

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV97-959-1 IFR]

#### Onions Grown in South Texas; Amendment of Sunday Packing and Loading Prohibitions

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

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

**SUMMARY:** This interim final rule amends, for the remainder of the 1997 period, the regulation under the South Texas onion marketing order which specifies that no handler may package or load onions on Sunday during the period March 1 through May 20 to remove the prohibition. The order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). The Committee unanimously recommended the change to increase supplies of South Texas onions in the marketplace. Recent heavy rainfall in the production area has prevented handlers from packing and loading enough onions to meet buyer needs.

**DATES:** Effective April 19, 1997; comments received by May 23, 1997 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 in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-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:** Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (210) 682-2833, Fax # (210) 682-5942; or James B. Wendland, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2170, Fax # (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax # (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule 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." This 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 (Department) 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 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 to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Due to record amounts of rainfall in the last 40 days, South Texas growers have had difficulty harvesting their onions. Normally, 1½ to 2 million 50-lb. equivalents of onions have been shipped by April 15, but this year only approximately ½ million were shipped by that date.

Currently, Section 959.322 of the order prohibits the packaging and loading of onions on Sundays during the March 1 through May 20 period each season. This restriction was implemented to contribute to orderly marketing conditions. However, the industry indicates that, since the advent of the heavy rains, all onions must be dried in mechanical dryers prior to packing. This has disrupted the normal pattern of harvesting, packing and loading. Growers cannot harvest more onions until the dryers are emptied. The dryers can not be emptied if onions are unable to be packed and shipped each day of the week.

The Committee met on April 16 and, by telephone vote, unanimously recommended revising the current handling regulation to remove the restriction on packing and loading onions on Sundays. This action will provide handlers with greater flexibility and additional time to prepare the onions for market.

If this action is not taken, crop losses will be significant. The cessation in harvesting activity will result in increased unemployment among onion field workers and employees at handlers' facilities. In addition, reduced supplies would likely result in consumers paying higher prices for these onions.

Thus, this rule relaxes requirements by modifying language in the order's handling regulation, as authorized by § 959.52 of the order, to allow Sunday packing and loading of such onions during the remainder of the 1997 period.

Pursuant to 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, 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. Thus, both statutes have small entity orientation and compatibility.

There are 36 handlers of South Texas onions who are subject to regulation under the order and approximately 60 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.

Committee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered to represent the interests of small business entities in the industry.

Many years of marketing experience led to the development of the current shipping and packing procedures. These procedures have helped the industry address marketing problems by keeping supplies and movement of packed onions in balance with market needs, and strengthening market conditions. However, the recent heavy rains have disrupted the normal pattern of harvesting, packing and loading and all onions must now be dried in mechanical dryers prior to packing. Growers cannot harvest more onions until the dryers are emptied and dryers can not be emptied if onions are unable to be packed and shipped each day of the week.

The Committee considered not relaxing the regulation for the remainder of the season, but felt that would result in significant crop losses. The Committee also felt that a cessation in harvesting activity would result in increased unemployment among onion field workers and employees at handlers' facilities. In addition, reduced supplies would likely result in

consumers paying higher prices for these onions.

While the level of benefits of this rulemaking are difficult to quantify, the stabilizing effects of the relaxation in the packing and loading regulation impact both small and large handlers positively by helping them maintain markets even though onion harvesting and packing conditions have fluctuated widely this season.

There are some reporting, recordkeeping and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This interim final rule does not change those requirements.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

A 30-day comment period is provided to allow interested persons to respond to this interim final rule. All written comments received within the comment period regarding this action or its effect on small business entities will be considered prior to finalization of this interim final 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) Record rainfall in the South Texas production area necessitates emergency rulemaking and making this action effective on the date specified; (2) this rule relaxes requirements on regulated handlers; (3) handlers are aware of this action which was unanimously recommended by the Committee at an April 16, 1997, meeting; and (4) this interim final rule provides a 30-day comment period, and

all comments timely received will be considered prior to finalization of this 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 paragraph is revised to read as follows:

#### § 959.322 Handling regulation.

During the period beginning March 1 and ending June 15, no handler shall handle any onions unless they comply with paragraphs (a) through (d) or (e) or (f) of this section. In addition, no handler may package or load onions on Sunday during the period March 1 through May 20, except during the period April 20, 1997, through May 20, 1997.

\* \* \* \*

Dated: April 18, 1997.

**Robert C. Keeney,**

*Director, Fruit and Vegetable Division.*

[FR Doc. 97-10570 Filed 4-18-97; 4:19 pm]

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## DEPARTMENT OF COMMERCE

### Office of the Secretary

#### 15 CFR Parts 15, 15a, and 15b

[Docket No. 970416092-7092-01]

RIN 0690-XX03

#### Statement of Policy and Procedures Regarding Indemnification of Department of Commerce Employees

**AGENCY:** Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds a statement of policy and procedures regarding indemnification of Department of Commerce employees. During the 1980s, largely in response to the flood of Bivens type lawsuits, *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), approximately a dozen agencies issued regulations establishing procedures and policies to indemnify their employees against personal liability for actions taken within the