

Rules and Regulations

Federal Register

Vol. 62, No. 137

Thursday, July 17, 1997

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV97-959-1 FIR]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with change an interim final rule which removed the restriction prohibiting handlers from packaging and loading onions on Sunday. 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 removing the prohibition to increase supplies of South Texas onions in the marketplace. Heavy rainfall in the production area during late March and most of April prevented handlers from packing and loading enough onions to meet buyer needs. Removing the prohibition provided handlers additional time to prepare onions for market and meet buyer needs. This rule also changes an erroneous regulatory period ending date which appeared in the interim final rule.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, 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 George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room

2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3919; 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, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491; Fax: (202) 720-5698.

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 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 the date of the entry of the ruling.

Due to record amounts of rainfall during late March and most of April 1997, South Texas growers had difficulty harvesting their onions. Normally, 1½ to 2 million 50-lb. equivalents of onions are shipped by

April 15, but this year only approximately ½ million were shipped by that date.

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 indicated that, since the advent of the heavy rains, all onions had to be dried in mechanical dryers prior to packing. This disrupted the normal pattern of harvesting, packing, and loading. Growers could not harvest more onions until the dryers were emptied, and dryers could not be emptied until the dried onions could be packed and shipped. Thus, the Sunday packing and loading restrictions had placed an undue hardship on growers and handlers. There was a need to pack and ship each day of the week.

The Committee met on April 16, 1997, and, by telephone vote, unanimously recommended revising the current handling regulation to remove the restriction on packing and loading onions on Sundays for the remainder of the 1997 shipping season. That recommendation was intended to provide handlers with greater flexibility and additional time to prepare the onions for market.

If this recommendation had not been implemented, crop losses would have been significant. In addition, the cessation in harvesting activity would have resulted in increased unemployment among onion field workers and employees at handlers' facilities. Finally, reduced supplies would likely have resulted in consumers paying higher prices for South Texas onions.

Thus, in the interest of growers, handlers, and consumers, the interim final rule relaxed 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 onions during the period April 20, 1997, through May 20, 1997. This final rule finalizes that action. In 1998, Sunday packing and loading prohibitions will again apply to handlers marketing South Texas onions during the period March 1, 1998, through May 20, 1998.

This final rule also corrects the June 15 ending date in the first sentence of

§ 959.322. The correct date is "June 4", and the first sentence of § 959.322 is changed accordingly.

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 final 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. 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 heavy rains in late March and most of April 1997, disrupted the normal pattern of harvesting, packing, and loading. All onions had to be dried in mechanical dryers prior to packing. Growers could not harvest more onions until the dryers had been emptied, and the dryers could not be emptied until the dried onions could be packed and shipped. Thus, the Sunday packing and loading prohibition placed an undue burden on South Texas onion growers and packers.

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, the Committee believed that reduced supplies would likely have resulted in consumers paying higher prices for these onions.

While the level of benefits of the interim final rule are difficult to quantify, the stabilizing effects of the relaxation in the packing and loading regulation impacted both small and large onion handlers positively by helping them maintain markets in the phase of adverse harvesting and packing conditions in 1997.

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 reviewed to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This final rule does not change those requirements.

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

An interim final rule regarding this action was issued by the Department on April 18, 1997, and published in the **Federal Register** (62 FR 19667, April 23, 1997), with an effective date of April 19, 1997. That rule provided a 30-day comment period which ended May 23, 1997. No comments were received. However, as stated earlier, the interim final rule, contained an erroneous regulatory period ending date and this document changes it.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, with change, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 959 which was published at 62 FR 19667 on April 23, 1997, is adopted as a final rule with the following change:

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.

§ 959.322 [Amended]

2. Section 959.322, introductory text, is amended by removing the date "June 15," in the first sentence and adding the date "June 4," in its place.

* * * * *

Dated: July 11, 1997.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.
[FR Doc. 97–18820 Filed 7–16–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–122–AD; Amendment 39–10083; AD 97–15–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 757 and 767 series airplanes. This action requires repetitive inspections to detect damage and to verify proper configuration of the battery ground terminations of the auxiliary power unit (APU) at the battery and connected structure; and removal, replacement, and repair of the battery ground termination, if necessary. This amendment is prompted by reports of smoke or fire coming from the APU due to battery grounds that were not installed/maintained properly. The actions specified in this AD are intended to detect and correct such APU battery grounds, which could result in heat damage and consequent smoke/fire on the airplane.

DATES: Effective August 1, 1997.

Comments for inclusion in the Rules Docket must be received on or before September 15, 1997.