

# Rules and Regulations

Federal Register

Vol. 74, No. 78

Friday, April 24, 2009

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Doc. No. AMS-FV-09-0012; FV09-959-1 IFR]

#### Onions Grown in South Texas; Change in Regulatory Period

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule revises the regulatory period during which minimum grade, size, quality, and maturity requirements are in effect for onions grown in South Texas under Marketing Order No. 959 (order). The previous regulatory period for South Texas onions was March 1 to July 15 of each year. The new regulatory period ends on June 4. Prior to this change, onions subject to order requirements from June 5 to July 15 were present in the market at the same time as onions produced in other areas of the United States not regulated under Federal marketing orders. Changing the ending date of the regulatory period to June 4 relaxes the regulatory requirements for onions covered under the order, and will enable producers and handlers to compete more effectively in the marketplace, and therefore, promote the orderly marketing of onions. The South Texas Onion Committee (Committee), which locally administers the order, unanimously recommended the change.

**DATES:** Effective April 25, 2009; comments received by June 23, 2009 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and

Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

#### FOR FURTHER INFORMATION CONTACT:

Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682-2833, Fax: (956) 682-5942, or e-mail: [Belinda.Garza@usda.gov](mailto:Belinda.Garza@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or e-mail: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under

section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule, which was unanimously recommended by the Committee, revises the regulatory period during which minimum grade, size, quality, and maturity requirements are in effect for onions grown under the order in South Texas. This change is intended to enable producers and handlers to compete more effectively in the marketplace, and therefore, promote the orderly marketing of onions.

Section 959.52(b) of the order authorizes the establishment of grade, size, quality, maturity, or pack regulations for all varieties of onions within the production area during any period in any or all portions of the production area. Section 959.52(c) authorizes the modification, suspension, or termination of regulations. Section 959.60 provides that whenever onions are regulated pursuant to § 959.52, or at other times when recommended by the Committee and approved by the Secretary, such onions shall be inspected by the Federal or Federal-State Inspection Service.

Section 959.110 of the order's administrative rules and regulations apportions 35 South Texas counties between two onion-growing areas known as District 1, consisting of 19 counties designated as the Coastal Bend-Lower Valley area, and District 2, consisting of 16 counties designated as the Laredo-Winter Garden area.

Section 959.322 of the order's rules and regulations provides that the handling of South Texas onions shall be subject to specified grade, size, and inspection requirements. That section also prescribes the time period during which such regulatory requirements for

South Texas onions are in effect. Prior to this action, the regulatory period during which regulations were in effect ran from March 1 to July 15, annually (see 72 FR 49136).

During a public meeting held on December 15, 2008, the Committee unanimously recommended changing the ending date of the regulatory period for onions from July 15 to May 31. Upon further consideration, the Committee unanimously recommended, through a follow-up mail vote completed on January 28, 2009, changing the ending date to June 4.

Prior to the 2007 marketing season, the regulatory period was from March 1 through June 4. At that time, the regulatory period did not completely cover the full South Texas production season and onion shipments occurring after June 4 were not subject to order requirements. The early and mid-season crop is produced in District 1 of the production area, which generally accounts for about 90 percent of the total. The remaining crop, approximately 10 percent, is produced in District 2, and is shipped during the latter part of the season.

In 2007, based on a Committee recommendation, the ending date of the regulatory period was extended from June 4 to July 15. The Committee believed that extending the ending date from June 4 to July 15 would provide the consumer with higher-quality onions for a longer period of time because the entire production area would be regulated throughout its shipping period. Extending the ending date of regulation also resulted in additional assessment revenue being collected by the Committee, since assessments are based on inspection certificates.

After two seasons' experience, District 2 producers and handlers requested the Committee to reconsider the extension of the regulatory period. According to the Committee, extending the regulatory period from June 4 to July 15 in 2007 resulted in the South Texas onion industry competing in the market directly with lower-quality onions shipped from other areas of the United States not regulated under Federal marketing orders. Onion prices are usually quite low during this period and these unregulated areas have a competitive advantage over District 2. Ending grade, size, quality, and maturity requirements on June 4, rather than July 15, relaxes regulation on District 2 shippers and helps them compete in the market with shippers from non-regulated production areas.

The Committee also recommended continuing inspection of onions through

July 15. To identify the quality and quantity of onions being shipped in the latter part of the season, the Committee will continue assessing all South Texas onion shipments. Collecting assessments for the entire season will provide a consistent funding source for Committee operations and programs, and will help to ensure that all handlers pay an equitable share of assessments.

Section 8e of the Act provides that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This action will have no impact on the import regulation for onions.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

Currently, there are approximately 84 producers of onions in the production area and approximately 31 handlers subject to regulation under the order. Small agricultural producers are 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 having annual receipts of less than \$7,000,000.

Most of the South Texas handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2007–08 marketing year, the industry's 31 handlers shipped onions produced on 10,978 acres with the average and median volume handled being 202,245 and 176,551 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 31 handlers were estimated to be \$174.7 million, with average and median revenues being \$5.64 million and \$4.92 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 31 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other farming enterprises could result in a number of these handlers being above the \$7,000,000 annual receipt threshold. All of the 84 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule shortens the ending date of the order's regulatory period for Texas onions shipped to the fresh market from July 15 to June 4 of each year. This action, which was unanimously recommended by the Committee, shortens the regulatory period during which minimum grade, size, quality, and maturity requirements are in effect for onions grown under the order. Authorization to implement such regulations is provided in § 959.52(b) of the order. Regulatory requirements authorized under this section are provided in § 959.322.

This action provides that fresh onion shipments from the South Texas onion production area meet minimum grade, size, quality, and maturity requirements from March 1 through June 4 of each year. Inspection requirements will continue through July 15. The previous regulations require that onions grown in the production area meet order requirements from March 1 through July 15 of each year. Prior to the 2007 marketing season, the regulatory period was from March 1 through June 4. In 2007, the regulatory period was extended from June 4 to July 15. The Committee believed that applying quality requirements for a longer time period was necessary to accommodate an extended growing season.

After two seasons' experience, District 2 producers and handlers requested that the Committee reconsider the previous regulatory extension. Onions subject to quality requirements under the order from June 5 to July 15 have been competing in the market with non-regulated onions from growing areas outside the order. Relaxing the requirements by changing the ending

date of the regulatory period back to June 4 relieves District 2 handlers of the resulting inequity and enables them to be more competitive with shippers from other production areas.

Under the order, the Committee collects assessments from handlers based on inspection of onions to be shipped to market. The Committee's recommendation to continue the inspection requirement to July 15 will allow the Committee to continue to collect assessments through the end of the season. This revenue will continue to be used by the Committee to fund its operations, including consistent funding for onion promotion and research projects under the order.

One alternative to this action would be to not change the regulatory period back to June 4. However, the Committee believes that leaving the quality requirements in place for the entire season would not be as beneficial for those shipping onions in the latter part of the season.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Further, 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. All Committee meetings are public meetings and all entities, both large and small, are able to express their views. Finally, interested persons are invited to submit comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on a change to the regulatory period under

the South Texas onion marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final 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 rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes regulatory requirements on handlers; (2) this rule should be implemented as soon as possible since the South Texas onion regulatory period begins March 1; (3) the Committee unanimously recommended these changes; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### 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. In § 959.322, the introductory text is revised to read as follows:

During the period beginning March 1 and ending June 4, no handler shall handle any onions, including onions for peeling, chopping, and slicing, unless they comply with paragraphs (a) through (c) or (d) or (e) of this section; except that onions handled during the period June 5 through July 15 shall comply with paragraphs (c) or (d) or (e) of this section.

\* \* \* \* \*

Dated: April 20, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator.*

[FR Doc. E9–9378 Filed 4–23–09; 8:45 am]

**BILLING CODE 3410–02–P**

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Part 910

## FEDERAL HOUSING FINANCE AGENCY

### 12 CFR Part 1202

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Federal Housing Enterprise Oversight

### 12 CFR Part 1703

**RIN 2590–AA05**

### Freedom of Information Act Implementation

**AGENCIES:** Federal Housing Finance Agency; Federal Housing Finance Board; Office of Federal Housing Enterprise Oversight.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** On January 15, 2009, the Federal Housing Finance Agency (FHFA) published a final rule implementing the Freedom of Information Act (FOIA). This technical rulemaking will delete the FOIA rules promulgated by the FHFA's predecessor agencies, the Federal Housing Finance Board (FHFB) and Office of Federal Housing Enterprise Oversight (OFHEO). It also will remove now obsolete references in the FHFA rule to the FHFB and OFHEO.

**DATES:** *Effective Date:* May 26, 2009.

**FOR FURTHER INFORMATION CONTACT:** Janice Kaye, Chief FOIA Officer, [janice.kaye@fhfa.gov](mailto:janice.kaye@fhfa.gov), 202–343–1514, Federal Housing Finance Agency, 1700 G Street NW., Washington, DC 20552. The telephone number for the telecommunications device for the deaf (TDD) is 800–877–8339.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

Effective July 30, 2008, Division A of the Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008, created the Federal Housing Finance Agency as an independent agency of the Federal Government. HERA transferred supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (collectively,