following web site: <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.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 1999–2000 fiscal period began on August 1, 1999, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal

period; (2) the proposed rule would decrease the assessment rate for assessable onions beginning with the 1999–2000 fiscal period; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### 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 proposed to be 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, 1999, an assessment rate of \$0.04 per 50-pound container or equivalent is established for South Texas onions.

Dated: November 8, 1999.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 99–30813 Filed 11–24–99; 8:45 am]

**BILLING CODE 3410–02–P**

#### NATIONAL CREDIT UNION ADMINISTRATION

##### **12 CFR Part 721**

##### **Federal Credit Union Insurance and Group Purchasing Activities**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** Under National Credit Union Administration's regulations, a federal credit union is allowed to offer group purchasing activities, including insurance plans, to its members. For group purchasing plans other than insurance, a federal credit union is limited to reimbursement up to its cost amount. NCUA is soliciting public comment on, among other things, whether NCUA should amend this regulation to set forth credit union's incidental powers that would not have a limit on reimbursement. Information from interested parties will assist NCUA in determining whether to issue a

proposed rule on incidental authorities and group purchasing.

**DATES:** The NCUA must receive comments on or before February 24, 2000.

**ADDRESSES:** Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or you may fax comments to (703) 518–6319. *Please send comments by one method only.*

**FOR FURTHER INFORMATION CONTACT:** Michael J. McKenna, Senior Staff Attorney or Chrisanthy J. Loizos, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

Currently, Part 721 sets forth the rules governing federal credit union (FCU) group purchasing activities, including insurance plans. Group purchasing activities are generally understood to mean FCUs making the products or services of third-party vendors available to their members. FCUs may provide an endorsement and perform administrative functions on behalf of the vendors. 12 CFR 721.1.

Part 721 was originally issued as a way to foster the educational role of credit unions.

The regulation evolved into a method for credit unions to provide information, products and services to their members through outside vendors. For group purchasing plans other than insurance, a federal credit union is limited to reimbursement up to its "cost amount." 12 C.F.R. 721.2(a)(2) For insurance products, except as otherwise provided by state law, compensation is unlimited with respect to insurance sales, by the credit union or its employees, which are directly related to an extension of credit by the credit union or directly related to the opening or maintenance of a share, share draft or share account at the credit union.

The legal authority for the activities covered by Part 721 is the incidental powers provision of the Federal Credit Union Act. That provision states that a federal credit union may "exercise such incidental powers as shall be necessary or requisite to enable it to carry on effectively the business for which it is incorporated." 12 U.S.C. 1757(17). NCUA's current test of what is an incidental power is whether the activity is convenient or useful to the credit union's business as expressly authorized by the Federal Credit Union Act. NCUA's position on incidental