

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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of 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 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 89 producers of South Texas onions under this marketing order, and approximately 35 handlers. Since the interim final rule was issued, information regarding an increase in the number of producers from approximately 70 to 89 was received. 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.

The budget of expenses for the 1995-96 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. 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. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of \$239,250 for personnel, office, and compliance expenses were recommended in a mail vote. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of \$239,250 were published in the Federal Register as an interim final rule August 17, 1995 (60 FR 42774). That interim final rule added \$959,236, authorizing expenses for the Committee, and provided that interested persons could file comments through September 18, 1995. No comments were filed.

The Committee subsequently met on November 14, 1995, and unanimously recommended an increase of \$1,000 for insurance in the recently approved 1995-96 budget. The Committee also unanimously recommended \$246,000 for promotion and \$99,000 for onion breeding research. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Manager's salary, \$19,094 (\$15,172), office salaries, \$24,000 (\$22,000), payroll taxes, \$4,000 (\$3,100), insurance, \$8,000 (\$6,250), rent and utilities, \$6,500 (\$5,000), supplies, \$2,000 (\$1,500), postage, \$1,500 (\$1,000), telephone and telegraph, \$4,000 (\$2,500), furniture and fixtures, \$2,000 (\$1,000), equipment rental and maintenance, \$3,500 (\$2,500), contingencies, \$6,706 (\$3,978), manager travel, \$5,000 (\$3,000), Canadian onion promotion, \$5,000 (\$4,450), \$226,000 for the Thacker Group for promotion (\$200,000), onion breeding research, \$99,000 (\$88,028), and \$3,750 for deferred compensation (manager's retirement), and \$5,000 for miscellaneous promotion expenses, which were not line item expenses last year. All other items are budgeted at last year's amounts.

The initial 1995-96 budget, published on August 17, 1995, did not establish an assessment rate. Therefore, by a vote of 11 to 1, the Committee also recommended an assessment rate of \$0.10 per 50-pound container or equivalent of onions, \$0.06 more than

last year's assessment rate. The no vote came from a grower who thought increasing the assessment rate from \$0.04 to \$0.10 cents was too great an increase. This rate, when applied to anticipated shipments of approximately 6,000,000 million 50-pound containers or equivalents, will yield \$600,000 in assessment income, which, will be adequate to cover budgeted expenses. Funds in the reserve as of October 31, 1995, were \$408,314, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on 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 Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

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.

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 action 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 fiscal period began on August 1, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to that taken for the 1994-95 fiscal period; 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 action.

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: