Proposed Rules

Federal Register
Vol. 63, No. 127
Thursday, July 2, 1998

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 958

[Docket No. FV97–958–2 PR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Proposed Increase in Grade Requirement for White Onions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the minimum grade requirement for white onion varieties handled under the Idaho-Eastern Oregon onion marketing order from U.S. No. 2 or U.S. Commercial to U.S. No. 1. The marketing order regulates the handling of onions produced in certain designated counties in Idaho, and Malheur County, Oregon, and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule would improve the marketing of white onions and increase returns to producers, as well as provide consumers with higher quality onions. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the proposed increase in the minimum grade requirement would also apply to all imported varieties of white onions.

DATES: Comments must be received by August 31, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. 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: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; and 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 proposal is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, 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.''

This proposed rule is also issued under section 8e of the Act, which provides that whenever certain specified commodities, including onions, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal would 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act. This proposal invites comments on an increase in the minimum grade requirement for white onion varieties grown in the defined production area and handled under order authority. This proposed rule, unanimously recommended by the Committee at its June 19, 1997, meeting, would require that all white onion varieties handled be U.S. No. 1 grade. The current regulations allow the handling of white onions of U.S. No. 2, U.S. Commercial, and U.S. No. 1 grades. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the proposed increase in the minimum grade requirements would also apply to all imported varieties of white onions.

Sections 958.51 and 958.52 of the order provide authority for the establishment and modification of regulations applicable to the handling of particular grades of onions. Section 958.328(a)(1) establishes the grade requirements for white onions handled subject to the Idaho-Eastern Oregon onion marketing order. Such grade requirements are based on the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types) (7 CFR part 51.2830 *et seq.*), or the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR part 51.3195 *et seq.*). Currently, these handling regulations require that white onion varieties shall be (1) U.S.

No. 2 or U.S. Commercial, 1 inch minimum to 2 inches maximum diameter; or (2) U.S. No. 2 or U.S. Commercial, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality, and at least 1½ inches minimum diameter; or (3) U.S. No. 1, at least 1½ inches minimum diameter. The regulations further specify that none of these three categories may be commingled in the same bag or other container.

This proposed rule would require that all bags or other containers of white onion varieties shipped subject to order requirements be either: (1) U.S. No. 1, 1 inch minimum to 2 inches maximum diameter; or (2) U.S. No. 1, at least 1½ inches minimum diameter. Commingling of these two categories would not be allowed. Current exemptions under the order for special purpose shipments in section 958.328(e), and shipments qualifying for a minimum quantity exemption in section 958.328(g), would continue to apply when applicable.

The Committee justification for its recommendation indicated that shipments of U.S. No. 2 and U.S. Commercial grade white onions have had a negative impact on producer returns and have been a factor in decreasing this industry's share of the fresh domestic white onion market. In addition, the Committee stated that consumers of white onions traditionally demand a quality product and that U.S. No. 2 and U.S. Commercial grade white onions have poor consumer acceptance.

The Committee stated that producers seldom profit from U.S. No. 2 or U.S. Commercial grade white onion sales, and as a consequence, common business practice for many is to discard such onions as culls following harvest. Based upon comments made by handlers and receivers of white onions, the Committee reported that shipments of low quality U.S. No. 2 and U.S. Commercial grade white onions have a depressing influence on the price of the higher quality U.S. No. 1 grade white onions. The Free-on-Board (FOB) price for U.S. No. 2 white onions usually runs about one-half the FOB price on U.S. No. 1 white onions reflecting the weak demand for U.S. No. 2 white onions in fresh markets. Moreover, over the last several years there has been increased competition from white onions grown in Nevada, Washington, Colorado, and Utah. The quality produced and marketed from those States is excellent. Thus, a higher grade for white onions grown in Idaho-Eastern Oregon should help this industry compete more effectively and increase demand through stronger confidence in the quality of Idaho-Eastern Oregon white onions.

Between the 1986/87 and the 1996/97 marketing seasons, an annual average of 336,000 hundredweight of white onions, representing 3.9 percent of the total of all onion varieties, has been shipped from the Idaho-Eastern Oregon production area. The annual average of all Idaho-Eastern Oregon onion shipments for this period, including white, yellow, and red onion varieties, is 9,517,500 hundredweight. During the same period of time, shipments of Idaho-Eastern Oregon U.S. No. 2 white onions averaged 3,807 hundredweight per year, or approximately an annual average of 1.2 percent of white Idaho-Eastern Oregon onion shipments and an annual average of .04 percent of all Idaho-Eastern Oregon onion shipments. The majority, or nearly 99 percent, of the white onions shipped from this production area are U.S. No. 1 grade. Onions from the Idaho-Eastern Oregon production area are shipped throughout most of the year. Most Idaho-Eastern Oregon white onions are marketed during the months of September, October, and November, with significant additional volume through February. Preliminary information pertaining to the 1998/99 shipping season indicates that the FOB price for onions this season could average $13.10 per hundredweight.

As mentioned earlier, section 8e of the Act requires 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, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must then meet the requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions grown in South Texas, since the marketing orders were established. The current import regulation specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulation specifies that imported onions must meet the requirements of the Idaho-Eastern Oregon onion marketing order during the period June 5 through March 9 and the South Texas onion marketing order during the period March 10 through June 4 each season. This proposal would change the import requirements for the period June 5 through March 9 of each marketing year to provide that all imported white onion varieties must be U.S. No. 1 grade. While no changes are required in the language of section 980.117, all white onion varieties imported during this period would be required to meet the modified grade requirement.

White onions are imported into the United States throughout the year from a number of different countries. By far the largest source of all imported onions is Mexico. Mexican white onions enter the United States from November through July, with the heaviest volumes moving during the months of December through April. The annual average volume of all Mexican onions imported into the United States between 1986 and 1996 was 3,333,150 hundredweight, while the annual average volume for all imported onions from all sources during the same period was 4,040,004 hundredweight.

Other sources of imported onions are Canada, Chile, New Zealand, France, Guatemala, Belgium, Morocco, and the Netherlands. In 1996 and 1997, imports from Canada totaled 654,728 hundredweight and 498,950 hundredweight, imports from Chile totaled 139,927 hundredweight and 85,914 hundredweight, and those from New Zealand totaled 13,007 hundredweight and 20,172 hundredweight. During those two years, onion imports from France totaled 82,034 hundredweight and 102,956 hundredweight, imports from Guatemala were 32,540 hundredweight and 32,474 hundredweight, imports from Belgium totaled 1,565 hundredweight and 2,386 hundredweight, Moroccan imports totaled 287 hundredweight and 948 hundredweight, and imports from the Netherlands during 1996 and 1997 totaled 26,852 and 26,544 hundredweight, respectively.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact this action would have on small entities. Accordingly, the 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.

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 260 onion producers, including approximately 80 producers of white onions, in the regulated area. In addition, approximately 150 importers of onions are subject to import regulations and could be affected by this proposed rule. Small agricultural service firms 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. Approximately 90 percent of the handlers and 70 percent of the producers of Idaho-Eastern Oregon white onions may be classified as small entities. Although it is not known how many importers of white onions may be classified as small entities, it can be assumed that a number of the 150 importers could be classified as such.

This proposal invites comments on an increase in the minimum grade requirement for white onion varieties grown in the defined production area and handled under order authority. This proposed rule, unanimously recommended by the Committee at its June 19, 1997, meeting, would require that all white onion varieties handled be U.S. No. 1 grade. The current regulations allow the handling of U.S. No. 2 grade and U.S. Commercial grade white onions as well. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the proposed increase in the minimum grade requirement would also apply to all imported varieties of white onions.

At the meeting the Committee discussed the impact of this proposal on handlers and producers in terms of cost. The Committee stated that producers seldom profit from U.S. No. 2 or U.S. Commercial grade white onion sales, and as a consequence, common business practice for many is to discard such onions as culls following harvest.

Based upon comments made by handlers and receivers of white onions, the Committee reported that shipments of low quality U.S. No. 2 and U.S. Commercial grade white onions have a depressing influence on the price of the higher quality U.S. No. 1 grade white onions. The Free-on-Board (FOB) price for U.S. No. 2 white onions usually runs about one-half the FOB price on U.S. No. 1 white onions reflecting the weak demand for U.S. No. 2 white onions in fresh markets. Moreover, over the last several years there has been increased competition from white onions grown in Nevada, Washington, Colorado, and Utah. The quality produced and marketed from those States is excellent. Thus, a higher grade for white onions grown in Idaho-Eastern Oregon should help this industry compete more effectively and increase demand through stronger confidence in the quality of Idaho-Eastern Oregon white onions. Preliminary information pertaining to the 1998–99 shipping season indicates that the FOB price for onions this season could average $13.10 per hundredweight.

While this proposed rule may impose some additional costs on handlers and producers, the costs are expected to be minimal, and would be offset by the benefits of the proposal. This proposal is expected to similarly impact importers of white onions. The Committee believes that this proposed modification would benefit consumers, producers, and handlers. The benefits of this rule are not expected to be disproportionately greater or lesser for small entities than for large entities.

As alternatives to the proposal, the Committee discussed leaving the regulations as currently issued and using voluntary methods to solve the problem. Both alternatives were rejected. The prevailing opinion was that market confidence and producer income would continue to erode without the implementation of this proposal. The majority of Committee members stated that voluntary measures had not been effective in the past.

Section 8e of the Act requires 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, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions grown in South Texas, since the orders were established. The current import regulation specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulations specify that imported onions must meet the requirements of the Idaho-Eastern Oregon onion order during the period June 5 through March 9 each season and the South Texas onion order during the period March 10 through June 4 each season. This proposal would change the import requirements for the period June 5 through March 9 of each marketing year to provide that all imported white onion varieties must be U.S. No. 1 grade.

This action would not impose any additional reporting or recordkeeping requirements on either small or large 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. The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 19, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An advance notice of proposed rulemaking with request for public comment was published in the **Federal Register** (63 FR 5472) on February 3, 1998. A 60-day comment period was provided to allow interested persons the opportunity to comment on the volume and grade of imported white onions, as well as other aspects of the potential grade increase, including its probable regulatory and economic impact on small business entities. Copies of the notice were faxed and mailed to the Committee office, which in turn notified Committee and Idaho-Eastern Oregon onion industry members of the recommendation. The Department also provided copies of the notice to the administrative offices of the Walla Walla Sweet Onion Committee, the South Texas Onion Committee, and the Vidalia Onion Committee, as well as to the World Trade Organization. In addition, the Committee's meetings were widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend and participate on all issues. A copy of the notice was also made available on the Internet by the U.S. Government Printing Office.

Five comments were received. Four of the comments are supportive of the Committee's recommendation. The Idaho-Eastern Oregon Onion Committee reaffirmed its unanimous recommendation in favor of increasing the minimum grade for white onions from U.S. No. 2 or U.S. Commercial to U.S. No. 1. The South Texas Onion Committee, administering Marketing Order No. 959, expressed its support of the recommended modification as well. The South Texas Onion Committee commented that by the time the South Texas industry enters the market in March of each year, the market is flooded with inferior quality white onions from both Mexico and Idaho-Eastern Oregon, and that the onion industries and consumers would benefit from the minimum grade increase. The minimum grade requirement for white onion varieties handled under the South Texas marketing order is a modified U.S. No. 1 grade. The proposed rule would increase the minimum grade requirement for Idaho-Eastern Oregon onions, with the two minimum grade requirements becoming more similar.

Also commenting in favor of the Committee's recommendation were a South Texas onion handler and an association representing Texas onion handlers as well as importers of Mexican onions. Both commentators are located in Mission, Texas. The handler commented that the recommended modification would allow the South Texas industry the necessary confidence to continue to produce onions for a market free from the negative consumer reaction associated with poor quality white onions. The association also added its support of the recommended minimum grade increase. The association stated that it has within its membership approximately 21 South Texas handlers of onions, most of whom also import onions from Mexico. The commenter added that the association has numerous members who only handle imported produce, including white onions. The commenter noted further that in the modern competitive produce market, consumers must be provided with the best quality products available.

A comment was also received from the European Commission, Brussels, Belgium, on behalf of the European Community. That comment stated that the proposal aims at increasing the minimum diameter size requirement for imported onions from 2.54 to 2.79 centimeters for the period June 5 through March 9 of each year, and objected to such action. However, the Committee had recommended increasing the minimum grade for Idaho-Eastern Oregon white onions and white onions imported during the period June 5 through March 9 from U.S. No. 2 to U.S. No. 1. However, the recommendation did not include a modification to the minimum diameter size itself, which continues to be 1 inch or 2.54 centimeters.

In conjunction with the issuance of the advance notice and request for comment, the Texas Cooperative Inspection Program monitored white onions imported from Mexico during the period December 1, 1997, through March 9, 1998. This process was conducted at the request of the AMS to determine the quantity of imported white onions potentially impacted by the Committee's recommendation. An analysis of the information provided by the Inspection Program indicates that approximately 98 percent of the white onions imported from Mexico during the test period met U.S. No. 1 grade. The balance of the imported white onions during this period either met U.S. Commercial grade or failed to meet the minimum of U.S. No. 2 grade. There were no U.S. No. 2 grade white onions imported from Mexico during this period. During the test period, a total of 1,006,279 50-pound containers were offered for importation. A total of 948,069 50-pound containers graded U.S. No. 1, 11,427 50-pound containers graded U.S. Commercial, and 10,783 50-pound containers failed to meet the current minimum grade requirement of U.S. No. 2.

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

A 60-day comment period is provided to allow interested persons the opportunity to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is proposed to be amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.328 is amended by revising paragraph (a)(1) to read as follows:

§ 958.328 Handling Regulations.

* * * * *

(a)(1) *Grade and size requirements.* (i) White varieties shall be either:

(A) U.S. No. 1, 1 inch minimum to 2 inches maximum diameter; or

(B) U.S. No. 1, at least 1½ inches minimum diameter.

(ii) Neither of these two categories of onions may be commingled in the same bag or other container.

* * * * *

Dated: June 26, 1998.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–17564 Filed 7–1–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–98–039]

RIN 2115–AE46

Special Local Regulations; City of Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Temporary special local regulations are being proposed for the Charleston Maritime Center's South Carolina Tug Boat Challenge. The event will last approximately 30 minutes and will take place, depending on shipping traffic, between 11 a.m. and 5 p.m. Eastern Daylight Time (EDT) on August 8, 1998, in Charleston Harbor on Cooper River Charleston, SC. The exact time of the race will be announced via separate Broadcast Notice to Mariners. These regulations are necessary for the safety of life on the navigable waters during the event.

DATES: Comments must be received on or before August 3, 1998.

ADDRESSES: Comments may be mailed to U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401–1817, or may be delivered to the