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.

Industry Information

There are approximately 73 handlers of Colorado Area No. 2 potatoes subject to regulation under the order and approximately 180 producers in the regulated production area. The order is administered locally by the Colorado Potato Administrative Committee, Area No. 2 (Committee). Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

During the 2007–2008 marketing year, approximately 14,225,568 hundredweight of Colorado Area No. 2 potatoes were inspected under the order and sold into the fresh market. Based on an estimated average f.o.b. price of $12.05 per hundredweight, the Committee estimates that 62 Area No. 2 handlers, or about 85 percent, had annual receipts of less than $7,000,000. In view of the foregoing, the majority of Colorado Area No. 2 potato handlers may be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for Colorado potatoes for 2007 was $9.85 per hundredweight. The average annual fresh potato revenue for the Colorado Area No. 2 potato producers is therefore calculated to be approximately $778,455. Consequently, on average, the majority of the Area No. 2 Colorado potato producers may not be classified as small entities.

Section 948.22 authorizes the issuance of grade, size, quality, maturity, pack, and container regulations for potatoes grown in the production area. Section 948.21 further authorizes the modification, suspension, or termination of requirements issued pursuant to § 948.22.

Section 948.386 of the marketing order's rules and regulations establishes minimum sizes for various varieties of potatoes. This rule continues in effect the action that changed the minimum size requirement from 2 inches in diameter to 1⅞ inches in diameter and removed the minimum weight requirement for long potatoes that are considered neither ''Size B'' nor ''creamer'' size potatoes.

In 2007, handlers were unable to adequately supply the fresh market because of low yields due to poor weather conditions and because of more restrictive regulations. Adverse weather conditions contributed to lower yields and short supplies of potatoes for the market again in the 2008–2009 season. The Committee believes that relaxing the minimum size and weight requirements on long potato varieties allows handlers to market a larger portion of the crop in fresh market outlets, and thus better meet demand. This action is expected to foster increased consumption and have a positive impact on the Colorado potato industry.

This change is expected to improve returns to producers. The interim final rule was a relaxation of the minimum size regulation and, as such, should have a positive impact on industry participants. The Committee believes that this change should not negatively impact either handlers or producers.

The Committee discussed alternatives to this change, including not taking any action. However, for the reasons discussed earlier, the Committee believes this action best meets the needs of buyers and is most beneficial to the industry.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Colorado Area No. 2 potato 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.

In addition, as noted in the initial regulatory flexibility analysis, 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 Colorado Area No. 2 potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 21, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action also affirms information contained in the interim final rule concerning the authority for marketing orders under the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601–674), as well as information regarding Executive Orders 12866 and 12988, the Paperwork Reduction Act (44 U.S.C. Chapter 35), and the E-Gov Act (44 U.S.C. 101).

Comments on the interim final rule were required to be received on or before June 15, 2009. No comments were received. Therefore, for reasons given in the interim final rule, USDA is adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to: *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=AMS-FV-08-0094.*

After consideration of all relevant material presented, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (74 FR 17589, April 16, 2009) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 948

Marketing Agreements, Potatoes, Reporting and recordkeeping requirements.

PART 948—IRISH POTATOES GROWN IN COLORADO

■ Accordingly, the interim final rule that amended 7 CFR part 948 and that was published at 74 FR 17589 on April 16, 2009, is adopted as a final rule, without change.

Dated: July 29, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–18539 Filed 8–3–09; 8:45 am]

BILLING CODE

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–FV–09–0044; FV09–959–2 IFR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the South Texas Onion Committee (Committee) for the 2009–10 and subsequent fiscal periods from $0.03 to $0.025 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Assessments upon onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The

fiscal period begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective August 5, 2009. Comments received by October 5, 2009, 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 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*. Comments should reference the document 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*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

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@ams.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@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 959, 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. Under the marketing order now in effect, South Texas onion 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 onions beginning August 1, 2009, and continue until amended, 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 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. Such 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 rule decreases the assessment rate established for the Committee for the 2009–10 and subsequent fiscal periods from $0.03 to $0.025 per 50-pound equivalent of onions.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee'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 2007–08 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 9, 2009, and unanimously recommended 2009–10 expenditures of $184,705.12 and an assessment rate of $0.025 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were $185,095.12. The assessment rate of $0.025 is $0.005 lower than the rate currently in effect. The Committee recommended a lower assessment rate in order to reduce its reserve fund.

The major expenditures recommended by the Committee for the 2009–10 fiscal period include $73,705 for management, administrative, and rent expenses; $45,000 for promotion expenses; and $44,000 for compliance. Budgeted expenses for these items in 2008–09 were $66,695, $45,000, and $48,000 for compliance, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and production levels of South Texas onions. In its recommendation, the Committee utilized an estimate of 6 million 50-pound equivalents of assessable onions for the 2009–10 fiscal period. If realized, this will provide estimated assessment revenue of $150,000 from all handlers. In addition, it is anticipated that $34,705 will be provided by interest income and reserve funds. When combined, revenue from these sources will be adequate to cover budgeted expenses. Funds in the reserve (currently $214,770) will be kept within the maximum of approximately two fiscal periods' expenses as required by § 959.43 of the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2009–10 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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.

There are approximately 84 producers of onions in the production area and approximately 31 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

Most of the South Texas handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2007–08 marketing year, the industry's 31 handlers shipped onions produced on 10,978 acres with the average and median volume handled being 202,245 and 176,551 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 31 handlers were estimated to be $174.7 million, with average and median revenues being $5.64 million and $4.92 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 31 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other farming enterprises could result in a number of these handlers being above the $7,000,000 annual receipt threshold. All of the 84 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2009–10 and subsequent fiscal periods from $0.03 to $0.025 per 50-pound equivalent of onions handled. The Committee unanimously recommended 2009–10 expenditures of $184,705.12 and an assessment rate of $0.025 per 50-pound equivalent. The recommended assessment rate is $0.005 lower than the rate currently in effect. The quantity of assessable onions for the 2009–10 fiscal period is estimated at 6 million 50-pound equivalents. Thus, the $0.025 rate should provide $150,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2009–10 fiscal period include $73,705 for management, administrative, and rent expenses; $45,000 for promotion expenses; and $44,000 for compliance. Budgeted expenses for these items in 2008–09 (previous year) were $66,695, $45,000, and $48,000, respectively.

The Committee reviewed and unanimously recommended 2009–10 expenditures of $184,705.12, which include a decrease in compliance expenses due to a shortened regulatory period. The assessment rate of $0.025 per 50-pound equivalent of assessable onions recommended by the Committee was determined by considering anticipated expenses and production levels of South Texas onions. As stated earlier, the Committee utilized an estimate of 6 million 50-pound equivalents of assessable onions for the 2009–10 fiscal period, which, if realized, will provide estimated assessment revenue of $150,000 from all handlers. In addition, it is anticipated that $34,705 will be provided by interest income and reserve funds. When combined, revenue from these sources will be adequate to cover budgeted expenses.

The Committee discussed alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Other assessment rates were not considered because the Committee believed decreasing the rate by $0.005 was sufficient to reduce their current reserve fund to a desirable level.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the season average f.o.b. price for the 2009–10 fiscal period could range between $10.00 and $28.00 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2009–10 fiscal period as a percentage of total f.o.b. revenue could range between 0.1 and 0.25 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, 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 on all issues. Like all Committee meetings, the June 9, 2009, 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 comments on this interim final rule, including the regulatory and informational impacts of this action on small businesses.

This action imposes no 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 sector agencies.

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.

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

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/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this 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) The 2009–10 fiscal period begins on August 1, 2009, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) this action decreases the assessment rate for assessable onions beginning with the 2009–10 fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

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

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2009, an assessment rate of $0.025 per 50-pound equivalent is established for South Texas onions.

Dated: July 29, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–18540 Filed 8–3–09; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1229

RIN 2590–AA21

Capital Classifications and Critical Capital Levels for the Federal Home Loan Banks

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Regulatory Reform Act, Division A of the Housing and Economic Recovery Act of 2008 (HERA), requires the Director of the Federal Housing Finance Agency (FHFA) to establish criteria based on the amount and type of capital held by a Federal Home Loan Bank (Bank) for each of the following capital classifications: Adequately capitalized; Undercapitalized; Significantly undercapitalized; and Critically undercapitalized. In addition, HERA provides that the critical capital level for each Bank shall be the amount of capital that the Director by regulation shall require. HERA also sets forth prompt corrective action (PCA) authority that the Director has for the Banks. To implement these new provisions, FHFA published in the **Federal Register** on January 30, 2009 an interim final rule to define critical capital for the Banks, establish the criteria for each of the capital classifications identified in HERA and delineate its PCA authority over the Banks. FHFA requested comments on all aspects of the regulation. It also sought comment on whether it should establish a ''well-capitalized'' classification and on what criteria may be appropriate to define such a new category. After considering the comments received on the interim final rule, FHFA is adopting the interim final rule as a final regulation, subject to amendments meant to clarify certain provisions.

DATES: The final regulation is effective August 4, 2009.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Senior Financial Analyst, (202) 408–2842, and Anthony G. Cornyn, Senior Associate Director, (202) 408–2522, Division of Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006; or Thomas E. Joseph, Senior Attorney-Advisor, (202) 414–3095, Office of General Counsel, Federal Housing Finance Agency, 1700 G St., NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Federal Housing Finance Agency and Recent Legislation

Effective July 30, 2008, HERA, Public Law 110–289, 122 Stat. 2654 (2008), transferred the supervisory and oversight responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) over the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises) and the oversight responsibilities of the Federal Housing Finance Board (Finance Board) over the Banks and the Office of Finance (which acts as the Banks' fiscal agent) to a new independent executive branch agency, FHFA. FHFA is responsible for ensuring that the Enterprises and the Banks operate in a safe and sound manner, including that they maintain adequate capital and internal controls, that their activities foster liquid, efficient, competitive and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See id.* at § 1102, 122 Stat. 2663–64.

Section 1141 of HERA states that the Director shall adopt regulations specifying the critical capital level for each Bank no later than the expiration of the 180 day period from the date that HERA was enacted. *See id.* at § 1141, 122 Stat. 2730 (adopting 12 U.S.C. 4613(b)). In establishing this requirement, HERA provides that the Director shall take due consideration of the critical capital levels established for the Enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the Banks and the Enterprises.

In addition, section 1142 of HERA requires that the Director, no later than 180 days from its enactment, establish for the Banks criteria for each of the four following capital classifications: Adequately capitalized; Undercapitalized; Significantly undercapitalized; and Critically undercapitalized. *See id.* at § 1142, 122 Stat. 2730–32. HERA specifies that the criteria should be based on the amount and types of capital held by a Bank and the risk-based, minimum and critical capital levels for the Banks, taking due consideration of the capital classifications established for the Enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in