

clarifying changes, 7 CFR 723.209(c) as published in the interim rule is amended. In addition, with respect to restrictions relating to transfers in general, 7 CFR 723.103 is amended so that non-statutory deadlines and other requirements may be modified where circumstances warrant, such as in the case this year with the final deadline for marketing burley tobacco where that deadline has proven inopportune given weather and crop conditions this year. This additional flexibility should not have an adverse effect on anyone and should provide a greater opportunity to allow for relief in meritorious cases. Consequently, delaying implementation of that provision appears to be contrary to the public interest.

#### List of Subjects in 7 CFR Part 723

Acreage allotments, Auction warehouses, Dealers, Domestic manufacturers, Marketing quotas, Penalties, Reconstitutions, Tobacco.

For the reasons set forth in the preamble, the interim rule for 7 CFR part 723 published on April 2, 1997 (62 FR 15599) is hereby adopted as a final rule with the following changes:

#### PART 723—TOBACCO

1. The authority citation for 7 CFR part 723 continues to read as follows:

**Authority:** 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b–1, 1314b–2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 11377–1379, 1421, 1445–1 and 1445–2.

2. The heading for § 723.209 is revised as set forth below.

3. Paragraph (c) of 723.209 is amended as follows:

(i) In the first sentence, “quotas for flue-cured tobacco,” is revised to read “quotas”;

(ii) In the third sentence, “PFC flue-cured quota farm” is revised to read “PFC farm”;

(iii) The fifth sentence is revised to read as follows:

**§ 723.209 Determination of acreage allotments, marketing quotas, and yields for combined farms; special combinations for farms with production flexibility contracts.**

\* \* \* \* \*

(c) \* \* \* Such action could result in a farm being found to have had excess acreage devoted to tobacco or excess marketings of tobacco, in which case certain penalties, along with other sanctions as may be applicable, would apply. \* \* \*

4. Section 723.103(d) is amended by adding at the end a new sentence to read as follows:

#### § 723.103 Administration

\* \* \* \* \*

(d) \* \* \* Further, the Administrator or the Administrator's designee may modify any deadline or other provisions of this part to the extent that doing so is determined by such person to be appropriate and not inconsistent with the purposes of the program administered under this part.

Signed at Washington, DC, on February 18, 1998.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 98–4560 Filed 2–23–98; 8:45 am]

BILLING CODE 3410–05–M

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV98–959–2 IFR]

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

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

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

**SUMMARY:** This rule changes the handling regulation under the South Texas onion marketing order by removing the Sunday packing and loading prohibitions. The marketing order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule will allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace.

**DATES:** Effective February 25, 1998; comments received by April 27, 1998, 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 Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. 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, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the “order.” The marketing agreement and order are 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.

This rule changes the handling regulation under the South Texas onion marketing order by removing the

Sunday packaging and loading prohibitions. It also modifies § 959.322(f)(5) by removing all references to the Sunday packaging and loading prohibitions. This rule will provide handlers with greater flexibility and additional time to prepare onions for market.

Section 959.322 of the order currently prohibits the packaging or loading of onions on Sunday during the period March 1 through May 20 of each season. This prohibition has been in place for 35 years to foster orderly marketing conditions. Handlers were permitted to move onions that were already inspected and billed, but were not prevented from harvesting onions or taking them to the packing shed for storage or to the dryers. The onions, however, could not be packaged or loaded on Sunday during that time period.

At a Committee meeting on November 6, 1997, producers and handlers expressed the view that the Sunday holiday had outlived its usefulness. In recent seasons, the Sunday packaging and loading prohibition has hindered the movement of South Texas onions by not allowing producers and handlers to harvest and pack each day of the week. Last year, the South Texas area received record amounts of rainfall and producers had difficulty harvesting their onions. The packaging and loading restriction prevented handlers from packaging or loading onions, even when it was dry by Sunday. These heavy periods of rain disrupted the normal pattern of harvesting, packing, and loading.

Due to these severe conditions last season, the Committee unanimously recommended relief from the Sunday packing and loading restriction in April through May 20 of the onion season. The restriction was removed and handlers had the flexibility to package and load onions on Sunday, which helped them to salvage some of their crop. According to the Committee's pre-season estimate, five million fifty-pound bags were expected to be harvested last season. However, due to the inclement weather, only 2.78 million fifty-pound bags were shipped.

At its November 6, 1997, meeting, the Committee unanimously recommended revising the current handling regulation to remove the restriction on packaging and loading onions on Sundays. This action will allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace.

Continuing to prohibit the packaging and loading of onions on Sunday could

prevent the South Texas onion industry from marketing more of their onions. Producers object to the Sunday restriction because if the shed is full of onions they are prevented from sending more onions to the sheds. By removing the Sunday restriction, handlers could continue to package and load onions on Sunday and salvage the producers' crops if there were a threat of adverse weather conditions.

The Committee noted that competing areas pack and load on Sundays, and the restrictive Sunday holiday has prevented the South Texas onion industry from competing effectively with other areas that do not restrict packing or loading on Sundays. The South Texas onion industry wants the same opportunity. Continuing to prohibit the packing and loading of onions on Sunday would present an unreasonable and unnecessary hardship on handlers in the production area. If the prohibitions continue, the Committee believes that Texas markets will be taken by competing areas, and that the Texas onion industry will not be able to meet their buyers' needs.

The Committee's recommendation is expected to improve producers' and handlers' returns by allowing them to package and load onions on Sunday if their operations were curtailed for some reason earlier during the week. There have been times when handlers have been packing onions on Saturday night, and at 12:01 a.m. had to stop even though the packing had not been completed. This restriction is unacceptable to the South Texas onion industry. The producers and handlers need the flexibility to pack and ship each day of the week to effectively meet their competition.

This action will allow handlers to package and load onions on Sunday and permit producers to harvest and deliver their onions to packing sheds each day of the week. This will provide producers and handlers more flexibility in meeting buyer needs and additional time for preparing onions for market.

Removing the Sunday packing and loading prohibitions also requires that all references to the Sunday restrictions be removed from § 959.322(f)(5). Currently, the prohibition against packing or loading onions on Sunday may be modified or suspended to permit the handling of onions for export provided that such handling complies with safeguard procedures. In addition, whenever the handler grades, packages, and ships onions for export on any Sunday, such handler is required to cease all grading, packaging, and shipping on the first weekday following shipment for the same length of time as

the handler operated on Sunday. The Committee recommended the removal of such references. Thus, § 959.322(f)(5) is revised to remove all references to the Sunday prohibition.

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 the 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 38 handlers of South Texas onions who are subject to regulation under the order and approximately 70 onion producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) (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.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 1996-97 marketing year, onions produced on 12,175 acres were shipped by the industry's 38 handlers; with the average acreage and median acreage handled being 310 acres and 177 acres, respectively. In terms of production value, total revenues from the 38 handlers were estimated to be \$23.6 million; with average and median revenue being \$620,000 and \$146,000, respectively. The industry is highly concentrated as the largest 8 handlers (largest 25 percent) controlled 62 percent of the acreage and 77 percent of onion production.

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 the 38 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the \$5,000,000 annual receipt threshold. All of the 70 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenue from all sources is considered, a majority of the producers would be considered small entities because many of the producers would exceed the \$500,000 figure.

This rule would relieve the Sunday ban on packing and loading onions from South Texas allowing individual firms the flexibility to modify operations to effectively compete with production areas not bound by such restrictions, to fill customer orders, and to take advantage of available transportation.

The Committee recommended this rule change for the purpose of ensuring a timely flow of available supplies, and thus help to maintain stability in the onion market. Being reasonably assured of a stable price and market provides South Texas onion producers and handlers with added flexibility to maintain proper cash flow and to meet annual expenses. The market and price stability provided by the order potentially benefits the smaller handlers more than such provisions benefit large handlers. Smaller producers and handlers are more dependent upon stable prices. Larger handlers are more diversified and not as dependent upon price stability. Therefore, the relief of packing and loading restrictions on Sundays has small entity orientation.

While the level of benefits of removing the Sunday packing and loading prohibitions are difficult to quantify, this action is expected to allow the South Texas onion industry to compete more effectively with other growing areas, better meet buyer needs, and increase supplies of South Texas onions in the marketplace. Last season, the South Texas onion industry expected to ship 5 million 50-pound bags of onions with a production value of \$45.6 million. However, inclement weather during a substantial part of the shipping season limited shipments. Late in the season, the packing and loading restrictions were removed to help producers and handlers salvage their crops. Industry shipments totaled 2.8 million bags with a production value of \$25.4 million. The suspension for last season provided producers and handlers

more flexibility in meeting the needs of their buyers.

The Committee believes that providing handlers the ability to pack and load on Sundays will benefit the industry. Removal of the prohibitions will provide producers with an additional window of opportunity to harvest and deliver their onions to handlers for sorting, grading, packaging, and loading. Moreover, the continued use of this self-imposed restriction could cause the South Texas area to lose its markets to other competing areas, because these areas can package and load onions on Sunday. Removing the Sunday packaging and loading prohibitions will positively impact both small and large handlers by helping them maintain markets.

This action is expected to improve producers' and handlers' returns by allowing them to package and load onions on Sunday if their operations were curtailed for some reason earlier in the week. The ability to pack and load on Sunday will help the handlers fill unexpected rush orders made at the end of the normal packing week. There have been times when handlers were packing onions on Saturday night, and at 12:01 a.m. had to stop even though the packing had not yet been completed. This hindered handler operations and unduly delayed the packing and shipping of onions to meet buyer needs.

The Committee considered not removing the Sunday packing and loading prohibitions. However, not relaxing the regulation could result in significant crop losses as occurred last season prior to the emergency suspension of the prohibitions. Also, the cessation in harvesting activity last season resulted in increased unemployment among onion field workers and employees at handlers' facilities. In addition, reduced supplies could result in consumers paying higher prices for onions. The opportunity to pack and load onions seven days a week will give producers and handlers more time to harvest and prepare onions for market. This increased flexibility will enable the industry to better meet buyer needs and to compete more effectively with its competition.

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

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. Like all Committee meetings, the November 6, 1997, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the information and recommendation by the Committee and other available information, it is hereby found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the handling regulation currently prescribed under the South Texas onion marketing order. Any comments received will be considered prior to finalization of this rule.

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 requirements in the handling regulations; (2) this action must be taken promptly to be in place by March 1, the start of the South Texas onion regulatory period; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; 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 paragraph is amended by removing the last sentence and paragraph (f)(5) is revised to read as follows:

**§ 959.322 Handling regulation.**

\* \* \* \* \*

(f) \* \* \*

(5) *Export shipments.* Export shipments shall be exempt from all container requirements of this section.

\* \* \* \* \*

Dated: February 17, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98-4596 Filed 2-23-98; 8:45 am]

BILLING CODE 3410-02-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 982**

[Docket No. FV97-982-1 FIR]

**Hazelnuts Grown in Oregon and Washington; Reduced Assessment Rate**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which decreased the assessment rate established for the Hazelnut Marketing Board (Board) under Marketing Order No. 982 for the 1997-98, and subsequent marketing years. The Board is responsible for the local administration of the marketing order which regulates the handling of hazelnuts grown in Oregon and Washington. Authorization to assess hazelnut handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The 1997-98 marketing year covers the period July 1 through June 30. The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** March 26, 1998.

**FOR FURTHER INFORMATION CONTACT:**

Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, OR 97204; telephone: (503) 326-2724, Fax: (503) 326-7440 or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by

contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 115 and Order No. 982, both as amended (7 CFR part 982), regulating the handling of hazelnuts grown in Oregon and Washington, hereinafter referred to as the "order." The marketing agreement and order are 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, hazelnut handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable hazelnuts beginning July 1, 1997, and continuing in effect indefinitely unless modified, suspended, or terminated. 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. Such 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 the date of the entry of the ruling.

This rule continues in effect the assessment rate established for the Board for the 1997-98, and subsequent marketing years of \$0.004 per pound of hazelnuts.

The order provides authority for the Board, with the approval of the Department, to formulate an annual

budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of hazelnuts. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996-97, and subsequent marketing years, the Board recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on August 28, 1997, and unanimously recommended 1997-98 expenditures of \$553,218 and an assessment rate of \$0.004 per pound of hazelnuts. In comparison, last year's budgeted expenditures were \$558,974. The assessment rate of \$0.004 is \$0.003 less than the rate previously in effect. At the former rate of \$0.007 per pound and an estimated 1997 hazelnut production of 70,000,000 pounds, the projected reserve on June 30, 1998, would have exceeded the level the Board believes is necessary to administer the program. Section 982.62 of the order allows the Board to establish and maintain an operating monetary reserve in an amount not to exceed approximately one marketing year's operational expenses. Last year's actual Board expenditures totaled \$284,894. The reduced assessment rate is expected to result in an operating reserve of \$257,497, which is about equal to what the Board actually spent last year for program expenses.

The Board discussed lower assessment rates, but decided that an assessment rate of less than \$0.004 would not generate the income necessary to administer the program with an adequate reserve. Major expenses recommended by the Board for the 1997-98 marketing year include \$46,864 for personnel service (salaries and benefits), \$5,640 for rent, \$5,000 for compliance, \$17,000 for a crop survey, \$269,000 for promotion, and \$182,364 for an emergency fund. Budgeted expenses for these items in 1996-97 were \$50,020, \$5,640, \$5,000, \$15,000, \$275,000, and \$182,364, respectively.

The assessment rate recommended by the Board was derived by dividing