

**§ 400.47 Denial of crop insurance.**

(a) \* \* \*

(2) The application and policy of insurance will be voided, or the person will be removed from the policy and the policyholder share reduced in accordance with 7 CFR 400.681(b), when any person becomes ineligible for crop insurance under the provisions of paragraph (a) of this section. To obtain crop insurance coverage following the period of ineligibility, the person must submit a new application for crop insurance.

\* \* \* \* \*

Signed in Washington D.C., on April 11, 2000.

**Kenneth D. Ackerman,***Manage, Federal Crop Insurance Corporation.*

[FR Doc. 00-9598 Filed 5-9-00; 8:45 am]

BILLING CODE 3410-08-P

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 959**

[Docket No. FV00-959-2 FIR]

**Onions Grown in South Texas; Change in Container Requirements****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule revising the container requirements for shipping onions to fresh processors under the South Texas onion marketing order. The marketing order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule continues to provide handlers additional marketing flexibility by allowing them to ship onions for peeling, chopping, and slicing in bulk trailer loads, 48-inch deep bulk bins, and tote bags. These changes allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to compete with other suppliers of onions for fresh processing.

**EFFECTIVE DATE:** June 9, 2000.**FOR FURTHER INFORMATION CONTACT:**

Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or

George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, 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 marketing agreement and order are 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to revise the container requirements for onion shipments for peeling, chopping, and slicing prescribed under the South Texas onion marketing order. Handlers are allowed to ship onions for peeling,

chopping, and slicing in bulk trailer loads, 48-inch deep bulk bins, and tote bags. Previously, onions for these purposes could only be shipped in 47 inch by 37½ inch by 36 inch deep bulk bins, having a volume of 63,450 cubic inches (hereinafter referred to as the "36-inch deep bulk bin"), or containers deemed similar by the Committee. A dimension tolerance for the bulk containers was also added. All handlers shipping onions for peeling, chopping, and slicing will continue to be required to meet grade, size, inspection, and safeguard requirements. The additional method of shipment and containers allows the South Texas onion industry to better meet the needs of fresh processors and allows the industry to compete with other suppliers of onions for fresh processing.

These changes were first unanimously recommended by the Committee at its meeting on September 16, 1999. At that meeting, the Chairman appointed a subcommittee to review the Committee's recommendations. On October 19, 1999, the Committee met again and unanimously approved the subcommittee's recommendations detailed herein.

Section 959.52 of the South Texas onion marketing order authorizes the establishment of grade, size, quality, maturity, and pack and container regulations for shipments of onions. Section 959.52(c) allows for the modification, suspension, or termination of such regulations when warranted. Section 959.53 authorizes changes to the order's regulations to facilitate the handling of onions for relief, charity, experimental purposes, export, or other purposes recommended by the Committee and approved by the Secretary. Section 959.54 of the order provides authority for the Committee to establish that onions handled for special purposes are handled only as authorized. Section 959.60 provides that whenever onions are regulated pursuant to § 959.52, such onions must be inspected by the inspection service and certified as meeting the applicable requirements. Section 959.80 of the order authorizes handler reporting requirements.

Section 959.322(f) of the order's rules and regulations provides specific safeguards for certain special purpose shipments of onions. Furthermore, paragraph (f)(3) of § 959.322 provides authority for the shipment of onions for fresh peeling, chopping, and slicing in 36-inch deep bulk bins, or containers deemed similar by the Committee. Such shipments are exempt from the container requirements specified in paragraph (c) of § 959.322, but are

required to be handled in accordance with the safeguard provisions of § 959.54, and meet the grade requirements in paragraph (a), the size requirements in paragraph (b), the inspection requirements in paragraph (d), and the safeguard requirements in paragraph (g) of § 959.322.

Previously, § 959.322(f)(3) allowed onion shipments for peeling, chopping, and slicing in 36-inch deep bulk bins, or containers deemed similar by the Committee. The Committee recommended that shipments of onions to these outlets be authorized in bulk trailer loads, 48-inch deep bulk bins (with the same length and width dimensions as the 36-inch deep bulk bin), and tote bags, and that the provisions on containers deemed similar be removed because it had caused confusion in the industry. In its place, the Committee recommended implementation of a dimension tolerance.

The market for onions for fresh processing uses has grown dramatically in the last five years. The food service industry is the fastest growing market for onions in the United States. Consumption of onions has increased, especially for onions used in restaurants, salad bars, and cafeterias in fresh peeled, chopped, or sliced form. Fresh process is an increasingly important market for the domestic onion industry, and is expected to continue growing.

Buyers of onions for fresh processing continually demand flexibility in container availability, and the Committee is always looking for ways to strengthen and expand the market for South Texas onions. The Committee believes that South Texas may enhance its ability to take full advantage of available marketing opportunities for fresh peeling, chopping, and slicing onions with the more flexible shipping container requirements. The more flexible containers and method of shipment allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to better compete with other suppliers of onions for fresh processing. The changes will open new markets for South Texas and help the industry increase its fresh processed onion market share. The Committee estimates that these changes will help the industry double shipments into these outlets.

Because the demand for fresh processed onions is increasing and Texas has not been able to market more of its crop in the conveyances and containers the trade desires, the trade has been going to other competing areas,

that are not restricted by regulations, leaving Texas at a disadvantage. Other onion-growing areas can ship onions in bulk loads for peeling, chopping, and slicing purposes, but the South Texas onion industry could not do so because the regulations restricted shipments to 36-inch deep bulk bins. Competition from other onion production areas demands that the South Texas onion industry be able to quickly respond to buyer demands for other types of shipments. Also, other onion producing areas not bound by restrictions have the flexibility to ship fresh processing onions as needed by buyers. The added flexibility of these changes allows handlers to meet the competition from other areas and better meet buyer's needs.

The Committee also recommended adding tightly-woven mesh plastic tote bags 36 inches by 36 inches by 66 inches long with a capacity of approximately 2,000 pounds of onions for shipment to fresh processors. These tote bags are returnable and have four handles that are placed to fit forklifts. Ties are attached to each end of the bags and the onions are dumped by unfastening the bottom tie. Use of these bags helps speed up the unloading process, saving time and money for the fresh processors.

The total volume specification of 63,450 cubic inches for the 36-inch bulk bin previously included in the regulation did not allow any flexibility in the dimension of the container and the phrase "or containers deemed similar by the committee" lacked specificity and resulted in confusion. The Committee believed that a more precise tolerance was needed so that there was no room for misinterpretation by the industry. The Committee, therefore, recommended removing the phrase "and having a volume of 63,450 cubic inches, or containers deemed similar by the committee" and adding in its place provisions establishing a dimension tolerance of 2 inches for each dimension on all bulk containers used for shipping onions for peeling, chopping, and slicing. The 2-inch tolerance for each dimension on all bulk containers allows handlers to pack onions for peeling, chopping, and slicing in containers with dimensions slightly different from the sizes specified in the regulation. Identifying a specific dimension tolerance in the regulation prevents misunderstandings, and provides handlers packing flexibility. The addition of the container dimension tolerance recognizes the difficulty in producing containers with precise measurements all of the time.

The Committee recommended that the regulation specify that only 3-inch and larger onions be shipped for these purposes because smaller onions cannot be processed efficiently using available machinery. However, the provisions under which this action was being implemented did not authorize the establishment of a minimum size different than the 1-inch minimum currently in place for all shipments. Therefore, this recommendation was not implemented. Lastly, minor changes were made to the handling regulation for clarity.

Pursuant to 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 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. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 producers of South Texas onions in the production area and 37 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Most of the handlers in South Texas are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 1998-99 marketing year, onions produced in the production area were shipped by the industry's 37 handlers with the average and median volume handled being 147,669 and 102,478 fifty-pound bag equivalents, respectively. In terms of production value, total revenues from the 37 handlers were estimated to be \$43.7 million, with average and median revenues being \$1.1 million, and \$820,000, 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 the 37 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the \$5,000,000 annual receipt threshold. All of the 80 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed \$500,000.

This rule continues to revise the container requirements for onion shipments for peeling, chopping, and slicing prescribed under the South Texas onion marketing order. Shipments of onions for these purposes are permitted in bulk loads, 48-inch deep bulk bins, and tote bags, in addition to the approved 36-inch deep bulk bin. A dimension tolerance for the bulk containers was also added. All handlers shipping onions for peeling, chopping, and slicing continue to be required to meet grade, size, inspection, and safeguard requirements.

This rule change continues to allow South Texas onion handlers to supply existing markets, opens up new markets to satisfy fresh processor demand, and allows the industry to be more competitive in the marketplace. Allowing shipments of onions to fresh processors in bulk loads, 48-inch bulk bins, and tote bags, in addition to the 36-inch deep bulk bin, is expected by the Committee to double the shipments of Texas onions to fresh processed buyers. The increase in shipments is expected because the changes allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to compete with other suppliers of onions for fresh processing.

At the meetings, the Committee discussed the impact of these changes on handlers and producers and believed that the benefits of this rule were not expected to be disproportionately greater or less for small handlers or producers than for larger entities. The increased shipping flexibility is equally beneficial to all shippers regardless of size.

An alternative to this action was to maintain the status quo, however, the Committee believed that the regulation did not address the needs of handlers desiring to expand their fresh process onion marketing efforts. The Committee believed that the regulations should be modified to address these needs. The Committee further believed that not allowing different types of bulk shipments for peeling, chopping, and slicing would be detrimental to the South Texas onion industry. Allowing shipments of onions in additional bulk bins and in bulk loads will meet the industry's objective of marketing more onions. These changes provide the industry with additional marketing opportunities and allow the industry to be more competitive.

All handlers making onion shipments for relief, charity, processing, experimental purposes, or peeling, chopping, and slicing are required to apply for and obtain a Certificate of Privilege from the Committee to make such shipments. No additional reporting burden is estimated in making such applications because all 37 of the handlers in the Texas onion industry routinely apply each season for these certificates and this is expected to continue. However, this action imposes additional reporting requirements on the 37 onion handlers. Because this action fosters increased shipments, the handlers will file more Reports of Special Purpose Onion Shipments. This report accompanies each shipment and takes about .083 hours to complete. It is used to verify proper disposition of the onions. Previously, each of the 37 handlers shipped approximately 15 loads of onions for special purposes. The Committee estimates that this rule change will double the number of shipments going to these outlets to 30 loads per handler, which will result in an estimated burden to the previously-mentioned 37 handlers of about 92 hours.

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 accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0187. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

Further, the Committee's meetings were widely publicized throughout the onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the October 19, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 17 members, of which 10 are producers and 7 are handlers. Also, the Committee has subcommittees to review certain issues and make recommendations to the Committee. The subcommittee met on October 12, 1999, and discussed this issue in detail. The meeting was a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on February 16, 2000. Copies of the rule were mailed by the Committee's staff to all Committee members and onion handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended April 17, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <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.

After consideration of all relevant material presented, including the Committee's unanimous recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (65 FR 7711, February 16, 2000) 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 65 FR 7711 on February 16,

2000, is adopted as a final rule without change.

Dated: May 4, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00-11642 Filed 5-9-00; 8:45 am]

**BILLING CODE 3410-02-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV00-993-2 FR]

#### Dried Prunes Produced in California; Undersized Regulation for the 2000-2001 Crop Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule changes the undersized prune regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2000-2001 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allows handlers to dispose of undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes expected at the end of the 1999-2000 crop year by approximately 5,100 tons, leaving sufficient prunes to fulfill foreign and domestic trade demand.

**EFFECTIVE DATE:** August 1, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room

2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule 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 the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2000-2001 crop year for inventory management purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from  $2\frac{3}{32}$  to  $2\frac{4}{32}$  of an inch in diameter; and for non-French prunes, the opening will be increased from  $2\frac{8}{32}$  to  $3\frac{0}{32}$  of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 2000, through July 31, 2001, and was unanimously recommended by

the Committee at a November 30, 1999, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of  $2\frac{3}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary, upon a recommendation of the Committee, may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes\* \* \* Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of  $2\frac{3}{32}$  or  $2\frac{4}{32}$  of an inch for French prunes, and  $2\frac{8}{32}$  or  $3\frac{0}{32}$  of an inch for non-French prunes.

During the 1974-75 and 1977-78 crop years, the undersized prune regulation was established by the Department at  $2\frac{3}{32}$  of an inch in diameter for French prunes and  $2\frac{8}{32}$  of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974-75 crop year with an undersized regulation at the aforementioned  $2\frac{3}{32}$  and  $2\frac{8}{32}$  inch diameter screen sizes. During the 1975-76 and 1976-77 crop years, the undersized prune regulation was established at  $2\frac{4}{32}$  of an inch for French prunes, and  $3\frac{0}{32}$  of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15, 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes, particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975-76, 1976-77 and 1977-78 crop years, the Committee