

# Proposed Rules

Federal Register

Vol. 60, No. 112

Monday, June 12, 1995

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

[FV95-959-1PR]

#### Onions Grown in South Texas; Changes in Bulk Bin Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would remove a requirement that polyethylene liners be used in bulk shipping bins. Such liners limit air flow inside the container and may cause the onions to decay more easily and result in a loss of product. Removal of this requirement should reduce product loss due to excessive decay and lessen the chances of receiver rejection. This proposed rule also would prohibit the use of bulk bins for shipments of onions for fresh whole use because the arrival condition of such onions is critical. Onions transported in bulk bins are not protected from damage, such as bruising, as well as those packed in smaller size cartons or bags. However, the arrival condition of onions for fresh chopping, slicing, or peeling, or other fresh use in which the form of the onion is changed is not as critical. The use of bulk bins, which are more cost effective for such shipments, would continue.

**DATES:** Comments must be received by July 12, 1995.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456, FAX (202) 720-5698. All comments should reference the docket 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.

#### FOR FURTHER INFORMATION CONTACT:

Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 690-0464; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501; telephone: (210) 682-2833, FAX (210) 682-5942.

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A 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 requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural

Marketing Service (AMS) has considered the economic impact of this action 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 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 35 handlers of South Texas onions who are subject to regulation under the order and approximately 70 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

At a public meeting on November 8, 1994, the South Texas Onion Committee (committee) recommended deleting a requirement that perforated polyethylene liners (poly liners) be used in the bulk bins under the authority for experimental shipments. It also recommended limiting the use of bulk bins to shipments of onions for peeling, slicing, chopping, or other fresh use in which the form of the onion is changed. Fourteen members and alternates were present, and all recommendations were unanimous.

Sweet onions normally have a high moisture content, and a poly liner, even when perforated, acts as a vapor barrier. Moisture remains inside the bin, or container, which can cause mold, bacteria, and other decay micro-organisms to develop. To avoid such a warm, damp environment, air circulation is necessary. However, use of the poly liner blocks air movement and may cause "sweating" and decay of the onions. Because satisfactory arrival condition is important to onion receivers, the committee recommended that the requirement for poly liners be removed. This should lessen the chances of receiver rejections due to excessive decay.

At the meeting, the committee also recommended permitting onions for fresh peeling, chopping, or slicing to be shipped in bulk bins, as authorized by the provision for experimental shipments in the handling regulation. Although bags and cartons provide better protection during shipping, the committee does not believe that such additional protection is necessary for onions moving to processing outlets. Handlers have found that both bags and cartons are more difficult to load and unload than are bulk containers. In addition, bags and cartons are more expensive to buy and only last for one shipment, while bins can be used repeatedly. Also, bags and cartons must be disposed of at the destination, an additional cost, while bins can be returned for further use. It is therefore proposed that sub-paragraph (i) of paragraph (f)(3) *Experimental shipments*, be revised to remove the requirement for a poly liner and be limited to shipments for peeling, slicing, and chopping, and redesignated as (f)(3) *Peeling, slicing, and chopping*. The remaining parts of paragraph (3) *Experimental shipments*, would be redesignated (f)(4) *Experimental shipments*, but would be otherwise unchanged. Both paragraph (f)(3) and (f)(4) would continue to be subject to the safeguards under paragraph (g).

In accordance with the Paperwork Reduction Act of 1988 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this proposal have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB number 0581-0074.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

#### 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. Paragraphs (f)(4) and (f)(5) of § 959.322 are redesignated (f)(5) and (f)(6) respectively; paragraphs (f)(3)(ii) and (f)(3)(iii) are redesignated (f)(4)(i)

and (f)(4)(ii) and revised; paragraph (f)(3)(i) is redesignated as (b)(3) and revised; and the introductory text of paragraphs (g) and (g)(4) are revised to read as follows:

#### § 959.222 Handling regulation.

\* \* \* \* \*

(f) \* \* \*

(3) *Peeling, chopping, and slicing.* Upon approval of the committee, onions for peeling, chopping, and slicing may be shipped in bulk bins with inside dimensions of 47 inches x 37 1/2 inches x 36 inches deep and having a volume of 63,450 cubic inches, or containers deemed similar by the committee. Such shipments shall be exempt from paragraph (c) of this section, but shall be handled in accordance with the safeguard provisions of § 959.54 and shall meet the requirements of paragraphs (a), (b), (d), and (g) of this section.

(4) *Experimental shipments.* (i) Upon approval by the committee, onions may be shipped for experimental purposes exempt from regulations issued pursuant to §§ 959.42, 959.52, and 959.60, provided they are handled in accordance with the safeguard provisions of § 959.54 and paragraph (g) of this section.

(ii) Upon approval of the committee, onions may be shipped for testing in types and sizes of containers other than those specified in paragraphs (c) and (f)(2) of this section, provided that the handling of onions in such experimental containers shall be under the supervision of the committee.

\* \* \* \* \*

(g) *Safeguards.* Each handler making shipments of onions for relief, charity, processing, experimental purposes, or peeling, chopping and slicing shall:

\* \* \*

(g)(4) In addition to provisions in the preceding paragraphs, each handler making shipments for processing and peeling, chopping, and slicing shall:

\* \* \* \* \*

Dated: June 6, 1995.

**Sharon Bomer Lauritsen,**

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 95-14277 Filed 6-9-95; 8:45 am]

BILLING CODE 3410-02-P

#### DEPARTMENT OF ENERGY

#### Office of Energy Efficiency and Renewable Energy

#### 10 CFR Part 490

[Docket No. EE-RM-95-110A]

RIN 1904-AA64

#### Alternative Fuel Transportation Program

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

**ACTION:** Notice of limited reopening of the comment period.

**SUMMARY:** On February 28, 1995, the Department of Energy (DOE) published a notice of proposed rulemaking (60 FR 10970) to implement statutorily required alternative fueled vehicle acquisition requirements applicable to certain alternative fuel providers and State government fleets under sections 501 and 507(o) of the Energy Policy Act of 1992 (Act), respectively. Public hearings were held in three cities and the 60-day public comment period closed on May 1, 1995. The purpose of this notice is to reopen the comment period for 30 days in order to solicit comments on options being given consideration in light of the many comments for and against altering the dates of the statutory vehicle acquisition schedules.

**DATES:** Written comments (11 copies) on the issues presented in this notice must be received by the Department on or before July 12, 1995.

**ADDRESSES:** Written comments (11 copies) should be addressed to: U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE-33, Docket No. EE-RM-95-110A, 1000 Independence Ave., SW, Washington, DC 20585, (202-586-3012).

**Docket:** Supporting information used in developing the proposed rule and written comments received on the Notice of Proposed Rulemaking are contained in Docket No. EE-RM-95-110A. This Docket is available for examination in DOE's Freedom of Information Reading Room, 1E-090, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, 202-586-6020, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth R. Katz, Program Manager, Office of Energy Efficiency and Renewable Energy (EE-33), U.S. Department of Energy, 1000