

whatsoever, including cases in which it is finally determined that past service of a current or former employee was subject to the higher deduction and Government contribution rates, the employing agency must correct the error by submitting the correct amounts (including both employee and agency shares) to OPM as soon as possible. Even if the agency waives collection of the overpayment of pay under any waiver authority that may be available for this purpose, such as 5 U.S.C. 5584, or otherwise fails to collect the debt, the correct amount must still be submitted to OPM as soon as possible.

(d) Upon proper application from an employee, former employee or eligible survivor of a former employee, an employing agency or former employing agency will pay a refund of erroneous additional withholdings for service that is found not to have been covered service. If an individual has paid to OPM a deposit or redeposit, including the additional amount required for covered service, and the deposit is later determined to be erroneous because the service was not covered service, OPM will pay the refund, upon proper application, to the individual, without interest.

(e) The additional employee withholding and agency contributions for covered service properly made are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8415(d).

(f) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to such a position, the additional withholdings and agency contributions will not be made.

(g) While an employee who holds a primary or secondary position is detailed or temporarily promoted to a position that is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

#### **§ 842.908 Mandatory separation.**

(a) Effective on and after October 17, 1999, the mandatory separation provisions of 5 U.S.C. 8425 apply to all nuclear materials couriers including those in secondary positions. A mandatory separation under 5 U.S.C. 8425 is not an adverse action under part 752 of this chapter or a removal action under part 359 of this chapter.

(b) Exemptions from mandatory separation are subject to the conditions set forth under 5 U.S.C. 8425. An exemption may be granted at the sole discretion of the head of the employing

agency or by the President in accordance with 5 U.S.C. 8425(c).

(c) In the event that an employee is separated mandatorily under 5 U.S.C. 8425, or is separated for optional retirement under 5 U.S.C. 8412 (d) or (e), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position that did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart or, if applicable, in part 831 of this chapter, such separation will be considered erroneous.

#### **§ 842.909 Review of decisions.**

The following decisions may be appealed to the Merit Systems Protection Board under procedures prescribed by the Board:

(a) The final decision of the Department of Energy issued to an employee, former employee, or survivor as the result of a request for determination filed under § 842.906; and

(b) The final decision of the Department of Energy that a break in service referred to in § 842.904(a)(2) did not begin with an involuntary separation within the meaning of 5 U.S.C. 8414(b)(1)(A).

#### **§ 842.910 Oversight of coverage determinations.**

(a) Upon deciding that a position is a nuclear materials courier position, the agency head must notify OPM (Attention: Associate Director for Retirement and Insurance) stating the title of each position, the number of incumbents, and whether the position is primary or secondary. The Director of OPM retains the authority to revoke the agency head's determination that a position is a primary or secondary position, or that an individual's service in any other position is creditable under 5 U.S.C. 8412(d).

(b) The Department of Energy must establish a file containing each coverage determination made by the agency head under § 842.903 and § 842.904, and all background material used in making the determination.

(c) Upon request by OPM, the Department of Energy will make available the entire coverage determination file for OPM to audit to ensure compliance with the provisions of this subpart.

(d) Upon request by OPM, the Department of Energy must submit to OPM a list of all covered positions and any other pertinent information requested.

[FR Doc. 00-1051 Filed 1-14-00; 8:45 am]

**BILLING CODE 6325-01-P**

## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

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

[Docket No. FV00-959-1 FR]

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule decreases 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 will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** January 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Cavazos, Marketing Assistant, McAllen Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry; 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 issued herein will be applicable to all assessable onions beginning 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 decreases 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 have exceeded anticipated expenses by about \$74,000 and the projected reserve on July 31, 2000 (\$458,720), would have exceeded the level the Committee believed 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, should be adequate to cover budgeted expenses. Funds in the reserve (currently \$384,720) 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 the Secretary 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 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 1999–2000 budget and those for subsequent fiscal periods will 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 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. 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 decreases 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 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, should 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 have exceeded anticipated expenses by about \$74,000 and the projected reserve on July 31, 2000 (\$458,720), would have exceeded the level the Committee

believed to be adequate to administer the program.

The Committee's recommended 1999–2000 expenditures of \$301,000, include 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 carton or 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 would be used to make up the expected deficit.

A review of historical production and marketing information 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 decreases 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 reduces 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.

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.

The Department 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 November 26, 1999 (64 FR 66411). Copies of the proposed rule were also mailed or sent via facsimile to all onion handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register. A 30-day comment period ending December 27, 1999, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty 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.

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 1999–2000 fiscal period began 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. This action decreases the rate beginning with the 1999–2000 fiscal period. Further, handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

#### 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, 1999, an assessment rate of \$0.04 per 50-pound

container or equivalent is established for South Texas onions.

Dated: January 11, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-1049 Filed 1-14-00; 8:45 am]

BILLING CODE 3410-02-P

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 269a

[Docket No. R-1056]

#### Labor Relations for the Federal Reserve System

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim rule with request for comments; policy statement.

**SUMMARY:** The Board of Governors of the Federal Reserve System (the Board) has an internal "Policy on Labor Relations for the Board of Governors of the Federal Reserve System," which was revised in 1983 through notice and comment. The Board has determined that its regulation entitled "Policy on Labor Relations for the Federal Reserve Banks" should be applied to the Board policy insofar as that regulation provides procedures for processing charges of unfair labor practices. In addition, the Board is amending the references in its policy to the "Federal Reserve System Labor Relations Panel" to read "Federal Reserve Board Labor Relations Panel" which is the correct name of this panel. Further, the Board is also amending part 269a by correcting cross-references to another Board regulation.

**DATES:** This interim rule is effective January 19, 2000. Submit comments on or before March 20, 2000.

**ADDRESSES:** Comments, which should refer to Docket No. R-1056, may be mailed to the Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551; Attention: Ms. Jennifer J. Johnson, Secretary, or may be delivered to the Board's mail room between 9 a.m. and 5 p.m. All comments received may be inspected in Room MP-500 of the Martin Building between 9 a.m. and 5 p.m., Monday through Friday, except as provided in 12 CFR 261.11(a) of the Board's Rules Regarding Availability of Information.

**FOR FURTHER INFORMATION CONTACT:**

Richard M. Ashton, Associate General Counsel (202-452-3750), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication

Device for the Deaf (TDD), Diane Jenkins (202-452-3544), Board of Governors of the Federal Reserve System, 20th and C Street NW, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Under the authority provided in the Federal Reserve Act, the Board has recognized the rights of its employees to organize and bargain collectively through recognized representatives and to be free from unfair labor practices. See Sections 10(4) and 11(l) (providing the Board exclusive authority over employment at the Board). The Board has adopted a "Policy on Labor Relations for the Board of Governors of the Federal Reserve System" which prohibits unfair labor practices and sets up the Federal Reserve Board Labor Relations Panel (Board Panel) to adjudicate charges of unfair labor practices. The policy authorizes the Board to issue rules to remedy unfair labor practices listed in the policy. The policy provides that the Board Panel will adhere to the rules and regulations promulgated by the Board for this purpose.

The Board has also adopted a "Policy on Labor Relations for the Reserve Banks," which is very similar in many respects to the Board Policy. 12 CFR part 269. The Board policy, like the Reserve Bank policy, prohibits certain unfair labor practices. The Bank policy, which establishes a Federal Reserve System Labor Relations Panel, also contains procedures for presenting and remedying unfair labor practices. Like the Board policy, the Bank policy, including the unfair labor practice procedures, was adopted after public notice and opportunity for comment. 48 FR 18820 (April 26, 1983); 48 FR 32331 (July 15, 1983).

An unfair labor practice charge under the Board policy has recently been filed. The Board has determined that the procedures for adjudicating unfair labor practice claims and other matters provided in its "Policy on Labor Relations for the Reserve Banks" should be applied to the processing of charges of unfair labor practice filed under the Board policy.

Accordingly, the Board is amending the Board policy to provide that in processing charges of unfair labor practices under that policy, 12 CFR part 269a and 269b of the Bank policy will govern. Thus, where the Bank policy refers to "bank," the reference will be read as referring to the "Board" and where it refers to the "Federal Reserve System Labor Relations Panel," the reference will be read as referring to the Board Panel. In addition, the Board is correcting all references in its policy to the "Federal Reserve System Labor

Relations Panel" to read "Federal Reserve Board Labor Relations Panel" which is the correct name of this panel. Further, references in part 269a to part 292, which was removed and redesignated in 1983 into part 269b after notice and public comment, will be revised to refer to the correct sections in part 269b.

Pursuant to 5 U.S.C. 553(d)(3), the Board has determined that it is unnecessary, and would be impracticable, to defer the effective date of this action until after public comments have been received and considered, although the Board will consider all public comments received and make changes in its procedures based on those comments where appropriate. The Board has also determined, pursuant to 5 U.S.C. 553(d)(3), that good cause exists to make this action effective immediately rather than to defer its effective date for 30 days. The procedures here adopted for use by the Board Panel were issued for the System Panel in 1983 following notice and public comment and the substance of the unfair labor practice provisions in the Board and the Reserve Bank policies are essentially the same. 48 FR 32331 (July 15, 1983). A pending matter under the Board policy requires that those procedures be used by the Board Panel without delay in the interest of fairness.

The Board is amending its "Policy on Labor Relations for the Board of Governors of the Federal Reserve System" published on July 15, 1983 (48 FR 32334) as set forth below:

#### Policy on Labor Relations for the Board of Governors of the Federal Reserve System

1. Section 6, paragraph (d), of this policy is amended to read as follows:

##### Section 6 Unfair Labor Practices

(d) The Federal Reserve Board Labor Relations Panel will follow the rules in 12 CFR parts 269a and 269b for the prevention and remedy of the unfair labor practices listed in this Policy. For purposes of this Policy, the reference in § 269b.110 to § 269.6 will be read as referring to section 6 of this Policy. References in parts 269a and 269b to a Federal Reserve Bank will be read as referring to the Board. References in parts 269a and 269b to the Federal Reserve System Labor Relations Panel will be read as referring to the Federal Reserve Board Labor Relations Panel.

2. Every reference in the policy to the "Federal Reserve System Labor Relations Panel" is removed and the