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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 Nos. AO-322-A4; AMS-2006-0079; FV06-959-1]

Onions Grown in South Texas; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Marketing Agreement No. 143 and Order No. 959

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order (order) for onions grown in South Texas. Three amendments were proposed by the South Texas Onion Committee (committee), which is responsible for local administration of the order. These proposed amendments would: Add authority to the order to establish supplemental assessment rates on specified containers of onions; authorize interest and late payment charges on assessments not paid within a prescribed time period; and authorize the committee to engage in marketing promotion and paid advertising activities. Two additional amendments were proposed by the Department of Agriculture (USDA). These amendments would: Require that a continuance referendum be conducted every six years to determine grower support for the order; and, limit the number of consecutive terms of office a member can serve on the committee. The USDA also proposed to make such changes to the order as may be necessary to conform to any amendment that may result from the hearing.

DATES: Written exceptions must be filed by May 7, 2007.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, Room 1081-

S, Washington, DC 20250-9200; Fax: (202) 720-9776; or via the Internet at <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments will be made available for public inspection in the Office of the Hearing Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

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Small businesses may request information on this proceeding 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, E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include a Notice of Hearing issued on May 23, 2006, and published in the May 30, 2006, issue of the **Federal Register** (71 FR 30629).

This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement 143 and Order No. 959 regulating the handling of onions grown in South Texas, and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Martin Engeler, whose address is listed above.

This recommended decision is issued pursuant to the provisions of the

Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendments are based on the record of a public hearing held on June 15, 2006, in Mission, Texas. Notice of this hearing was published in the **Federal Register** on May 30, 2006 (71 FR 30629). The notice of hearing contained proposals submitted by both the committee and USDA.

Four proposed amendments to the order were initially submitted by the committee to USDA. These proposals were the result of deliberations and a recommendation by the committee at a public meeting on October 28, 2004. The four proposed amendments were included in the notice of hearing. Proposal number four in the notice of hearing pertaining to container marking requirements was withdrawn at the hearing because the committee determined it was not needed and recommended it be withdrawn at a meeting on June 1, 2006. The committee's remaining three proposed amendments to the order would: (1) Provide authority to establish supplemental assessment rates on specified containers of onions; (2) authorize interest and late payment charges on assessments not paid within a prescribed time period; and (3) add authority for marketing promotion, including paid advertising.

The USDA proposed two additional amendments that would: Require a continuance referendum to be conducted every six years to determine grower support for the order; and limit the number of consecutive years terms of office a member may serve on the committee. USDA also proposed to make such changes to the order as may be necessary, if any of the proposed changes are adopted, so that all of the order's provisions conform to the effectuated amendments.

Four industry witnesses testified at the hearing. These witnesses represented onion growers and handlers in the production area, as well as the committee, and they all supported the committee's recommended changes. The witnesses expressed the need to provide the industry with additional tools to aid in the marketing of onions and to

improve the operation and administration of the order.

Witnesses expressed their support of the committee's recommendation to add authority for supplemental rates of assessment for specified containers of onions. Additional funds generated from supplemental rates of assessment could be used for promotion of onions packed in specified containers.

Witnesses also offered testimony in support of adding authority to charge interest and/or late payment charges on assessments not paid within a prescribed time period. This authority, if implemented, would provide an incentive for handlers to pay assessments in a timely manner and would be consistent with standard business practices.

Witnesses addressed the need for adding authority to the order for marketing promotion, including paid advertising. This authority would enable the committee to engage in various types of promotional activities to assist in the marketing of its product, which could lead to greater market exposure and consumer demand for South Texas onions, thereby fostering improved grower returns.

A USDA witness testified in support of tenure limitations as a way to broaden industry participation in the program. The USDA witness also presented testimony in support of periodic continuance referenda as a means of determining grower support for the order.

At the conclusion of the hearing, the Administrative Law Judge stated that the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing would be August 15, 2006. If the hearing transcript was not posted on the Internet by July 15, 2006, the final date would be changed to 30 days after the date the hearing transcript was so posted. The transcript was posted prior to July 15; thus, the filing date remained at August 15, 2006. No briefs were filed.

Material Issues

The material issues presented on the record of hearing are as follows:

(1) Whether to amend the order to add authority for supplemental rates of assessment for specified containers of onions;

(2) Whether to amend the order to add authority for late payment and interest charges on assessments not paid within a prescribed time period;

(3) Whether to amend the order to add authority for the committee to engage in marketing promotion, including paid advertising activities;

(4) Whether to amend the order to limit the number of consecutive terms of office a person can serve as a member on the committee; and

(5) Whether to amend the order to require that continuance referenda be held every 6 years.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof.

Material Issue Number 1— Supplemental Rates of Assessment

Section 959.42 of the order should be amended to add authority to establish supplemental rates of assessment on specified containers of onions. That section currently authorizes establishment of assessment rates on containers of onions, but not supplemental rates based on the types of containers used in packing and shipping onions. The assessment rate is established through informal rulemaking after recommendation of the committee and implementation by USDA. Once established, handlers are required to pay an assessment to the committee based on the quantity of containers they ship. If authority to establish supplemental rates of assessment is added to the order, any supplemental rate would likewise require recommendation of the committee and implementation by USDA through informal rulemaking.

Witnesses testified that the South Texas onion industry is geared primarily towards the fresh market. The product is typically packed and marketed in two types of containers. The lower quality (standard) product is packed and sold in 50-pound sacks, while the higher quality (premium) product is packed and sold in more appealing 40-pound cartons. The premium product is a milder, sweeter onion due to its lower pyruvic acid content. Onions are routinely tested to measure their pyruvic acid level prior to packing to ensure that the onions packed in cartons is in fact a premium quality product. According to record evidence, premium carton onions are typically sold at retail outlets as a higher-end product at relatively higher price levels as compared to standard bagged onions which are customarily sold to foodservice outlets at relatively lower price levels.

Witnesses testified that the industry would like to increase sales and build demand for its higher value, premium product by promoting it and differentiating it from standard product. Witnesses also testified that the

committee would like to expand the range of promotional opportunities available to promote its product, and that this proposal goes hand in hand with the proposal to allow marketing promotion, including paid advertising (Material Issue Number 3). The rationale and anticipated benefits of advertising and promotion are discussed later under Material Issue Number 3.

According to record testimony, the funding of promotional activities for premium onions packed in cartons should be derived by applying a supplemental assessment rate to such product. Witnesses stated that any funds raised from a supplemental assessment should be used for promotion of that specific product. Testimony indicated that the primary benefits of promoting premium quality onions would accrue to those growers and handlers involved in producing and selling that product. Therefore, it would be more equitable for those benefiting from these activities to provide the funding, rather than using funding from a general assessment on all onions packed and sold.

A witness testified that applying a supplemental assessment rate on carton onions would not pose any problems from an administrative standpoint. All regulated South Texas onions are required to be inspected by the Federal-State Inspection Service prior to shipment. The inspection certificates provide the basis for assessment billings, and the certificates indicate the numbers and types of containers used. Committee staff utilizes this information in its assessment billings.

Testimony was also presented which addressed concerns regarding potential compliance issues with a supplemental assessment rate. It was hypothesized that handlers could circumvent a supplemental assessment rate by packing in bags prior to inspection, and then re-packing the product in cartons after the inspection was performed. Witnesses stated there would be no incentive for this to occur, since the costs associated with re-packing would far exceed any additional supplemental assessment rate incurred.

The record evidence supports adding authority to the order to establish supplemental rates of assessment on specified containers of onions. In addition, the evidence supports applying such supplemental assessment funds towards programs designed to promote the product upon which the supplemental assessments would be collected. The regulatory language contained in the Notice of Hearing and presented at the hearing did not address this specific issue. However, based on the testimony received at the hearing, it

is recommended that the proposed regulatory language be modified to specify that funds collected from a supplemental assessment rate be used for projects and activities related to the product upon which such assessments are collected.

For the above reasons, it is recommended that § 959.42 be amended accordingly as modified. There was no testimony in opposition to this proposal.

Material Issue Number 2—Authority for Interest and Late Payment Charges on Unpaid Assessments

Section 959.42 of the order should be amended to include authority for the committee to charge interest and late payment fees for assessments not paid within a prescribed timeframe. That section of the order currently does not contain such authority. If such authority is added, informal rulemaking would be required to establish parameters for implementation, including applicable interest rates and late payment fees.

Witnesses testified that adding such authority to the order would provide the committee with an additional tool to administer the assessment collection provisions of the order. Charging late fees and/or interest on assessments not paid within a prescribed time frame would provide an incentive for handlers to pay assessments in a timely manner. Further testimony stated that such fees would remove any financial advantage for those who do not pay on time while they benefit from committee programs. It would help create a level playing field for the industry.

Record testimony reflects that late payment and interest charges on unpaid financial obligations are commonplace in the business world, and implementation of such charges would bring the committee's financial operations in line with standard business practices.

Section 959.42 should thus be amended to include authority for the committee, with approval of the Secretary, to implement late payment and interest charges on assessments not paid within a prescribed time period. There was no testimony in opposition to this proposal.

Material Issue Number 3—Authority for Marketing Promotion, Including Paid Advertising

Section 959.48 of the order should be amended to include authority for marketing promotion, including paid advertising. Section 959.48 currently authorizes only production research, marketing research, and development activities. Adding authority for

marketing promotion and paid advertising to the order would expand the promotional opportunities available to the committee to help market South Texas onions.

Witnesses testified that the intent of this proposal is to allow the committee to engage in paid advertising promotional activities, should the committee so choose.

As previously discussed under Material Issue Number 1, the industry believes it would be beneficial to promote its premium onions packed in cartons. Witnesses testified that it is becoming increasingly difficult to succeed in the produce industry due to domestic and foreign competition. In order to remain competitive and maintain a viable onion industry in South Texas, witnesses indicated that advertising and promotion is important to promote the best quality product available.

Industry witnesses further testified that promotion of carton onions at the retail level could be undertaken which would help differentiate the product from bagged onions, and also differentiate Texas onions from onions produced in other competing geographical areas. Promotions would be designed to influence consumer's perceptions and increase awareness of the product. This in turn could lead to repeat purchases, thus building demand for the product. Successful promotion could lead to increased demand which in turn could lead to increased price levels, and the end result would be improved returns to producers and handlers of South Texas onions.

Witnesses stated that the committee currently has limited financial resources and would not likely engage in a significant advertising campaign. It is more likely to partner with retailers in purchasing advertising space in newspapers and/or radio and television spots. This type of advertising has been proven to be an effective means of selling commodities and presents a cost effective method of advertising with limited resources. However, should the committee choose to devote adequate funding, it could also engage in other forms of advertising. Witnesses testified that the committee had been precluded from participating in these types of activities in the past due to constraints in the order authority.

Witnesses further testified that any promotional activity the committee engages in must be fully vetted by the committee at public meetings, and the committee would only engage in those activities with the expectation that sales would increase and returns to handlers and producers would improve.

The record supports adding authority for marketing promotion, including paid advertising, to § 959.48 of the order. There was no opposition testimony on this issue.

Material Issue Number 4—Term Limits

Section 959.23, Term of office, should be revised to establish a limit on the number of consecutive terms a person may serve on the committee.

Currently, the term of office of each member and alternate member of the committee is two years. There are no provisions related to term limits in the marketing order. Members and alternates may serve on the committee until their respective successors are selected and have qualified, pursuant to the marketing order.

The record shows that USDA proposed tenure requirements for committee members is a means to increase industry participation on the committee, provide for more diverse membership, provide the committee with new perspectives and ideas, and increase the number of individuals in the industry with committee experience.

Experience with other marketing order programs suggests that a period of six years would be appropriate. Since the current term of office for committee members and alternates is two years, USDA is proposing that no member serve more than three consecutive two-year terms or a total of six years. This proposal for a limitation on tenure would not apply to alternates. Once a member has served on the committee for three consecutive terms, or six years, the member would be required to sit out for at least one year before being eligible to serve as a member again. The member could serve as an alternate during that time. Service on the committee prior to the effective date of this change would not apply to a member's term limitation. Also, a person who has served less than six consecutive years on the committee may not be selected for a new term if his or her total consecutive years on the committee at the end of that new term would exceed six years.

There was no opposition testimony on this issue. Therefore, it is recommended that the order be amended to establish term limit requirements for committee members.

Material Issue Number 5—Continuance Referenda

Section 959.84, Termination, should be amended to require that continuance referenda be conducted every six years to ascertain industry support for the order.

Currently, there is no provision in the marketing order that requires periodic

continuance referenda. The record evidence indicates that growers should have an opportunity to periodically vote on whether the marketing order should continue. Continuance referenda provide an industry with a means to measure grower support for the marketing order program. Since marketing orders are designed to benefit growers, it follows that they should be afforded the opportunity to express whether they support the programs on a periodic basis. Experience has shown that marketing order programs need significant industry support to operate effectively. Under this proposal, USDA would consider termination of the marketing order if continuance is not favored by at least two-thirds of those voting, or at least two-thirds of the volume represented in the referendum. This is the same criteria as that for issuance of an order. Experience in recent years indicates that six years is an appropriate period to allow growers an opportunity to vote for continuance of the program. Therefore, the proposal sets forth that a referendum would be conducted six years after the effective date of this amendment and every sixth year thereafter.

The proposed regulatory text set forth in the Notice of Hearing did not include the above-mentioned criteria the Department would consider in determining if the order should be continued or terminated. To provide clarity, the Department recommends including such criteria in the proposed amended regulatory text.

The Department believes that growers should have an opportunity to periodically vote on whether the marketing order should continue. There was no opposition testimony on this issue. Accordingly, it is recommended that the order be amended to require a continuance referendum every six years, and that such amendment include criteria the Department would consider in determining if the order should be continued or terminated.

USDA also proposed to make such changes as may be necessary to the order to conform to any amendment that may result from the hearing. No necessary conforming changes have been identified at this time.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the 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 so that small businesses will not be unduly or disproportionately burdened. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms are defined as those with annual receipts of less than \$6,500,000.

There are approximately 114 growers of onions in the production area and approximately 38 handlers subject to regulation under the order. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be \$44.2 million, with average and median revenues being \$1.16 million and \$1.12 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 all of the 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other productive enterprises would likely push a number of these handlers above the \$6,500,000 annual receipt threshold. Likewise, all of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

The committee is comprised of 10 growers and 7 handlers, representing both large and small entities. Committee meetings are open to the public. All members are able to participate in committee deliberations and each has an equal vote in committee decisions. When the committee met on October 28, 2004, and recommended the proposed amendments, all views expressed by the members and others in attendance were considered.

In addition, the hearing to receive evidence on the proposed changes was open to the public and all interested

parties were invited and encouraged to participate and provide their views.

The proposed amendments are intended to provide the committee and industry with additional tools to aid in the marketing of South Texas onions, and to improve the operation and administration of the order. Record evidence indicates that the proposed changes are intended to benefit all onion producers and handlers under the order, regardless of size. Witnesses testified that the impact of any of the proposals, if implemented, would be proportionate to individual grower's and handler's size, and that both small and large entities would benefit.

The record shows that the proposal to include authority for supplemental rates of assessments on specified containers would not have a differential impact on small versus large growers and handlers. Any increased assessment costs would be based on the type and volume of containers shipped rather than the size of a grower or handler's operation. Any supplemental assessment rate would thus be applied proportionately to handlers.

Onions that are packed and sold in cartons receive a higher return than onions packed and sold in bags or sacks. There is no known relationship between small versus large growers and handlers and the types of containers in which they pack their product. If onions packed in the higher value cartons were assessed at a higher rate, the assessment burden on the industry would be more proportionate to the revenues generated by the sales of product in the different types of containers.

In absolute dollar terms, a handler packing and selling only carton onions would pay more in assessments than a handler packing and selling a comparable volume of bagged onions. However, witnesses testified that additional funds generated from the supplemental assessment rate on specified containers would be used to promote sales of the product packed and sold in those containers. Therefore, the benefits of promotion would more directly benefit those paying the supplemental assessment. As discussed later in this document, the benefits of such promotions would be expected to outweigh the additional costs. Assessment revenues generated from supplemental assessment rates on specified containers would not be used to subsidize the lower assessment revenues generated from sales of the lower value product, thereby ensuring equitability between handlers.

The proposed amendment to authorize the committee to charge interest and/or late payment fees on

assessments not paid within a prescribed time period would not have a differential impact on small and large entities. According to record testimony, late fees and interest charges, if implemented, would be based on handlers' timeliness of payments, regardless of size. A hearing witness familiar with the assessment collection operations under the order stated that there is no relationship between a handler's performance with regard to timely assessment payment and the size of the handler's business operation. Any increased costs would be borne only by those handlers that fail to pay their assessments in a timely manner. These potential costs would offset any potential advantage handlers could gain by not paying their assessments when due and would thus promote equity for all handlers. It would provide an incentive to pay on time. This proposed amendment is strictly a performance-based measure and would thus be applied based on handlers' performance with respect to their payment of assessments.

Adding authority for paid advertising to the order would not disproportionately impact small business if such authority is implemented. Paid advertising activities would provide another tool the committee could use to promote its product. Paid advertising activities would be funded from handler assessments, which, as previously mentioned, are proportional to the volume of product shipped and thus proportional to the handler's relative size. Likewise, funding of the activities would be proportional.

Promotional activities authorized under the order are generic in nature. Generic advertising and promotion attempts to influence consumer's preferences and perceptions about a product, and if successful, ultimately expands the demand for the product. Because generic promotion promotes a product category, it benefits all entities in the category, especially growers and handlers. As witnesses testified, specific benefits of promotion and advertising programs are difficult to quantify, and are especially difficult to estimate prior to engaging in the activities. However, if more product is ultimately sold, both large and small growers and handlers benefit.

The proposed amendment to limit the number of consecutive terms of office that committee members may serve would increase industry participation on the committee by allowing more persons the opportunity to serve as members of the committee. It would also provide for more diverse

membership, provide the committee with new perspectives and ideas, and increase the number of individuals in the industry with committee experience. There would be no additional cost as a result of this amendment.

The proposal to require continuance referenda on a periodic basis to ascertain grower support for the order would allow growers to vote on whether to continue the operation of the program. This provides a means for those whom the order was intended to benefit with an opportunity to express their views regarding continuation of the marketing order. USDA would conduct the referenda, and thus USDA would bear the majority of any associated costs.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impacts of the proposed amendments to the order on small entities. The record evidence is that while some minimal costs may occur, those costs would be outweighed by the benefits expected to accrue to the South Texas onion industry. In addition, any additional costs would be proportional to a handler's size and would not unduly or disproportionately impact small entities.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. The amendments are designed to improve the administration and operation of the order and to provide additional tools to assist in the marketing of South Texas onions.

Committee meetings regarding these proposals as well as the hearing date and location were widely publicized throughout the Texas onion industry. All interested persons were invited to attend the meetings and the hearing and participate in deliberations on all issues. All Committee meetings and the hearing were public forums and all entities, both large and small, were provided the opportunity to express views on these issues. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because these proposed changes have already been widely publicized and the committee and industry would like to avail themselves of the opportunity to implement the changes as soon as possible. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Paperwork Reduction Act

Current information collection requirements for part 959 are approved by the Office of Management and Budget (OMB) under OMB number 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this proceeding are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

Civil Justice Reform

The amendments to Marketing Order 959 proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the Department 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. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the 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 the Department's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(1) The marketing agreement and order, as amended, and as hereby

proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of onions grown in the production area (designated counties in South Texas) in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in their application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions grown in the production area; and

(5) All handling of onions grown in the production area as defined in the marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

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 959.23 paragraph (a) is revised to read as follows:

§ 959.23 Term of office.

(a) The term of office of committee members and their respective alternates shall be for two years and shall begin as of August 1 and end as of July 31. The terms shall be so determined that about one-half of the total committee membership shall terminate each year.

Committee members shall not serve more than three consecutive terms. Members who have served for three consecutive terms may not serve as members for at least one year before becoming eligible to serve again. A person who has served less than six consecutive years on the committee may not be nominated to a new two-year term if his or her total consecutive years on the committee at the end of that new term would exceed six years. This limitation on the number of consecutive terms and years does not apply to service on the committee prior to the enactment of this provision and does not apply to alternates.

* * * * *

3. Revise paragraph (b) of § 959.42 to read as follows:

§ 959.42 Assessments.

* * * * *

(b) Based upon the recommendation of the committee or other available data, the Secretary shall fix a base rate of assessment that handlers shall pay on all onions handled during each fiscal period. Upon recommendation of the committee, the Secretary may also fix supplemental rates on specified containers, including premium containers, identified by the committee and used in the production area:

Provided, That any such supplemental assessment funds shall be used, to the extent practicable, for projects and activities related to the product upon which such assessments are collected.

* * * * *

4. Add a new paragraph (e) to § 959.42 to read as follows:

§ 959.42 Assessments.

* * * * *

(e) If a handler does not pay assessments within the time prescribed by the committee, the assessment may be increased by a late payment charge and/or an interest rate charge at amounts prescribed by the committee with approval of the Secretary.

5. Revise § 959.48 to read as follows:

§ 959.48 Research and development.

The committee, with approval of the Secretary, may establish or provide for the establishment of production research, marketing research, development projects, and marketing promotion, including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of onions. The expenses of such projects shall be paid from funds collected pursuant to § 959.42.

6. In § 959.84, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

§ 959.84 Termination.

* * * * *

(d) The Secretary shall conduct a referendum within six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance is favored by producers. The Secretary would consider termination of this part if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of onions represented in the referendum favor continuance.

* * * * *

Dated: March 29, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–6234 Filed 4–5–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27785; Directorate Identifier 2006–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes and Model ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found that some “caution” messages issued by the Flight Guidance Control System (FGCS) are not displayed on aircraft equipped with [certain] EPIC software load[s] * * *. Therefore, following a possible failure on one FGCS channel during a given flight, such a failure condition will remain undetected * * *. If another failure occurs on the second FGCS channel, the result may be a command hardover by the autopilot.

A command hardover is a sudden roll, pitch, or yaw movement, which could