

Proposed Rules

Federal Register

Vol. 68, No. 225

Friday, November 21, 2003

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. FV03-959-4 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 2003-04 and subsequent fiscal periods from \$0.085 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. 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 22, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

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, 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.

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 proposed herein would be applicable to all assessable onions beginning on August 1, 2003, 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 would decrease the assessment rate established for the Committee for the 2003-04 and subsequent fiscal periods from \$0.085 to \$0.03 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. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002-03 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 June 5, 2003, and unanimously recommended 2003-04 expenditures of \$124,661 and an assessment rate of \$0.03 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were \$325,400. The assessment rate of \$0.03 is \$0.055 lower than the rate currently in effect. The decrease in the assessment rate and budget is primarily due to the discontinuation of funding for production research projects and a lower marketing and promotion budget. The reduced assessment rate and budget would lower handler costs by about \$220,000 and would keep the

Committee's operating reserve at an acceptable level.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include \$74,661 for personnel and office expenses, \$30,000 for compliance, and \$20,000 for promotion expenses. Budgeted expenses for these items in 2002–03 were \$72,002, \$35,000, and \$170,500, 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 4 million 50-pound equivalents, which should provide \$120,000 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 \$256,982) 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 USDA 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 USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA 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 2003–04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial 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 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 78 producers of onions in the production area and approximately 37 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 2002–03 marketing year, the industry's 37 handlers shipped onions produced on 12,740 acres with the average and median volume handled being 114,454 and 91,792 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 37 handlers were estimated to be \$73 million, with average and median revenues being \$1.97 million and \$1.58 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 36 of 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 78 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 would decrease the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from \$0.085 to \$0.03 per 50-pound equivalent of onions. The Committee unanimously recommended 2003–04 expenditures of \$124,661 and an assessment rate of \$0.03 per 50-pound equivalent. The proposed assessment rate of \$0.03 is \$0.055 lower than the current rate. The quantity of assessable onions for the 2003–04 fiscal period is estimated at 4 million 50-pound equivalents. Thus, the \$0.03 rate should provide \$120,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be more than adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include \$74,661 for personnel and office expenses, \$30,000 for compliance, and \$20,000 for promotion expenses. Budgeted expenses for these items in 2002–03 were \$72,002, \$35,000, and \$170,500, respectively. In addition, the Committee budgeted \$47,900 for production research in 2002–03.

The Committee reviewed and unanimously recommended 2003–04 expenditures of \$124,661, which included increases in administrative expenses and decreases in the compliance and promotion expenses. The Committee did not approve any production research program expenses for 2003–04. Prior to arriving at this budget, the Committee considered information from various sources, including the Research and Market Development Subcommittee. Numerous alternative expenditure levels were discussed based upon the relative value of various promotion projects 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 4 million 50-pound equivalents for the 2003–04 fiscal period.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2003–04 fiscal period could range between \$9.05 and \$19.05 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2003–04 fiscal period as a percentage of total grower revenue could range between .16 and .33 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 June 5, 2003, 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.

USDA 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 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.

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 2003-04 fiscal period began on August 1, 2003, 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 2003-04 fiscal period; (3) shipments during the 2003-04 fiscal period are expected to start in March 2004, and any change, if any, made to the assessment rate resulting from the proposed rule should be effective by that time; and (4) 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.

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, 2003, an assessment rate of \$0.03 per 50-pound equivalent is established for South Texas onions.

Dated: November 14, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03-29060 Filed 11-20-03; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-136890-02]

RIN 1545-BA90

Transfers To Provide for Satisfaction of Contested Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the transfer of indebtedness or stock of a taxpayer or related persons or of a promise to provide services or property in the future to provide for the satisfaction of an asserted liability that the taxpayer is contesting. The temporary regulations also relate to transfers of money or other property to a trust, an escrow account, or a court to provide for the satisfaction of a liability for which payment is economic performance. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by February 19, 2004. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for March 23, 2004, must be received by March 2, 2004.

ADDRESSES: Send submissions to: CC:LPD:PR (REG-136890-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:LPD:PR (REG-136890-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the IRS Internet site at www.irs.gov/regs. The public hearing will be held in the 7th floor auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the hearing, submission of comments, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622-7180; concerning the proposed regulations, Norma Rotunno, (202) 622-7900 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 461(f) of the Internal Revenue Code (Code). The temporary regulations provide the express rule that transfers of the indebtedness of a taxpayer or of any promise to provide services or property in the future, or transfers (other than to the person asserting the liability) of a taxpayer's stock, or the indebtedness or stock of a person related to the taxpayer (as defined in section 267(b)), are not transfers to provide for the satisfaction of an asserted liability. The temporary regulations also provide rules relating to the application of the economic performance rules to transfers of money or other property under section 461(f) to provide for the satisfaction of a contested workers compensation or tort liability, or other liability for which payment is economic performance under § 1.461-4(g). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a