IV. Other Required Information

A. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. We believe that this final rule with comment period will alleviate the time-consuming annual burden on hospitals to obtain updated physician acknowledgement statements, the administrative burden on PROs to validate them, and the physician discontent with the procedures. Moreover, we believe that this requirement's current level of burden to physicians, hospitals, and PROs can be substantially reduced without significantly impairing the effectiveness of the warning or its usefulness in cases where prosecution is necessary. This rule reduces rather than imposes burdens, and we believe that the individuals and organizations being affected by these changes are best served by immediate action. We believe that notice and comment is both unnecessary and contrary to the public interest.

Therefore, we find good cause to waive the notice of proposed rulemaking and to issue a final rule in this instance. We are providing a 60-day period for public comment on this rule.

B. Information Collection Requirements

Regulations at § 412.46(c) contain information collection or recordkeeping requirements that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Current § 412.46(c) requires that, when a claim is submitted, hospitals have on file a current signed and dated acknowledgment from each attending physician that the physician has received a notice from the hospital that explains the physician attestation requirement and the penalties applicable for misrepresenting, falsifying, or concealing essential information required for payment. Hospitals must ensure that physician acknowledgements are completed within 1 year prior to the submission of the claim. This requirement has imposed substantial annual paperwork costs on hospitals, which must repeatedly check signature dates and secure timely physician signatures on acknowledgement statements to ensure that, for payment purposes, no part of a year is unaccounted for by each physician's acknowledgment statement.

Under this final rule, we are requiring under revised § 412.46(c) that the acknowledgment statements be signed only at the time that the physician is granted admitting privileges at a particular hospital, or before or at the time the physician admits his or her first patient, rather than on an annual basis. Unlike the current requirement, we estimate that the residual system will impose on physicians and hospitals a shared one-time burden of only 5 minutes per acknowledgement for each physician that gains admitting privileges. The hospital must continue to keep these signatures on file. Since acknowledgements currently on file are considered to be in effect as long as the physician has admitting privileges in the hospital, the burden on PROs to review acknowledgement statements also will be reduced substantially to cover only physicians that are newly granted admitting privileges.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

C. Public Comments

Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "DATES" section of this preamble, and if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV, part 412, is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

Subpart C—[Amended]

B. In § 412.46, paragraph (c) is revised to read as follows:

§ 412.46 Medical review requirements; DRG validation.

* * * * *

(c) *Physician acknowledgement.* (1) In addition, when the claim is submitted, the hospital must have on file a signed and dated acknowledgement from the attending physician that the physician has received the following notice:

Notice to Physicians: Medicare payment to hospitals is based in part on each patient's principal and secondary diagnoses and the major procedures performed on the patient, as attested to by the patient's attending physician by virtue of his or her signature in the medical record. Anyone who misrepresents, falsifies, or conceals essential information required for payment of Federal funds, may be subject to fine, imprisonment, or civil penalty under applicable Federal laws.

(2) The acknowledgement must be completed by the physician at the time that the physician is granted admitting privileges at the hospital, or before or at the time the physician admits his or her first patient. Existing acknowledgements signed by physicians already on staff remain in effect as long as the physician has admitting privileges at the hospital.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 16, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: December 3, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–5315 Filed 3–7–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–49; Notice 4]

RIN 2127–AE29

Federal Motor Vehicle Safety Standards, Electric Vehicles Controls and Displays; Windshield Defrosting and Defogging Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts minor amendments to the Federal Motor Vehicle Safety Standard on windshield defrosting and defogging systems that make the systems more appropriate for electric powered motor vehicles. This document also announces the agency's decision not to adopt similar minor amendments that were proposed for controls and displays for electric powered vehicles. The reason for this decision is that standardization does not appear necessary at the present time for motor vehicle safety.

DATES: The effective date of the final rule is September 6, 1994. Petitions for reconsideration of the final rule must be received not later than April 8, 1994.

FOR FURTHER INFORMATION CONTACT:

Gary R. Woodford, Special Projects Staff, Office of Rulemaking NHTSA (202–366–4931).

SUPPLEMENTAL INFORMATION: On January 15, 1993, NHTSA issued a notice of proposed rulemaking (NPRM) proposing minor amendments of Federal motor vehicle safety standards on controls and displays and windshield defrosting and defogging systems (58 FR 4644). The proposal was issued to make these standards more appropriate for electric powered vehicles (EVs), and to put any necessary standards in place as soon as possible to support the safe introduction and operation of EVs. To delay rulemaking until significant production of EVs actually begins could not only fail to prevent avoidable safety problems, but also disrupt and impede the development and commercialization of EVs. The reader is referred to the NPRM for an extensive discussion of the background leading to the proposal.

Towards this goal, NHTSA identified two Federal motor vehicle safety standards whose modification appeared to be desirable to facilitate introduction of EVs.

1. Standard No. 101, *Controls and Displays*

The regulatory issue was whether a gauge and symbol should be required to indicate battery energy level to inform drivers about the vehicle's remaining range capability before recharging is necessary. General Motors had stated that the European agencies have agreed to use the ISO battery symbol to indicate electrical power reserve and requested NHTSA's concurrence to use it.

As NHTSA noted in the NPRM, it believes that EV manufacturers will provide a "range indicator" or "state-of-charge" indicator similar to the fuel gauge on a conventionally powered vehicle, without a regulatory requirement that they do so. In the agency's tentative view, the method of measuring state-of-charge should be left to the manufacturer, as the accuracy of current systems varies widely at this stage of the art. However, NHTSA proposed that the state-of-charge indicator (whether a gauge or otherwise) contain an illuminated telltale with the word "RECHARGE", and the ISO battery symbol (identical to the one presently specified to indicate "electrical charge" and used in nonelectric vehicles), which would illuminate when the electrical energy remaining in the battery system contains less than 25 percent of full charge. NHTSA invited specific comments as to whether a value other than 25 percent would be more appropriate. NHTSA asked for comments on whether use of the ISO symbol to indicate a state-of-charge warning would be confusing given its present use to indicate "electrical charge" in conventionally powered vehicles. It also asked whether an alternative symbol, such as the outline of a household electrical plug, might be desirable.

Comments on the proposal were received from Chrysler Corporation, Volkswagen of America, Inc. (VW), General Motors Corporation (GM), Toyota Motor Corporate Services of North America, Inc. (Toyota), Ford Motor Company, Mitsubishi Motors Corp., and American Honda Motor Co. (Honda).

The comments indicated that manufacturers intend to offer a state-of-charge indicator with a means for the operator to determine when battery recharging is necessary. However, four of the five manufacturers who commented on the issue disagreed with use of the battery symbol for a low state-of-charge warning since it has already acquired a meaning for operators of conventional vehicles. Only GM supported use of the symbol. Two of the three commenters on the issue opposed use of the word "recharge", though it was supported by GM. Chrysler commented that use of the word might cause an operator to feel that an immediate recharge was necessary. VW believes that use of the word is inappropriate because the need for a recharge can be determined from the state-of-charge indicator.

These comments indicate that manufacturers will offer a state-of-charge indicator and that a Federal regulation requiring them to do so is unnecessary. Given the diversity of opinion as to appropriate wording and/or symbols, the agency is choosing at the present time not to impose a regulatory requirement for identification of a low the state-of-charge, recognizing that any wording or symbol chosen by an EV manufacturer will be explained in the operator's manual.

Finally, although NHTSA did not propose regulatory language that a low state-of-charge warning activate when the state-of-charge reached 25 percent of capacity, it asked for comments on the appropriateness of this value, and on alternative values. All seven commenters recommended that the activation level of a low state-of-charge warning be determined by the vehicle manufacturer, with six rejecting the 25 percent level, and the seventh merely conceding that it "may be adequate." These comments will be taken into consideration should NHTSA decide to explore this subject further in the further.

For the reasons discussed above, NHTSA has decided not to adopt the amendments to Standard No. 101 that were proposed in Notice 3.

2. FMVSS No. 103, *Windshield Defrosting and Defogging Systems*

One provision of Standard No. 103 requires the defrosting and defogging system of a vehicle to be capable of melting a specific amount of windshield ice within a specified time period after allowing time for engine warm-up. NHTSA believed that the reference to engine warm-up is inappropriate for EVs in general and might need revision. In accordance with recommendations from industry, NHTSA proposed that the warm-up procedure should be the one that the manufacturer recommends for cold weather starting. Specifically, it proposed that the manufacturer's cold weather warmup procedure be followed by vehicles equipped with a heating system (other than a heat exchanger type system that uses the engine's liquid coolant as a means to supply the heat to the heat exchanger). These changes

would be made to the demonstration procedures in S4.3(a) and S4.3(b).

Comments were received from GM, Chrysler, Ford, VW, and Toyota. GM, VW and Ford supported the proposed amendments as adequate and appropriate.

Chrysler supported the proposal as well. It brought to NHTSA's attention the fact that the EV equipped with an electrical resistance heater, and tested at rest in a cold room facility, would have an abundance of electrical power available and could easily meet most defrost performance requirements. However, it noted that when the same vehicle is operating under normal road load conditions, the defrost/heat system may not have the same battery energy available since the propulsion system may utilize a large amount of power. Chrysler cautioned that these factors must be considered before establishing precise defrost/defogging system requirements for EVs. In its opinion, judging EV defroster performance "will require unique testing procedures that must be relatively elaborate and formalized to ensure that vehicle performance meets the regulatory intent of the standard." It observed that these procedures could be formulated by knowledgeable industry personnel working through an organization such as the SAE.

NHTSA concurs with Chrysler's comments and encourages the industry, either through SAE or other industry organizations, to explore this issue. At present, Standard No. 103 allows the defrosting and defogging system to be tested with the vehicle in neutral gear. EVs equipped with electric resistance heaters, which draw power from the vehicle propulsion batteries, may incur a degradation in performance under road load conditions or under less than full state-of-charge conditions. Currently, the agency has no information to determine the extent to which any such degradation may exist, or the extent to which it may impede vehicle safety. Moreover, the agency has no information on the number of EVs that will employ electric resistance heaters or use auxiliary combustible fuel heaters. To a large extent, EV technology is still in the developmental state. Therefore, NHTSA will monitor this issue for possible future rulemaking, and encourages the industry to explore it as well.

Toyota also supported the proposed amendments, but suggested that three pre-test conditions be adopted. Under these conditions, testing would be initiated with the battery at full charge, and the battery would be charging until defrost/defog testing is started. However, the battery should not be included in the −18 degrees C soak time as currently specified by the test procedure of SAE Standard J902 incorporated by reference in Standard No. 103. NHTSA appreciates Toyota's comments but believes that manufacturers are likely to begin defrost/defog testing with the battery at its maximum state of charge, and the battery will be charging until testing begins. Thus, no further regulatory language appears called for. The agency disagrees with Toyota's contention that the battery should not be included in the soak time because a temperature of −18 degrees C replicates the real world conditions under which some EVs are likely to be operated. Thus, NHTSA will not consider Toyota's suggestion as a candidate for future rulemaking.

Taking into consideration the foregoing remarks, NHTSA is amending S4.3 (a) and (b) of Standard No. 103 exactly as proposed, with a single exception. The present reference speed in S4.3(b)(2)(ii) is 25 m.p.h. The NPRM incorrectly stated it as 15 m.p.h. There was no intention to propose a reference speed of 15 m.p.h., and the final rule correctly states it as 25 m.p.h.

Effective Date

The amendments are effective September 6, 1994.

Rulemaking Analyses

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under E.O. 12866 "Regulatory Planning and Review", and the Department of Transportation regulatory policies and procedures. This action has been determined to be not "significant" under either, and has not been reviewed by OMB under E.O. 12866. The agency has determined that the economic effects of the amendment are so minimal that a full regulatory evaluation is not required. The purpose of the rule is to clarify several existing requirements applicable to all motor vehicles so that they may, in recognition of the different characteristics of EVs, be more appropriate for EVs. The rule makes no change in the cost of compliance for EVs.

Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and it has been determined that the notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

The agency has determined that the notice will not have a significant effect upon the environment for the purposes of the National Environmental Policy Act. There is no environmental impact associated with the rulemaking action since it clarifies the applicability of an existing Federal motor vehicle safety standard to EVs. To the extent that the rulemaking action will facilitate the production of EVs, it may result in a net positive benefit to the environment.

Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action in relation to the Regulatory Flexibility Act. I certify that this rulemaking action will not have a significant economic effect upon a substantial number of small entities. Although some EV manufacturers may be small businesses within the meaning of the Regulatory Flexibility Act, these manufacturers are already required to comply with the Federal motor vehicle safety standards that the rulemaking action is intended to clarify. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new EVs should not be impacted. The notice clarifies some existing requirements that EVs must meet. Accordingly, no Regulatory Flexibility Analysis has been prepared.

Civil Justice Reform

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read:

Authority: 15 U.S.C. 1392, 1401, 1407; delegation of authority at 49 CFR part 1.50.

§ 571.103 [Amended]

2. Paragraphs S4.3 (a) and (b) of § 571.103 are revised to read:

S4.3 Demonstration procedure * * *

(a) During the first 5 minutes of the test:

(1) For a passenger car equipped with a heating system other than a heat exchanger type that uses the engine's coolant as a means to supply the heat to the heat exchanger, the warm-up procedure is that specified by the vehicle's manufacturer for cold weather starting, except that connection to a power or heat source external to the vehicle is not permitted.

(2) For all other passenger cars, the warm-up procedure may be that recommended by the vehicle's manufacturer for cold weather starting.

(b) During the last 35 minutes of the test period (or the entire test period if the 5-minute warm-up procedure specified in paragraph (a) of this section is not used),

(1) For a passenger car equipped with a heating system other than a heat exchanger type that uses the engine's coolant as a means to supply the heat to the heat exchanger, the procedure shall be that specified by the vehicle's manufacturer for cold weather starting, except that connection to a power or heat source external to the vehicle is not permitted.

(2) For all other passenger cars, either—

(i) The engine speed shall not exceed 1,500 r.p.m. in neutral gear; or

(ii) The engine speed and load shall not exceed the speed and load at 25 m.p.h. in the manufacturer's recommended gear with road load.

* * * * *

Issued on March 2, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–5187 Filed 3–8–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[Docket No. 940368–4068; I.D. 030294C]

Atlantic Sea Scallop Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS issues this emergency interim rule to provide alternatives to the minimum ring size required for Atlantic sea scallop dredges by amendment 4 to the Fishery Management Plan for the Atlantic Sea Scallop Fishery (FMP) and its implementing regulations. Through April 30, 1994, participants in the fishery must comply with either the scallop meat-count requirement or corresponding shell-height requirement that existed prior to the implementation of amendment 4, or to the ring-size requirement implemented under amendment 4. The intent is to provide relief to fishermen who may have been unable to obtain the required rings, which are not currently available in sufficient quantities to supply the industry.

EFFECTIVE DATES: March 4, 1994 through April 30, 1994.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, NMFS, 508–281–9273.

SUPPLEMENTARY INFORMATION:

Background

Amendment 4 to the FMP was prepared by the New England Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) and approved by NMFS. Regulations implementing amendment 4 were published January 19, 1994 (59 FR 2757), and became effective March 1, 1994. In addition to other management measures, amendment 4 eliminated the average meat-count standard previously in effect to protect small scallops. The meat-count standard was most recently established at 33 meats per pound (59 FR 2777, January 19, 1994), which corresponds to a minimum shell height of 3 11/16 inches (94 mm). In its place, to reduce the number of juvenile scallops that would be retained and subjected to unnecessary mortality through elimination of the meat-count standard, amendment 4 imposed a minimum inside diameter ring size for scallop dredges of 3¼ inches (83 mm) in 1994 and 1995.

Because they were unable to predict whether amendment 4 would be approved, suppliers of scallop dredge rings were reluctant to purchase, and have available, sufficient numbers of the required rings as of March 1, 1994. As a result, not all scallop vessel owners have been able to purchase the required rings; therefore, they are unable to comply with the regulations implementing amendment 4 now in effect. These circumstances have made it impossible for such vessels to fish.

To provide relief to scallop fishermen unable to acquire the larger dredge rings, and to provide protection to juvenile sea scallops, this emergency rule allows vessels to comply with either the 3¼ inch (83 mm) minimum ring-size requirement, or an average 33-meat-count requirement (or the corresponding minimum shell-height standard) through April 30, 1994. By May 1, 1994, all scallop dredge vessels must comply with the minimum ring-size requirement. It is anticipated that the circumstances necessitating this emergency action will have been alleviated by that date.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This rule is not subject to review under Executive Order 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior public comment.

The AA finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for comment under the provisions of section 553(b) of the Administrative Procedure Act (APA). Further, because this rule relieves a restriction, under section 553(d) of the APA, there is no need to delay for 30 days the effective date of these regulations.

List of Subjects in 50 CFR 650

Fisheries, Reporting and recordkeeping requirements.

Dated: March 3, 1994.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 650 is temporarily amended from March 4, 1994, through April 30, 1994, as follows:

PART 650—ATLANTIC SEA SCALLOP FISHERY

1. The authority citation for part 650 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 650.9, paragraphs (b)(13) and (c)(14) are suspended and paragraphs

(b)(25), (b)(26), (c)(8), and (c)(9) are added to read as follows:

§ 650.9 Prohibitions.

* * * * *

(b) * * *

(25) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 L) of in-shell scallops while in possession of, or fish under the DAS allocation program with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3), except as provided in § 650.30(a).

(26) Fail to comply with the alternatives provided in § 650.30(a), if in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 L) of in-shell scallops while in possession of, or fishing under the DAS allocation program with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3).

(c) * * *

(8) Possess more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 L) of in-shell scallops while in possession of, or fish for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3), except as provided in § 650.30(a).

(9) Fail to comply with the average meat-count standard or minimum shell-height standard alternatives provided in § 650.30(a), if in possession of more than 40 pounds (18.14 kg) of shucked scallops or 5 U.S. bushels (176.1 L) of in-shell scallops while in possession of, or fishing for scallops with, dredge gear containing rings that have minimum sizes smaller than those specified in § 650.21(b)(3), except as provided in § 650.30.

* * * * *

3. Section 650.20 is suspended.

4. In § 650.21, paragraph (b)(3)(i) is suspended and paragraph (b)(3)(iv) is added to read as follows:

§ 650.21 Gear and crew restrictions.

* * * * *

(b) * * *

(3) * * *

(iv) For 1994 and 1995, the inside diameter ring size of a scallop dredge in use by or in possession of such vessels shall not be smaller than 3¼ inches (83 mm), except as provided in § 650.30.

* * * * *

5. A new § 650.30 is added to subpart B to read as follows:

§ 650.30 Alternatives to dredge minimum ring-size requirements.

(a) From March 4, 1994, through April 30, 1994, scallop dredge vessels may, as an alternative to dredge minimum ring-size requirements contained in § 650.21(b)(3)(iv), comply with one of the standards in paragraphs (a)(1) or (a)(2) of this section. (1) The average meat count for shucked Atlantic sea scallops must not exceed 33 meats per pound (per 0.45 kg).

(2) The shell height for in-shell Atlantic sea scallops must not be less than 3 1/16 inches (94 mm).

(b) *Compliance and sampling.* Compliance with the specified meat-count and shell-height standards will be determined by inspection and enforcement up to and including the first transaction in the United States as follows: (1) *Shucked meats (average meat count).* The Authorized Officer will take 1-lb (0.45 kg) samples at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 1-lb samples be examined as a sample group. A sample group fails to comply with the standard if the average meat count for the entire sample group exceeds the standard. The total amount of scallops in possession will be deemed in violation of this regulation if the sample group fails to comply with the standard.

(2) *Scallops in the shell (minimum shell height).* The Authorized Officer will take samples of 40 scallops each, at random, from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 samples (400 scallops) be examined as a sample group. A sample group fails to comply with the standard if more than 10 percent of the number of scallops in the sample group are less than the shell height specified by the standard. The total amount of scallops in possession will be deemed in violation of this regulation and subject to forfeiture if the sample group fails to comply with the standard.

(3) All sea scallop dredge vessels and all vessels landing more than 5 bushels (176.2 L) of Atlantic sea scallops in the shell must offload all fish each day within the applicable 12-hour offloading period as specified below:

State of offloading	Period
ME, NH, NC, SC, GA, & FL.	7 a.m. to 7 p.m.
MA, RI & CT	5 a.m. to 5 p.m.
NY, NJ, DE, MD, VA, & PA.	6 a.m. to 6 p.m.

(4) All other vessels not covered by paragraph (b)(3) of this section, landing more than 40 pounds (18.1 kg) of shucked Atlantic sea scallops, must offload the scallops within the applicable offloading period specified in paragraph (b)(3) of this section.

(5) *Presumption.* Fish not offloaded from vessels subject to the provisions of paragraph (b)(3) of this section, and shucked Atlantic sea scallops not offloaded from vessels subject to the provisions of paragraph (b)(4) of this section, during the offloading period, must remain on the vessel until the following offloading period. There shall be a presumption of unlawful offloading for any such catch that is observed or identified on such a vessel by an authorized officer at the close of the previous offloading period, if such catch is not found on that vessel at the beginning of the following offloading period.

[FR Doc. 94-5367 Filed 3-4-94; 11:48 am]

BILLING CODE 3510-22-P

Proposed Rules

Federal Register
Vol. 59, No. 46
Wednesday, March 9, 1994

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 959

[FV-93-959-2PR]

Onions Grown in South Texas—Regulation of Red Onions and Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with a request for comments.

SUMMARY: This proposed rule would establish requirements for red variety onions grown in South Texas under Marketing Order 959. In recent years, shipments of poor quality red onions have appeared in the marketplace and have adversely affected grower prices. This rule would tend to improve grower prices by providing more desirable quality red onions for consumers. This rule also would extend the termination date of the order's regulatory period from May 20 to June 15 of each year. More late season onions are being grown in a portion of the production area, increasing the need for marketing order quality requirements over a longer time period. Regulating onions from the production area through June 15 would help make more desirable onions available to markets.

DATES: Comments must be received by March 24, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456, FAX (202) 720–5698. 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 Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington, DC, 20090–6456, telephone: (202) 690–0464; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (210) 682–2833.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), as amended, regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

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

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposal will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 38 handlers of South Texas onions who are subject to regulation under the marketing order and 97 producers in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of South Texas onions may be classified as small entities.

At its November 9, 1993 meeting, the South Texas Onion Committee (committee) recommended, under the authority of § 959.52(c) of the order, that red varieties of onions be regulated and also that the termination date of the regulatory period for all varieties of regulated onions be extended from May 20 to June 15 of each year.

Red varieties of onions have been exempt from regulation since the inception of Marketing Order No. 959. The quantities of such onions produced have usually represented a small portion of the total annual production in the marketing order's regulated area. However, red variety acreage has increased significantly in recent seasons. Moreover, the committee reports that poor quality red onions grown in the production area have appeared in the marketplace from time to time.

The impact on the industry is two-fold. Poor quality red onions diminish consumer confidence in the better quality red onions, leading to fewer sales and lower returns to growers. In addition, a less favorable consumer opinion of red variety onions often leads to lower sales for all onions grown in the production area, including yellow and white varieties which now enjoy an

excellent reputation with receivers and consumers.

Red onions, like yellow onions and white onions, are varieties of *Allium cepa*, and are therefore covered by the same U.S. standards referenced in § 959.322(h). Because of this, regulatory requirements set forth in § 959.322 applicable to yellow and white varieties of onions are appropriate for red varieties also. The committee believes that by regulating red onions in the same fashion as yellow and white onions, that consumers can be assured of buying better quality red onions. Thus, increased consumer confidence should result in improved returns to growers. In addition to grade and size requirements, the committee also recommended that red varieties be subject to the same pack, container, inspection, assessment, and safeguard requirements as yellow and white varieties. In this way, red, yellow, and white onions would be regulated to the same extent.

The second recommendation concerns the length of the regulatory period for shipments of onions from the regulated area. Currently, order regulations are in effect from March 1 through May 20 each year. District 2 (Laredo-Winter Garden) is in the northern part of the production area and has a shipping season that extends from May to well into June. This district is comprised of the Counties of Zapata, Webb, Jim Hogg, DeWitt, Wilson, Atascosa, Karnes, Val Verde, Frio, Kinney, Uvalde, Medina, Maverick, Zavala, Dimmit and LaSalle. In the 1980's, District 2 production was declining and industry members asked to be relieved from the marketing order requirements after May 20 each season, instead of the June 15 date in effect at that time. By May 20, shipments from District No. 1 in the southern part of the production area usually are finished. Thus, effective for the 1989 and subsequent seasons, the termination date for the regulatory period was advanced for the entire production area from June 15 to May 20 (54 FR 8519, March 1, 1989).

However, committee records indicate an increase in onion shipments from District 2 during the past three years. The committee stated that it is the desire of the producers in District 2 that onions regulated under the marketing order once again be regulated during the May 20 through June 15 period. Shipments from this district typically account for 10 to 12 percent of the production area total, and the committee believes that grade, size, container, and other order requirements are necessary to maintain the quality of South Texas onions that receivers and consumers have become accustomed to. Extension of the regulatory period would not affect District 1 handlers as shipments from that district normally are completed by mid-May.

Currently, handlers may not package or load onions on Sunday during the period March 1 through May 20 of each season. The committee recommended not changing this requirement. After May 20, District 2 handlers would be competing with unregulated shipments from other areas such as California. Permitting District 2 handlers to package and ship whenever they can find buyers would help to reduce the competitive advantage of handlers shipping from outside the regulated area.

This action was unanimously recommended by the committee, and should ensure that consumers are provided with quality onions, including red varieties, during the entire South Texas shipping period.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for onions under a domestic marketing order, imported onions must meet the same or comparable requirements, subject to concurrence by the United States Trade Representative. Because this rule would establish grade, size, quality and maturity requirements on red onions and would change the regulatory period under the South Texas onion marketing order, corresponding changes would be needed in the onion import regulation. Such changes would be addressed in a separate onion import rule.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB number 0581–0074.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because any changes to the regulations, if adopted, should be in effect as soon as possible. The marketing period begins March 1. 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 proposed to be 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. In § 959.322, the introductory paragraph is revised to read as follows:

§ 959.322 Handling regulation.

During the period beginning March 1 and ending June 15, no handler shall handle any onions unless they comply with paragraphs (a) through (d), or (e), or (f) of this section. In addition, no handler may package or load onions on Sunday during the period March 1 through May 20.

* * * * *

Dated: March 4, 1994.

Martha B. Ransom,

Acting Deputy Director, Fruit and Vegetable Division.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–5]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of