

# Proposed Rules

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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 Parts 1150, 1160, 1205, 1207, 1209, 1210, 1215, 1216, 1218, 1219, 1220, 1230, 1240, 1250, 1260, and 1280**

[Docket No. PY-02-006 Ext.]

RIN 0581-AC15

### Proposed Rule To Exempt Organic Producers From Assessment by Research and Promotion Programs

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** Notice is hereby given that the comment period on the proposal to exempt producers and marketers of solely 100 percent organic products from paying assessments to any research and promotion program administered by the Agricultural Marketing Service (AMS) is extended.

**DATES:** Comments must be received by June 25, 2004.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule to Angela C. Snyder, Office of the Deputy Administrator, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0256, Room 3932-South, Washington, DC 20250. Comments should be submitted in duplicate. Comments may also be submitted electronically to: [organicasessment@usda.gov](mailto:organicasessment@usda.gov) or <http://www.regulations.gov>. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at Poultry Programs, AMS, USDA, Room 3932-South, 1400 Independence Avenue, SW., Washington, DC 20250 during regular business hours. A copy of the proposed rule may be found at: <http://www.ams.usda.gov/2002farmbill/organicexempt>.

[www.ams.usda.gov/2002farmbill/organicexempt](http://www.ams.usda.gov/2002farmbill/organicexempt).

Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

#### FOR FURTHER INFORMATION CONTACT:

Angela C. Snyder, Office of the Deputy Administrator, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0256, Room 3932-South, Washington, DC 20250; (202) 720-4476; (202) 720-5631 (fax); or e-mail at [organicasessment@usda.gov](mailto:organicasessment@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule on the exemption of organic producers and marketers from assessment under research and promotion programs was published in the **Federal Register** on April 26, 2004 (69 FR 22690). The proposed rule invited comments through May 26, 2004. Also, pursuant to the Paperwork Reduction Act, comments on the information collection burden were to be received by June 25, 2004.

An attorney representing several organic dairy companies requested that the comment period be extended by thirty days to provide ample time for a thorough review and to ensure that those most likely to be affected by the proposed rule have the opportunity to review and understand it before submitting comments. This request was submitted in consideration of the organic industry's most significant annual tradeshow and the most recent National Organic Standards Board meeting, both of which coincided with the pending comment period.

An extension would provide interested persons more time to review and assess the proposed rule's impacts. Therefore, USDA is extending the period in which to file written comments until June 25, 2004. This notice is issued pursuant to the Farm Security and Rural Investment Act (Pub. L. 107-171); the Beef Promotion and

Research Act of 1985; Commodity Promotion, Research, and Information Act of 1996; Cotton Research and Promotion Act; Dairy Production Stabilization Act of 1983; Egg Research and Consumer Information Act; Fluid Milk Promotion Act of 1990; Hass Avocado Promotion, Research, and Information Act of 2000; Honey Research, Promotion, and Consumer Information Act; Mushroom Promotion, Research, and Consumer Information Act of 1990; Popcorn Promotion, Research, and Consumer Information Act; Pork Promotion, Research, and Consumer Information Act of 1985; Potato Research and Promotion Act; Soybean Promotion, Research, and Consumer Information Act; and Watermelon Research and Promotion Act.

Dated: May 20, 2004.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 04-11878 Filed 5-25-04; 8:45 am]

BILLING CODE 3410-02-P

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 721 and 724

#### Health Savings Accounts

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The NCUA is proposing to amend its regulations governing a federal credit union's (FCU) authority to act as trustee or custodian to authorize FCUs to serve as trustee or custodian for Health Savings Accounts (HSA). The NCUA is issuing this proposed rule so that FCUs and their members can take advantage of the authority granted in the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (Medicare Act). The Medicare Act authorizes the establishment of HSAs by individuals who obtain a qualifying high deductible health plan and specifies that an HSA may be established and maintained at an FCU. The proposed rule would also make a conforming amendment to NCUA's incidental powers regulation to include trustee or custodial services for HSAs as a pre-approved activity.

**DATES:** Comments must be received on or before June 25, 2004.

**ADDRESSES:** You may submit comments by any of the following methods (please send comments by one method only):

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- NCUA Web Site: [http://www.ncua.gov/RegulationsOpinionsLaws/proposed\\_regs/proposed\\_regs.html](http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html). Follow the instructions for submitting comments.

- E-mail: Address to [regcomments@ncua.gov](mailto:regcomments@ncua.gov). Include “[Your name] Comments on Proposed Rule 721 and 724, Health Savings Accounts” in the e-mail subject line.

- Fax: (703) 518-6319. Use the subject line described above for e-mail.

- Mail: Address to Becky Baker, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

- Hand Delivery/Courier: Same as mail address.

**FOR FURTHER INFORMATION CONTACT:** Ross P. Kendall, Staff Attorney, at the above address, or telephone: (703) 518-6562.

**SUPPLEMENTARY INFORMATION:**

**Background**

The precursor to the HSA was the Medical Savings Account, a tax-advantaged savings plan that was available only to certain individuals who were either self-employed or employees of small companies. The law authorizing the creation of these accounts contained other limitations as well, including a ceiling on the number of persons nationwide who could establish such an account, as well as an expiration provision. 26 U.S.C. 220. The limitations raised doubt about whether these accounts would become a permanent, viable alternative for Americans seeking relief from the high cost of health insurance. For these reasons, the NCUA elected not to include Medical Savings Accounts in its 1998 amendment expanding the scope of part 724 to include Roth IRAs, Coverdell Education Savings Accounts and Savings Incentive Match Plans for Employees. 63 FR 14025 (March 24, 1998).

Title XII of the Medicare Act makes permanent and broadens the authority for individuals to establish tax-advantaged savings accounts at financial institutions to support their payment of medical expenses not covered by health insurance. Under the new law, anyone who has a qualifying high deductible health plan is eligible to establish and

maintain an HSA. A health plan with a minimum deductible of at least \$1,000 (for individual coverage) or \$2,000 (for family coverage) may qualify under the HSA rules even where certain preventive care services, as well as coverage for accidents, disability, dental care, vision care, and long-term care, are not subject to the deductible.

Contributions to an HSA qualify for an “above the line” tax deduction, whether or not the taxpayer itemizes other expenses on Schedule A. Income earned on funds in the account accrues tax-free, and withdrawals for qualified medical expenses are not taxable. Contributions to an HSA may be made by the individual or his or her employer, and employer contributions are not taxable as income to the individual. Contributions to the account for 2004 may not exceed the lesser of the annual deductible under the health plan or \$2,600 (for individuals) or \$5,150 (for family coverage). Contribution limits are indexed annually, and special “catch up” rules apply for individuals between ages 55 and 65. Funds in the account may be withdrawn tax-free if used to pay for qualified medical expenses. Unlike Flexible Spending Accounts, any unused balance in an HSA may be rolled over and accumulated from year to year, and the account is portable. After retirement but before eligibility for Medicare, an account owner may use funds in the account to purchase health insurance, including long-term care insurance. After an individual reaches age 65 and is qualified for Medicare coverage, any funds remaining in the account may be used for any purpose, although such withdrawals are taxed as ordinary income. Non-qualified withdrawals before age 65 are taxable as income, and are also assessed a 10% penalty. Upon death, HSA ownership may transfer to the spouse of the account owner on a tax-free basis.

Additional information about HSAs, including important details concerning the type of high deductible health plan an individual must obtain to qualify for an HSA, is available from the Public Affairs Office of the U.S. Department of the Treasury. The information is directly accessible from the Treasury Web site, <http://www.ustreas.gov>.

**FCUs as Trustees or Custodians for HSAs**

Title XII of the Medicare Act will be codified as new section 223 of the Internal Revenue Code (IRC). The proposed rule would amend § 724.1 of NCUA’s regulations by inserting a reference to section 223 of the IRC into its text, to go along with the other IRC

references that authorize retirement, pension and education savings accounts. The proposed rule would also make changes to the section heading and the caption of this part to reflect that trustee and custodial authority for FCUs is no longer limited to pension and retirement plans. In this respect, the NCUA proposes to use the term “tax-advantaged savings plans” as a more descriptive and inclusive way to refer to the types of accounts and savings plans that members may establish and for which FCUs may fulfill trustee or custodial responsibilities.

As with an IRA, an individual who maintains an HSA has an option to direct the investment choices. At present, however, both the text and the heading for § 724.2 refer only to retirement plans in describing the role that an FCU may fulfill in assisting a member who elects to make investment choices outside the credit union. Therefore, NCUA proposes to delete the reference to retirement from both the section heading and the first sentence of § 724.2, to clarify that members may determine investment options for HSAs as well. The amendment would not alter any of the procedural limitations and safeguards presently in the rule concerning either the extent of the actions an FCU may take or the notice requirements relating to the absence of share insurance for investment choices outside of share or share certificate accounts the FCU maintains.

The proposed rule would also amend NCUA’s incidental powers regulation by adding language to § 721.3, describing those activities that are pre-approved for FCUs. Subsection (l) discusses the role an FCU may fulfill as trustee or custodian. The proposed rule would simply add HSAs to the types of plans for which an FCU may fulfill trustee or custodian responsibilities. A conforming amendment is proposed for the first sentence in this subsection, substituting “tax-advantaged savings plans” for the current reference to pension and profit-sharing plans, to describe more clearly the types of accounts for which an FCU may serve as trustee or custodian.

The proposed rule would authorize FCUs to serve as trustee or custodian for member HSAs. Whether similar authority exists for State chartered, federally insured credit unions is a matter of applicable State law.

**Obligations of Trustee or Custodian**

NCUA understands that the Internal Revenue Service (IRS) will prepare and distribute comprehensive guidelines for HSA trustees or custodians, including model forms, in the near future. The

Department of the Treasury has already issued some guidance, including that an HSA trustee will not be responsible for monitoring or determining if a withdrawal from an HSA is for a qualified medical purpose. *See* U.S. Treasury Notice 2004-2—Guidance on Health Savings Accounts. NCUA anticipates that HSA trustees and custodians will be required to provide initial disclosures and monitor deposits made to the account to assure they do not exceed permissible annual contribution limitations, and we expect the guidelines will also require certain reporting to the IRS and to the account owner.

NCUA anticipates and expects that FCUs will comply with all applicable guidelines once established by the IRS. NCUA does not anticipate that the obligations will be burdensome. NCUA notes that FCUs have been providing IRA trustee and custodial services for over 25 years. In its examination and supervision of FCUs during this time, NCUA has seen no indication of regulatory problems or safety and soundness concerns arising from this activity. This historical performance suggests that FCUs can safely provide the same services for HSAs.

#### **Separate Share Insurance Coverage for HSAs**

The Board notes that, although it is set up as a trust account, an HSA is an account a member maintains for his or her own benefit. In view of the statutory limits on maximum annual contributions, as well as the likelihood of frequent withdrawals from the HSA to pay for medical expenses, the Board does not anticipate that substantial balances in HSAs will accumulate in the short term. Also, the Federal Deposit Insurance Corporation, with which the NCUA has traditionally maintained parity on matters involving the scope of account insurance coverage, has indicated it does not consider HSAs to be a separate category for insurance coverage purposes. As with other types of revocable trust accounts, the interests of person(s) designated by the owner of an HSA to receive any balance in the account remaining after the owner's death may qualify for separate insurance coverage under existing rules. To qualify for separate insurance, the designated beneficiary must be the spouse, child, grandchild, parent or sibling of the account owner and the other requirements in our rule must be satisfied. 12 CFR 745.4. For these reasons, the Board is not proposing an amendment to NCUA's share insurance rules at present. The Board intends to monitor developments in this area and

may reconsider its position at a later time if circumstances warrant.

#### **Request for Comments**

The Board's standard policy is to issue proposed regulations with a 60-day comment period. *See* NCUA Interpretative Ruling and Policy Statement 87-2 (52 FR 35231, Sept. 18, 1987; as amended by IRPS 03-2, 68 FR 31949, May 29, 2003). In this case, however, the Board finds that a shorter comment period is warranted. The Medicare Act is already effective, and the Board anticipates the IRS will produce and distribute model forms and related guidance for institutions acting as trustee or custodian on or before the end of June 2004. A shorter comment period will minimize delays for FCUs seeking to offer this service to their members.

#### **Regulatory Procedures**

##### *Regulatory Flexibility Act*

This proposed rule conforms current regulations to recent changes in the federal tax law and implements authority for FCUs to offer HSAs to their members. The Board has determined and certifies that the proposed rule would not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA Board has determined that a Regulatory Flexibility Analysis is not required.

##### *Paperwork Reduction Act*

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

##### *Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on State and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

#### *The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

#### **List of Subjects**

##### *12 CFR Part 721*

Incidental Powers.

##### *12 CFR Part 724*

Pensions, Reporting and recordkeeping, Trusts and trustees.

By the National Credit Union Administration Board, this 20th day of May, 2004.

**Becky Baker,**

*Secretary, NCUA Board.*

For the reasons stated in the preamble, NCUA proposes to amend 12 CFR chapter VII as follows:

#### **PART 721—INCIDENTAL POWERS**

1. The authority citation for part 721 continues to read as follows:

**Authority:** 12 U.S.C. 1757(17), 1766 and 1789.

2. Amend § 721.3 by revising paragraph (l) to read as follows:

**§ 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?**

\* \* \* \* \*

(l) *Trustee or custodial services.* Trustee or custodial services are services in which you are authorized to act under any written trust instrument or custodial agreement created or organized in the United States and forming part of a tax-advantaged savings plan, as authorized under the Internal Revenue Code. These services may include acting as a trustee or custodian for member retirement, education and health savings accounts.

#### **PART 724—TRUSTEES AND CUSTODIANS OF PENSION PLANS**

3. The authority citation for part 724 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1765, 1766 and 1787.

4. Revise the part heading for part 724 to read as follows:

## PART 724—TRUSTEES AND CUSTODIANS OF CERTAIN TAX-ADVANTAGED SAVINGS PLANS

5. Amend § 724.1 by revising the section heading and first two sentences to read as follows:

### § 724.1 Federal credit unions acting as trustees and custodians of certain tax-advantaged savings plans.

A federal credit union is authorized to act as trustee or custodian, and may receive reasonable compensation for so acting, under any written trust instrument or custodial agreement created or organized in the United States and forming part of a tax-advantaged savings plan which qualifies or qualified for specific tax treatment under sections 223, 401(d), 408, 408A and 530 of the Internal Revenue Code (26 U.S.C. 223, 401(d), 408, 408A and 530), for its members or groups of its members, provided the funds of such plans are invested in share accounts or share certificate accounts of the Federal credit union. Federal credit unions located in a territory, including the trust territories, or a possession of the United States, or the Commonwealth of Puerto Rico, are also authorized to act as trustee or custodian for such plans, if authorized under sections 223, 401(d), 408, 408A and 530 of the Internal Revenue Code as applied to the territory or possession under similar provisions of territorial law. \* \* \*

6. Amend § 724.2 by revising the section heading and introductory text to read as follows:

### § 724.2 Self-Directed Plans.

A federal credit union may facilitate transfers of plan funds to assets other than share and share certificates of the credit union, provided the conditions of § 724.1 are met and the following additional conditions are met: \* \* \*

[FR Doc. 04-11903 Filed 5-25-04; 8:45 am]

BILLING CODE 7535-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

#### Proposed Changes and Advisory Circular 25.1322

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of availability of Aviation Rulemaking Advisory Committee (ARAC) recommendations.

**SUMMARY:** The Federal Aviation Administration (FAA) announces the

availability of the ARAC-recommended proposed flight crew alerting, and the proposed Advisory Circular (AC) 25.1322, "Flight Crew Alerting," for potential use, upon request, in the certification of applicable airplane systems. The FAA has not yet adopted these ARAC recommendations.

**FOR FURTHER INFORMATION CONTACT:** Mr. Loran Haworth, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flight Crew Interface Branch, ANM-111, 1601 Lind Avenue SW., Renton, WA 98055-4056; telephone (425) 227-1133; fax (425) 227-1320; e-mail: [Loran.Haworth@faa.gov](mailto:Loran.Haworth@faa.gov).

**SUPPLEMENTARY INFORMATION:** *Reference:* FAA policy memorandum 00-113-1034 "Use of ARAC (Aviation Rulemaking Advisory Committee) Recommended Rulemaking not yet formally adopted by the FAA, as a basis for equivalent level of safety or exemption to Part 25."

This policy memorandum describes a standardized, streamlined approach for the use of draft FAA/Joint Aviation Authorities (JAA) harmonized regulations as a basis for an equivalent level of safety finding or an exemption to part 25. It may be found on the Internet at the following Web site address: <http://www.airweb.faa.rgl>.

#### Background

After a multi-year review of the current § 25.1322 and creation of the proposed AC 25.1322, the ARAC submitted to the FAA their recommendations for a rule change and the proposed advisory circular in May 2004. The ARAC-recommended proposed changes to 14 CFR 25.1322 and the newly proposed AC 25.1322 are available on the Internet at the following Web site address: <http://www.faa.gov/avr/arm/arac/aractasks/aracavsysrecommendation4.cfm?nav=6&task=2>. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

The procedure for using ARAC recommendations for rule changes that are not yet adopted by the FAA is described in the FAA policy memorandum 00-113-1034 referenced above. The memorandum describes the process for requesting an equivalent safety finding, as well as petitioning for an exemption.

Issued in Renton, Washington, on May 18, 2004.

**Kevin Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04-11896 Filed 5-25-04; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2004-CE-11-AD]

RIN 2120-AA64

#### Airworthiness Directives; Raytheon Aircraft Company Model B100 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) Model B100 airplanes. This proposed AD would require you to drill holes in the hot lip tube "B" nuts; tighten the "B" nuts to specified torque ranges; and secure the "B" nuts with safety wire. This proposed AD is the result of reports of loose "B" nuts on the engine inlet that may loosen and permit a leak in the engine inlet anti-ice system. We are issuing this proposed AD to detect and correct loose "B" nuts on the engine inlet, which could result in failure of the engine inlet anti-ice system and consequent ice buildup. This failure and ice buildup could lead to an engine's ingestion of ice with loss of engine power or loss of engine.

**DATES:** We must receive any comments on this proposed AD by July 26, 2004.

**ADDRESSES:** Use one of the following to submit comments on this proposed AD:

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004-CE-11-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

- *By fax:* (816) 329-3771.

- *By e-mail:* 9-ACE-7-

[Docket@faa.gov](mailto:Docket@faa.gov). Comments sent electronically must contain "Docket No. 2004-CE-11-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201-0085;