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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. AMS–FV–06–0214; FV07–959–1 IFR]

Onions Grown in South Texas; Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the regulatory period for minimum grade, size, quality, and maturity requirements applicable to onions grown in South Texas under Marketing Order No. 959 (order). The current regulatory period for South Texas onions is March 1 through June 4 of each year. Changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that now extends beyond June 4 into mid-July. The new regulatory period will extend through July 15. The South Texas Onion Committee (Committee), which locally administers the order, unanimously recommended the change.

DATES: Effective May 8, 2007. Comments received by July 6, 2007 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682–2833, Fax: (956) 682–5942, or e-mail: *Belinda.Garza@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

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 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 (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action 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 USDA 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 USDA 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 USDA'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 action, which was unanimously recommended by the Committee, extends the regulatory period when minimum grade, size, quality, and maturity requirements apply to onions grown under the order in South Texas.

Under the terms of the order, fresh market shipments of onions grown in a 35-county production area in South Texas are currently subject to handling regulations during the period March 1 through June 4 of each year. According to the Committee, changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that now extends beyond June 4 into mid-July. Because the current regulatory period does not cover the present production season completely, not all onion shipments occurring after June 4 are currently subject to order requirements.

According to USDA Market News data, 40 percent of South Texas onions shipped in 2005 from District 2, or roughly 11 percent of total shipments for the production area, occurred after June 4. In 2006, 30 percent of onions shipped from District 2, or approximately 10 percent of total shipments for the production area, were shipped after June 4.

Section 959.110 of the order's rules and regulations apportions the 35 counties between two onion-growing areas known as District 1, designated as the Coastal Bend-Lower Valley area, and District 2, designated as the Laredo-Winter Garden area. District 1 is comprised of the counties of Victoria, Calhoun, Goliad, Refugio, Bee, Live Oak, San Patricio, Aransas, Jim Wells, Nueces, Kleberg, Brooks, Kenedy, Duval, McMullen, Cameron, Hidalgo, Starr, and Willacy. District 2 includes the counties of Zapata, Webb, Jim Hogg, De Witt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit, and LaSalle.

Section 959.52(b) of the order provides authority to limit the handling of any grade, size, quality, maturity, or pack of onions within the production area during any period. Section 959.322 outlines the regulatory requirements authorized under § 959.52(b). Such grade requirements are based on the U.S. Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR part 51.3195–3212), or the U.S. Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types) (7 CFR part 51.2830–2854).

Currently, these handling regulations provide that shipments may not exceed 20 percent defects of U.S. No. 1 grade. In percentage grade lots, tolerances for serious damage shall not exceed 10 percent including not more than 2 percent decay. Double the lot tolerance is permitted in individual packages in percentage grade lots. Applications of tolerances in U.S. onion standards apply to in-grade lots.

Minimum size requirements for different size designations are outlined in the regulations. Specifically, for white onions only, the minimum diameter is 1 inch to 2¼ inches maximum diameter. For other than white onions, the minimum diameter for repacker onions is 1¾ inches to 3 inches maximum with 60 percent or more 2 inches in diameter or larger, 2 to 3½ inches for medium, 3 inches or larger for jumbo or large onions, and 3¾ inches or larger for colossal.

The regulations further specify that tolerances for size in the U.S. onion standards shall apply except that for repacker and medium sizes, not more than 20 percent, by weight, of onions in any lot may be larger than the maximum diameter specified.

The current South Texas regulatory period during which the aforementioned regulations are in effect runs from March 1 through June 4, annually. A final rule published on May 17, 1996 (61 FR 24877), established this regulatory period to promote the orderly marketing of onions.

Extending the end date of the regulatory period from June 4 to July 15 each year will provide the consumer with quality onions for a longer period of time because the entire production area will be regulated throughout its shipping period. Normally, South Texas onion handlers continue to voluntarily request inspection of their onions after June 4 to ensure product quality past the current regulatory period. Because the industry is already voluntarily having their onions inspected, the extension is not expected to negatively impact the industry and this change will align order requirements with present day industry operations.

Collecting assessments for an additional five weeks will provide the Committee with additional assessment revenue. Based on USDA Market News shipment 2005 data, an additional 1,086,600 fifty-pound equivalent cartons would have been assessed if the extended regulatory period had been in effect. At the current assessment rate of $0.02 per carton, this amount would have generated an additional $21,732 in assessment revenue. Similarly, Market News data for 2006 indicates that an additional 863,400 cartons would have been assessed between June 4 and July 15, and would have resulted in $17,268 of additional assessment revenue.

The additional revenue collected as a result of an extended regulatory period in 2007 will allow the Committee to further promote onions and conduct more research projects, making it advantageous to the industry as well as the consumer. All producers will realize a better return for a quality pack through research and market development projects funded by the collection of assessments through July 15.

Initial Regulatory Flexibility Analysis

Pursuant to the 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 so 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. Small agricultural growers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms are defined as those with annual receipts of less than $6,500,000.

There are approximately 114 producers of onions in the production area and approximately 38 handlers subject to regulation under the order.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $l.6 million and $1.12 million, respectively.

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 of the 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other productive enterprises would likely push a number of these handlers above the $6,500,000 annual receipt threshold. All of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule extends the end date of the order's regulatory period from June 4 to July 15 of each year for Texas onions shipped to the fresh market. This action, which was unanimously recommended by the Committee, extends the regulatory period when minimum grade, size, quality, and maturity requirements apply to onions grown under the order. Authorization to implement such regulations is provided in § 959.52(b) of the order. Regulatory requirements authorized under this section are provided in § 959.322.

This action provides that fresh onion shipments from the entire South Texas onion production area meet all order requirements from March 1 through July 15 of each year. The current regulations require that onions grown in the production area meet order requirements from March 1 through June 4 of each year.

According to the Committee, changes in available varieties, growing seasons, and marketing opportunities over the years have resulted in a prolonged onion shipping season that now extends beyond June 4 into mid-July. Because the current regulatory period does not cover the present production season completely, not all onion shipments occurring after June 4 are currently subject to mandatory inspection under the order. Extending the regulatory period will ensure that all South Texas onions would be inspected to order specifications.

Many South Texas onion handlers currently continue to voluntarily request inspection of their onions after June 4 to ensure product quality. Because the industry is already voluntarily having their onions inspected, the extension is not expected to negatively impact the industry and this change will align order requirements with present day industry operations.

According to USDA Market News data, forty percent of South Texas onions shipped in 2005 from District 2, or roughly 11 percent of total shipments for the production area, occurred after June 4. In 2006, 30 percent of onions shipped from District 2, or approximately 10 percent of total shipments for the production area, were shipped after June 4.

This action is also expected to support Committee promotional and research activities and benefit consumers. The Committee has indicated that collecting assessments for an additional five weeks will provide them with additional assessment revenue.

Based on USDA Market News shipment 2005 data, an additional 1,086,600 fifty-pound equivalent cartons would have been assessed if the extended regulatory period had then been in effect. At the current assessment rate of $0.02 per carton, this amount would have generated an additional $21,732 in assessment revenue. Similarly, Market News data for 2006 indicates that an additional 863,400 cartons would have been assessed between June 4 and July 15, 2006, and would have resulted in $17,268 of additional assessment revenue.

The additional revenue will allow the Committee to further promote onions and conduct more research projects, making it advantageous to the industry as well as the consumer. All producers will realize a better return for a quality pack through research and market development projects funded by the collection of assessments through July 15.

The additional five weeks of assessment collection is not expected to significantly burden South Texas Onion handlers. A burden calculation of the additional assessments that would have been collected in 2006 if the regulatory period had been in effect for that season indicates that the additional assessment payments by handlers would have equaled 0.039 percent of total of 2006 production value [($17,268/$44.2 million) × 100 = 0.039]. Total 2006 revenues for the 38 handlers were estimated to be $44.2 million, with average and median revenues being $l.6 million and $1.12 million, respectively.

Extending the end date of the regulatory period from June 4 to July 15 each year will also provide the consumer with quality onions for a longer period of time because the entire production area will be regulated throughout its shipping period.

One alternative to this action would be to not extend the regulatory period beyond the current end date of June 4. However, the Committee believes that not extending the regulatory period would result in a significant portion of the South Texas onion crop not being consistently regulated.

While most handlers currently extend inspection beyond the June 4 regulatory deadline on a voluntary basis, such inspection is not required. By extending the regulatory period, such inspection would be mandatory. Mandatory inspection will ensure orderly marketing of all South Texas onions since all handlers and product will be required to fulfill the same inspection requirements and product standards under the order for the entire production period. Therefore, USDA determined that the end date of the regulatory period for South Texas onions should be extended from June 4 to July 15.

While this action will impose some additional costs on South Texas onion handlers and producers, the costs are expected to be minimal, and will be offset by the benefits of the action. The Committee believes that this modification will benefit consumers, producers, and handlers. The benefits of this action are not expected to be disproportionately greater or lesser for small entities than for large entities.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large 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 sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA 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. All Committee meetings are public meetings and all entities, both large and small, are able to express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the extension of the regulatory period under the South Texas onion marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendations, 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) This rule should be implemented as soon as possible since the South Texas onion regulatory period began March 1, 2007; (2) the rule will benefit the onion industry by aligning the regulatory period with current production practices; (3) the Committee discussed this issue and unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input at the meeting; and (4) the 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:

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 2. In § 959.322, the introductory text is revised to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending July 15, no handler shall handle any onions, including onions for peeling, chopping, and slicing, unless they comply with paragraphs (a) through (c) or (d) or (e) of this section.

* * * * *

Dated: May 1, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–8626 Filed 5–4–07; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 772 and 774

[Docket No. 070411084–7087–02]

RIN 0694–AD96

Revisions to the Export Administration Regulations Based on the 2006 Missile Technology Control Regime Plenary Agreements

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final Rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to reflect changes to the Missile Technology Control Regime (MTCR) Annex that were agreed to by MTCR member countries at the October 2006 Plenary in Copenhagen, Denmark. The amendments set forth in this rule also include adding a new Export Control Classification Number (ECCN) 7A107 to control three axis magnetic heading sensors designed or modified to be integrated with flight control and navigation systems.

DATES: This rule is effective May 7, 2007. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

ADDRESSES: You may submit comments, identified by RIN 0694–AD96, by any of the following methods:

E-mail: publiccomments@bis.doc.gov Include ''RIN 0694–AD96'' in the subject line of the message.

Fax: (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.

Mail or Hand Delivery/Courier: Timothy Mooney, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, *Attn:* RIN 0694–AD96.

Send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Comments on this collection of information should be submitted separately from comments on the final rule (i.e. RIN 0694–AD96)—all comments on the latter should be submitted by one of the three methods outlined above.

FOR FURTHER INFORMATION CONTACT: Dennis L. Krepp, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1309.

SUPPLEMENTARY INFORMATION:

Background

The Missile Technology Control Regime (MTCR) is an export control arrangement among 34 nations, including the world's most advanced suppliers of ballistic missiles and missile-related materials and equipment. The regime establishes a common export control policy based on a list of controlled items (the Annex) and on guidelines (the Guidelines) that member countries implement in accordance with their national export controls. The goal of maintaining the Annex and the Guidelines is to stem the flow in the global marketplace of missile systems capable of delivering weapons of mass destruction.

The MTCR was originally created to prevent the spread of missiles capable of carrying a nuclear warhead; it was expanded in January 1993 to also stem the flow of delivery systems for chemical and biological weapons. MTCR members voluntarily pledge to apply the Regime's export Guidelines and to restrict the export of items contained in the Regime's Annex. The Regime's Guidelines are implemented through the national export control laws and policies of the regime members.

In January 1993, complete rocket systems and unmanned aerial vehicle systems that were capable of a ''range'' equal to or greater than 300 km, regardless of the payload, were added to the MTCR Annex (Category II, Item 19). This was based on concerns by MTCR members that rocket systems and unmanned aerial vehicle systems that were capable of a ''range'' equal to or greater than 300 km, but did not meet the 500 kg ''payload'' parameter from Category I of the MTCR Annex, were a proliferation concern. ''Missiles'' are defined in § 772.1 of the EAR as being '' 'capable of' delivering at least 500 kilograms payload to a range of at least 300 kilometers.''

Prior to publication of this rule, the items controlled in ECCNs 1A102, 1C101, 1C107, 6A108, 6B108, 7A102, 7A103, 9A111 and 9B105 included the defined term ''missile'' meaning they were controlled only when they were '' 'capable of' delivering at least 500 kilograms payload to a range of at least 300 kilometers.'' To accommodate the change made in 1993, the MTCR members decided at the 2006 Plenary to clarify the controls applicable to these ECCNs by making it clear that the items in these ECCNs were controlled when used in systems that were capable of a range of at least 300km, regardless of the payload capacity. Therefore, this rule clarifies the scope of these ECCNs by replacing the defined term ''missile'' with new language controlling rockets, missiles, and unmanned aerial vehicles ''capable of a range of at least 300 km'' to these ECCNs.

Amendments to the Export Administration Regulations

In § 772.1 (Definitions of Terms as Used in the Export Administration Regulations), this rule amends definitions of the terms ''range'' and ''payload.'' Specifically this rule adds double quotes around the terms ''range'' and ''payload'' in these definitions to signify these are defined terms under the EAR.

The Commerce Control List (CCL) (Supplement No. 1 to Part 774 of the EAR) is amended to reflect changes to the MTCR Annex agreed to at the October 2006 Plenary in Copenhagen, Denmark.

Specifically the following ECCNs are amended:

ECCN 1A102 is amended by substituting the defined term ''missiles'' with new text to the heading to clarify the scope of the entry (MTCR Annex Change Category II: Item 6.C.2). Under the new text, the materials in this entry are controlled if they are usable for any rockets, missiles, or unmanned aerial vehicles capable of a range of at least 300 km, regardless of the payload capability. This change is expected to have no impact on BIS licensing activity, because these commodities are controlled by the Department of State under the International Traffic in Arms Regulations (ITAR).

ECCN 1C101 is amended by substituting the defined term ''missiles'' with new text to the heading to clarify the scope of the entry (MTCR Annex