

Rules and Regulations

Federal Register

Vol. 74, No. 225

Tuesday, November 24, 2009

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 337

RIN 3206-AL51

Examining System

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is issuing final regulations pertaining to direct hire authority for certain acquisition positions. The purpose of this change is to conform OPM's regulations with recent changes in law.

DATES: March 24, 2010.

FOR FURTHER INFORMATION CONTACT: Darlene Phelps by telephone at (202) 606-0830; by fax at (202) 606-2329; by TTY at (202) 418-3134; or by e-mail at Darlene.phelps@opm.gov.

SUPPLEMENTARY INFORMATION: On November 24, 2008, OPM published a proposed rule at 73 FR 70915, to incorporate a statutory extension of direct-hire authority for certain acquisition positions. In the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), Public Law 110-181, Congress extended the direct-hire authority for acquisition positions under section 1413 of Public Law 108-136 through September 30, 2012. This statutory change permits department and agency heads (other than the Secretary of Defense) to determine, under regulations prescribed by OPM, when certain Federal acquisition positions are shortage positions for purposes of direct-hire authority. The Federal acquisition positions covered by section 1413 are listed in section 433(g)(1)(A) of title 41, United States Code.

OPM proposed to modify 5 CFR part 337, subpart B, to:

a. Update the legal authority citation for section 337.204(c) with section 1413(a) of Public Law 108-136, as amended by section 853 of Public Law 110-181;

b. Update section 337.206(d) to provide that agencies may not make new appointments under this authority after September 30, 2012; and

c. Remove the reporting requirements for this authority currently contained in 5 CFR 337.206(e).

Comments

OPM received no comments on the proposed rule.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

Lists of Subjects in 5 CFR Part 337

Government employees.

U.S. Office of Personnel Management.

John Berry,

Director.

■ Accordingly, OPM is amending part 337 of title 5, Code of Federal Regulations, as follows:

PART 337—EXAMINING SYSTEM

■ 1. Revise the authority citation for part 337 to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980; 116 Stat. 2290, sec. 1413 of Public Law 108-136 (117 Stat. 1665), as amended by sec. 853 of Public Law 110-181 (122 Stat. 250).

Subpart B—Direct Hire Authority

■ 2. Revise paragraph (c) of § 337.204 to read as follows:

§ 337.204 Severe shortage of candidates.

* * * * *

(c) A department or agency head (other than the Secretary of Defense) may determine, pursuant to section 1413(a) of Public Law 108-136, as amended by section 853 of Public Law 110-181, that a shortage of highly

qualified candidates exists for certain Federal acquisition positions (covered under section 433(g)(1)(A) of title 41, United States Code). To make such a determination, the deciding agency official must use the supporting evidence prescribed in 5 CFR 337.204(b)(1)-(8) and must maintain a file of the supporting evidence for documentation and reporting purposes.

■ 3. Revise paragraph (d) of § 337.206 to read as follows:

§ 337.206 Terminations, modification, extensions, and reporting.

* * * * *

(d) No new appointments may be made under the provisions of section 1413 of Public Law 108-136 after September 30, 2012.

§ 337.206(e) [Removed]

■ 4. Remove paragraph (e) of § 337.206.

[FR Doc. E9-28209 Filed 11-23-09; 8:45 am]

BILLING CODE 6325-39-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS-FV-09-0044; FV09-959-2 FIR]

Onions Grown in South Texas; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim final rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that decreased 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. The interim final rule was necessary to reduce the Committee's reserve fund to a desirable level.

DATES: *Effective Date:* Effective November 25, 2009.

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 obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: [http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&](http://www.ams.usda.gov/AMSV1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrders)

[page=MarketingOrders](#)
SmallBusinessGuide; or 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."

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

Under the order, South Texas onion handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable onions for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on August 1 and ends on July 31.

In an interim final rule published in the **Federal Register** on August 4, 2009, and effective on August 5, 2009 (74 FR 38505, Doc. No. AMS-FV-09-0044; FV09-959-2 IFR), § 959.237 was amended by decreasing 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 handled. The decrease in the per-unit assessment rate was possible due to a higher than desired reserve fund coupled with adequate anticipated assessment revenue and interest income.

Final 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 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 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 who are 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 continues in effect the action that decreased 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. The Committee unanimously recommended 2009-10 expenditures of \$184,705.12 and an assessment rate of \$0.025 per 50-pound equivalent. The assessment rate of \$0.025 is \$0.005 lower than the rate previously 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 included 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 rule continues in effect the action that decreased 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 production area 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.

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.

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

Comments on the interim final rule were required to be received on or before October 5, 2009. No comments were received. Therefore, for the reasons given in the interim final rule, we are adopting the interim final rule as a final rule, without change.

To view the interim final rule, go to <http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a0086c>.

This action also affirms information contained in the interim final rule concerning 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).

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 38505, August 4, 2009) 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.

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ Accordingly, the interim final rule amending 7 CFR part 959, which was published at 74 FR 38505 on August 4, 2009, is adopted as a final rule, without change.

Dated: November 17, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–28144 Filed 11–23–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS–FV–09–0035; FV09–987–1 FR]

Domestic Dates Produced or Packed in Riverside County, CA; Changes to Nomination Procedures and a Reporting Date

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the nomination procedures and changes a reporting date under the California date marketing order (order). The order regulates the handling of domestic dates produced or packed in Riverside County, California, and is administered locally by the California Date Administrative Committee (CDAC or Committee). This rule changes the method of polling for nominees to the Committee and the date on which CDAC Form 6 is due. These changes will assist in the administration of the order by updating and streamlining Committee program operations.

DATES: *Effective Date:* November 25, 2009.

FOR FURTHER INFORMATION CONTACT: Jeff Smutny, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: Jeffrey.Smutny@ams.usda.gov or Kurt.Kimmel@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 final rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

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 rule revises the nomination procedures and changes a reporting date under the order. This rule changes the method of polling for nominees to the Committee and the date on which CDAC Form 6 is due for the California Date Administration Committee. These changes will assist in the administration of the order by updating and streamlining Committee program operations. This final rule permits the Committee to conduct nominations for member and alternate member positions on the Committee through the mail or equivalent electronic means (including, but not limited to fax, or other technology, as available) rather than limit balloting to in-person polling on a specific date or absentee balloting.

This final rule also changes the date on which CDAC Form 6 is due to the Committee. Currently, the form is due by the 10th day of each month, but this