

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Parts 958 and 980

[Docket No. FV04-958-1 IFR]

#### Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Relaxation of Handling and Import Regulations

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule relaxes the size requirement for pearl onions, relaxes the minimum grade and size requirements for cipolline onion varieties, and updates the regulatory text concerning certain reporting requirements for onions handled under the Idaho-Eastern Oregon onion marketing order. The marketing order regulates the handling of onions grown in Idaho and Eastern Oregon and is administered locally by the Idaho Eastern-Oregon Onion Committee (Committee). This rule also relaxes the requirements for pearl and cipolline onions under the import regulations as required by section 8e of the Agricultural Marketing Agreement Act of 1937. Specifically, this rule changes the definition of pearl onions to mean onions 2 inches in diameter or less, establishes a relaxed minimum grade of U.S. No. 2 and relaxed minimum diameter of 1½ inches for cipolline onions, and adds clarification and specificity to the reporting requirements for onions handled for peeling, chopping, or slicing. The changes are intended to facilitate the marketing of onions handled under the marketing order, improve producer returns, and bring the section 8e import regulation into conformity with the marketing order.

**DATES:** Effective: September 23, 2004; comments received by November 22, 2004 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail:

*moab.docketclerk@usda.gov*; or Internet: *http://www.regulations.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

**FOR FURTHER INFORMATION CONTACT:**

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, 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.

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, 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."

This rule is also issued under section 8e of the Act, which provides that whenever certain specified

commodities, including onions, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities.

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 § 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.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule relaxes handling regulations for pearl and cipolline onions produced in certain designated counties in Idaho, and Malheur County Oregon, by redefining pearl onions to mean onions 2 inches in diameter or less, and by establishing a relaxed minimum grade of U.S. No. 2 and a relaxed minimum diameter of 1½ inches for cipolline onion varieties. As provided under section 8e of the Act, these changes also apply to all imported pearl and cipolline onions. This rule also adds clarification and specificity to the

reporting requirements by updating § 958.328(d) for onions handled for peeling, chopping, or slicing to reflect current form provisions. These changes were unanimously recommended by the Committee on April 1, 2004, and are intended to facilitate the marketing of Idaho-Eastern Oregon onions and improve producer returns.

Sections 958.51 and 958.52 of the order authorize the Committee to recommend, and the USDA to issue, grade, size, quality, pack, and container regulations for any variety or varieties of onions grown in the production area. Section 958.53 authorizes the issuance of special regulations to facilitate the handling of pearl onions as well as other special purpose shipments. Section 958.65 authorizes the Committee to collect information from handlers. Regulations specific to the handling of onions produced in the regulated production area are contained in § 958.328 of the order's handling regulations, whereas relevant import regulations are contained in § 980.117 and § 980.501 of the vegetable import regulations.

Pearl onions and cipolline onions are small, specialty onions with end uses in both the fresh market (raw and cooked) and processed market. Although there are relatively few pearl onions and cipolline onions produced in the Northwest, increased producer interest in both types of onions, as well as changes in customer preferences, encouraged this Committee recommendation.

Pearl onions are defined, in part, in both the order and the import regulations as onions that are produced using specific cultural practices that limit growth and are inspected and certified as measuring no larger than the maximum designated size. Factors that can limit growth, and subsequently final bulb size, include the variety, plant density, depth planted, photoperiod, and temperature. Pearl onions are mild flavored white, red, or yellow skinned onions generally ranging in size from about ¾ inch to less than 2 inches in diameter.

Although pearl onions must be inspected and certified as measuring no larger than the maximum size designated under the order, they have been exempt from the minimum grade, size, and maturity requirements of the order since 1985. In order to be eligible for this exemption, the onions must be no greater than the stated maximum size limit. Although exempt from the grade, size, and maturity requirements, shipments of pearl onions are subject to administrative assessments.

Due to previous changes in handling, marketing, and buyer preferences, the defined maximum diameter of pearl onions was changed from 1½ inches to 1¾ inches in 1990 (55 FR 27825). Similarly, due to ongoing changes in handling, marketing, and buyer preferences, this rule further relaxes the size requirements by increasing the defined maximum diameter of pearl onions to 2 inches.

The pearl onion market is a minor segment of the onion market served by the Idaho-Eastern Oregon production area. As such, the Committee continues to believe that pearl onions do not compete directly with most of the onions produced in this area and that the current exemption from size, grade, and maturity requirements should continue.

Due to changing dynamics in the cultural and handling practices in this region, as well as buyer and consumer preferences, this relaxation in requirements will help facilitate the efficient movement of pearl onions into fresh market channels and may also enhance producer returns.

Cipolline onions—also known as Boretana onions—are traditional Italian onions that are relatively small and button shaped, and include white, red, and yellow varieties. As noted earlier, cipolline (pronounced chip-ah-LEE-nee) onions have constituted a very small percentage of the onions produced and marketed in the order's regulated production area in the past. However, due to an increase in cipolline onion production, and a growing consumer interest in this specialty onion, the order's grade and size requirements were beginning to adversely affect the handling and marketing of cipolline onions.

Under the order, white, red, and yellow onion varieties handled for the fresh market have varying minimum grade and size requirements. Specifically, white varieties must meet a minimum grade of U.S. No. 1, 1 inch minimum to 2 inches maximum or at least 1½ inches minimum, whereas red varieties must meet a minimum grade of U.S. No. 2 and a minimum diameter of 1½ inches. The most prevalent onions packed in the Idaho-Eastern Oregon production area, yellow onion varieties, must meet a minimum grade of U.S. No. 2 and measure 3 inches or larger in diameter, or, if packed to U.S. No. 1 grade, they may have a minimum measurement of 1¾ inches in diameter. Prior to this change, cipolline onions were handled, graded, and inspected in accordance with the different order requirements for white, red, and yellow onion varieties.

Cipolline onions, however, range in size from about 1 inch in diameter to about 3 inches in diameter, with prevalence found in the 2-inch to 3-inch sizes. Since most of the cipolline onions produced in this area are yellow, U.S. No. 2 grade cipolline onions would have difficulty meeting the three-inch minimum size requirement. Following a review of the cultural practices, supply situation, and demand characteristics for cipolline onions, the Committee determined that the marketing of all cipolline onion varieties would be enhanced if handlers were held to a minimum grade of U.S. No. 2 and a minimum size of 1½ inches in diameter—the same minimum requirements for all Idaho-Eastern Oregon red varieties.

This rule, by establishing a minimum grade and size for all cipolline onion varieties distinct from the prevalent white, red, and yellow varieties, will help ensure that marketable cipolline onions meet the minimum requirements of the order. While the requirements in place prior to this action allowed for the shipment of white cipolline onions that graded U.S. No. 1, 1-inch minimum to 2-inches maximum, no such shipments were ever made from the production area. Therefore, this change in the minimum grade and size requirements is not expected to impact the shipment of white cipolline onions.

As mentioned earlier, section 8e of the Act provides that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, a determination must be made as to which of the areas produces the commodity in most direct competition with the imported commodity. Imports must meet the requirements established for that particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order No. 958 and Marketing Order No. 959, which regulates the handling of onions produced in South Texas, since the marketing orders were established. The import regulations specify that import requirements for onions are to be based on the seasonal categories of onions produced in both marketing order areas. In that regard, imported onions must meet the requirements of the Idaho-Eastern Oregon onion marketing order during the period June 5 through March

9 and the South Texas onion marketing order during the period March 10 through June 4 of each season. Pearl and cipolline onions are not currently produced in South Texas. However, they are produced and marketed in limited quantities through out the year under the Idaho-Eastern Oregon onion marketing order. Therefore, the requirements for imported pearl and cipolline onions should be based upon the requirements established under Marketing Order No. 958 for the entire year.

As a consequence, this action changes § 980.117(a)(1) and (2) and (b)(1) of the onion import regulations by determining that imports of pearl and cipolline onions during the entire year are in most direct competition with the marketing of onions produced under Marketing Order No. 958 and changes § 980.117(h) and (i) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to 2 inches or less in diameter. Accordingly, all cipolline onions imported must be U.S. No. 2 grade or better and measure 1½ inches or more in diameter, and pearl onions cannot be larger than 2 inches in diameter.

This rule also clarifies certain handler reporting requirements. Under the handling regulations, onions that are inspected and certified as meeting the grade, size, maturity, and pack requirements of the order and are subsequently peeled, chopped, or sliced for fresh market within the production area may be handled without reinspection. Section 958.328(d) provides reporting procedures for the handling of such previously inspected onions for peeling, chopping, or slicing.

The Committee uses Form FV-37, Rehandling of Onions Report, to collect information from handlers specific to onions handled under this section. These reporting requirements are in place primarily to ensure handler compliance with the order's provisions. This rule adds clarification and specificity to the regulations by updating § 958.328(d) to reflect current Form FV-37 provisions. The change is expected to minimize handler errors in completing the form and help ensure timely submission of the completed form to the Committee.

This form has been approved previously by the Office of Management and Budget (OMB) under OMB Number 0581-0178, Vegetable and Specialty Crops. This action will not impact the information collection burden hours currently approved by OMB for this form.

### Initial Regulatory Flexibility Analysis

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 initial regulatory flexibility analysis.

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

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products.

There are approximately 42 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 190 onion producers in the regulated area. In addition, based on the most recent information available, approximately 472 importers of onions are subject to import regulations and may be affected by this rule. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on its assessment records, the Committee estimates that about 39 of the 42 handlers ship less than \$5,000,000 worth of onions on an annual basis. In addition, based on the acreage (20,600), production (12,000,000 cwt), and total producer revenue (\$130,768,000) reported by the National Agricultural Statistics Service for 2003, and the current number of onion producers (190), the average annual gross producer revenue is approximately \$688,252. Thus, the majority of the onion handlers and the onion producers in this industry may be classified as small entities. Although it is not known how many importers of onions may be classified as small entities, we believe that many of the 472 importers can be classified as such. There are two firms involved in altering onions under the order and both firms can be classified as small entities.

This rule relaxes the size requirement for pearl onions, relaxes the minimum grade and size requirements for cipolline onions, and clarifies certain

reporting requirements for onions handled under the Idaho-Eastern Oregon onion marketing order. Authority for this action is contained in §§ 958.51, 958.52, 958.53, and 958.65 of the order. This rule—unanimously recommended by the Committee at its April 1, 2004, meeting—changes § 958.328(h) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to the same general size as boilers and picklers (as defined in the U.S. Standards for Grades of Onions), and that have been inspected and certified as measuring 2 inches in diameter or less. In addition, this rule changes § 958.328(a)(2) by adding cipolline onions to the minimum grade and size requirements established for red onion varieties: U.S. No. 2 grade or better and 1½ inch diameter or larger.

Under authority in section 8e of the Act, this rule also changes § 980.117(a)(1) and (2), and (b)(1), of the onion import regulations by determining that imports of pearl and cipolline onions are in most direct competition during the entire year with the marketing of onions produced under Marketing Order No. 958 and changes § 980.117(h) and (i) by redefining pearl onions to mean onions produced using specific cultural practices that limit growth to 2 inches in diameter or less. Although not specifically referenced in the text of § 980.117, this rule also relaxes the minimum grade and size for imported cipolline onions to U.S. No. 2 grade and 1½ inches in diameter.

Finally, this rule updates § 958.328(d) to reflect the current form used for onions handled for peeling, chopping, or slicing. This action is intended to facilitate the handling and marketing of pearl and cipolline onions, increase producer returns, and help minimize errors in completing Form FV-37 concerning the handling of onions for peeling, chopping, or slicing, and to help ensure timely submission of the form to the Committee.

According to the Committee, there is currently one producer and one handler of pearl and cipolline onions in the regulated production area, and, as such, statistics relating to the production and marketing of pearl and cipolline onions in the Idaho-Eastern Oregon onion production area cannot be made available. The quantity of such specialty onions, however, would be minor in relation to the prevalent large, globular shaped Spanish-type onion produced in the production area. Regarding pearl and cipolline onions produced elsewhere in the United States or imported into the United States: statistical information is available

grouped by dry bulb type onions, green onions, or onion sets and is generally unavailable by variety, size, or color. However, the U.S. Department of Commerce does track the quantity of pearl onions imported into the United States with a maximum diameter of .39 inches. In 2003, for example, approximately 211 hundredweight of pearl onions (less than or equal to .39 inches in diameter) were imported—in diminishing order—from Chile, Spain, China, Mexico, and India. In comparison, most onions imported into the U.S. are produced in Mexico, Canada, Peru, and Chile. Currently, there are no government statistics on the domestic production or importation of cipolline onions.

Regarding the impact of this rule on affected entities, relaxing the size requirement for pearl onions and the grade and size requirement for cipolline onions is expected to benefit handlers, importers, and producers. With the change in the definition of pearl onions to include onions as large as 2 inches in diameter, a potentially greater quantity of onions will pass inspection and thus be certified under the order's pearl onion exemption provisions. Similarly, by relaxing the minimum grade and size requirements for cipolline onions, a greater quantity of these onions should meet the order's handling regulations. This could translate into an increased market for cipolline onions and greater returns for handlers, importers, and producers. While the requirements in place prior to this action allowed for the shipment of white cipolline onions that graded U.S. No. 1, 1-inch minimum to 2 inches maximum, no such shipments were ever made. Therefore, this action is not expected to impact the shipment of white cipolline onions.

The clarification of reporting requirements for peeled, chopped, and sliced onions will have the tangible effect of providing more clearly understood instructions to handlers who are required to complete Form FV-37.

The Committee considered several alternatives to the relaxation in handling regulations for pearl and cipolline onions. The Committee initiated this action due to a request from the Idaho-Eastern Oregon onion industry's single pearl and cipolline onion producer and handler for an all-inclusive exemption from the requirements of the order. A special subcommittee was formed to study the request. The initial request was an exemption for an entire specialty product line, which included onion sets, pearl onions, boiler onions, prepack onions, cipolline onions, and

shallots. The requester's main contention with the order is that none of his onions fit the profile of the Idaho-Eastern Oregon onion industry's foremost product, the large, globular shaped and mild Spanish-type onion. In addition, the requester was of the view that the Committee's promotion efforts—a major budgetary item for the Committee—does not benefit him as a producer and marketer of the small specialty onions. The requester also stated that the cost to him in complying with the order—in administrative assessments and inspection fees—is too high when considering his benefits from the order.

The subcommittee noted that onion sets and shallots do not need to be considered for further exemptions since neither is regulated under the marketing order. In addition, the subcommittee determined that boiler and prepacker size onions should not be exempt from the handling regulations since both are produced throughout the regulated production area. Various members of the subcommittee were of the view that the marketing of out-of-grade and off-size boiler and prepacker onions would have a negative impact on the marketing of all Idaho-Eastern Oregon onions.

Further, as noted earlier in this document, pearl onions have been exempt from the minimum grade, size, and maturity requirements of § 958.328 for several years. The subcommittee determined that an increase in the maximum size for pearl onions would facilitate the handling and marketing of these onions. The subcommittee considered increasing the maximum size under the pearl onion definition from 1 $\frac{7}{8}$  inches to as much as 2 $\frac{3}{4}$  inches in diameter. This was rejected, however, because this would permit handlers to ship these onions exempt from the quality requirements in competition with larger sized onions subject to such requirements. The subcommittee also rejected consideration of an exemption from the current assessment and inspection requirements for pearl onions as being detrimental to the program. Pearl onions are inspected under the order to assure that they do not exceed the maximum diameter permitted.

Finally, the subcommittee considered various exemption and regulatory options in regard to cipolline onions. A complete exemption from the order was rejected since the subcommittee considered the cipolline onions as being a competitive product to the prevalent onion varieties produced and marketed under the order. Consideration was also given to establishing a different regulatory scheme for the county in

which the cipolline onions are produced. This was not considered a viable option due to administrative concerns and the fact cipolline onions can be produced anywhere within the production area.

The Committee, based on the subcommittee's consideration of the issue, determined that pearl and cipolline onions are promoted through the order's generic promotion efforts since a major component of these efforts are coupled to the Idaho-Eastern Oregon onion logo. In this regard, the Committee feels that all handlers within the regulated production area benefit from the order.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the April 1, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, as indicated earlier, the subcommittee appointed to consider this matter met on February 25, 2004, and discussed this issue in detail. That meeting was also 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.

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

This rule invites comments on a change to the handling regulations prescribed under the Idaho-Eastern Oregon onion marketing order and the onion import regulations. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and

other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers will begin shipping onions for the 2004–2005 season in August and to ensure maximum benefit to the industry, this relaxation should be in effect as soon as possible; (2) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects

##### 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

##### 7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

■ For the reasons set forth in the preamble, 7 CFR parts 958 and 980 are amended as follows:

■ 1. The authority citation for 7 CFR parts 958 and 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

#### PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 2. In § 958.328, paragraphs (a)(1) and (2), paragraph (d), and paragraph (h), are revised to read as follows:

##### § 958.328 Handling regulation.

\* \* \* \* \*

(a) *Grade and size requirements*—(1) *White varieties (except cipolline (Borettana) varieties)*. Shall be either:

(i) U.S. No. 1, 1 inch minimum to 2 inches maximum diameter; or

(ii) U.S. No. 1, at least 1½ inches minimum diameter. However, neither of these two categories of onions may be

commingled in the same bag or other container.

(2) *Cipolline (Borettana) varieties and red varieties*. U.S. No. 2 or better grade, at least 1½ inches minimum diameter.

\* \* \* \* \*

(d) *Onions for peeling, chopping, or slicing*. Onions that have been inspected and certified as meeting the requirements of paragraphs (a) and (b) of this section and that are subsequently peeled, chopped, or sliced for fresh market within the production area may be handled without reinspection subject to the following:

(1) Each handler making shipments of onions for altering by peeling, chopping, or slicing must, within 15 days of delivery of the onions, provide the committee with a copy of the original inspection certificate verifying that minimum marketing order requirements have been met. Furthermore, each handler of onions for peeling, chopping, or slicing must, within 15 days of delivery of the onions, provide the handler responsible for alteration of the onions and the committee the following information on forms provided by the committee:

(i) Business name, address, telephone number, signature and the date the form was signed;

(ii) The date the onions were delivered to the handler responsible for alteration of the onions by peeling, chopping, or slicing;

(iii) Information specific to the delivery of such onions to that handler (e.g., rail car number, truck license number, or “from storage” if both handlers are the same entity);

(iv) Inspection certificate number;

(v) The hundredweight of onions delivered for alteration;

(vi) Such other information that may be required by the committee.

(2) Each handler responsible for alteration of onions for peeling, chopping, or slicing must, within 15 days of alteration of the onions, provide the handler and the committee the following information on forms provided by the committee:

(i) Business name, address, telephone number, signature and the date the form was signed;

(ii) The date the onions were altered by peeling, chopping, or slicing;

(iii) The hundredweight of onions after alteration;

(iv) Such other information that may be required by the committee.

Handlers who peel, chop, or slice onions produced outside the production area must provide the committee with documentation showing that the onions

so prepared were produced outside the production area.

\* \* \* \* \*

(h) *Definitions*. The terms “U.S. No. 1”, “U.S. Commercial,” and “U.S. No. 2” have the same meaning as defined in the United States Standards for Grades of Onions (Other than Bermuda Granex-Grano and Creole Types), as amended (7 CFR 51.2830 through 51.2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195 through 51.3209), as amended, whichever is applicable to the particular variety, or variations thereof specified in this section. The term “braided red onions” means onions of red varieties with tops braided (interlaced). “Pearl onions” means onions produced using specific cultural practices that limit growth to the same general size as boilers and picklers (defined in the United States Standards specified in this paragraph), and that have been inspected and certified as measuring 2 inches in diameter or less. The term “moderately cured” means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

#### PART 980—VEGETABLES; IMPORT REGULATIONS

■ 3. In § 980.117, paragraphs (a)(2), (b)(1) and (2), (h), and (i) are revised to read as follows:

##### § 980.117 Import regulations; onions.

(a) \* \* \*

(2) Therefore, it is hereby determined that: Imports of onions during the June 5 through March 9 period, and the entire year for imports of pearl and cipolline varieties of onions, are in most direct competition with the marketing of onions produced in designated counties of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958) and during the March 10 through June 4 period the marketing of imported onions, not including pearl or cipolline varieties of onions, is in most direct competition with onions produced in designated counties in South Texas covered by Marketing Order No. 959, as amended (7 CFR part 959).

(b) \* \* \*

(1) During the period June 5 through March 9 of each marketing year, and the entire year for pearl and cipolline onions, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the

grade, size, quality, and maturity requirements imposed under that order.

(2) During the period March 10 through June 4 of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 959, imported onions, not including pearl and cipolline onions, shall comply with the grade, size, quality, and maturity requirements imposed under that order.

\* \* \* \* \*

(h) *Definitions.* For the purpose of this section, *Onions* means all varieties of *Allium cepa* marketed dry, except dehydrated, canned, or frozen onions, pickling onions in brine, onion sets, green onions, or braided red onions. The term *U.S. No. 2* has the same meaning as set forth in the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 2851.3195 through 2851.3209), the United States Standards for Grades of Creole Onions (7 CFR 2851.3955 through 2851.3970), or the United States Standards for Grades of Onions Other Than Bermuda-Granex-Grano and Creole Types (7 CFR 2851.2830 through 2851.2854), whichever is applicable to the particular variety, and variations thereof specified in this section. The term *moderately cured* means the onions are mature and are more nearly well cured than fairly well cured. *Importation* means release from the custody of U.S. Customs and Border Protection. The term *pearl onions* means onions produced using specific cultural practices that limit growth to 2 inches in diameter or less.

(i) *Exemptions.* The grade, size, quality and maturity requirements of this section shall not be applicable to onions imported for processing, livestock feed, charity, or relief, and pearl onions, onion sets (plantings), braided red onions, and minimum quantity shipments of 110 pounds, but such onions shall be subject to the safeguard provisions in § 980.501. Processing includes canning, freezing, dehydration, extraction (juice) and pickling in brine. Processing does not include fresh chop, fresh cut, convenience food or other pre-packaged salad operations. Pearl onions must be inspected for size prior to entry into the United States.

Dated: September 16, 2004.

**Kenneth C. Clayton,**

*Associate Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM289, Special Conditions No. 25-272-SC]

#### **Special Conditions: Dassault Model Mystere-Falcon 20-C5, 20-D5, 20-E5, and 20-F5 Series and Dassault Model Fan Jet Falcon Series C, D, E, F, and G Airplanes; High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for Dassault Model Mystere-Falcon 20-C5, 20-D5, 20-E5, and 20-F5 series and Dassault Model Fan Jet Falcon series C, D, E, F, and G airplanes modified by Genesis3 Engineering. These modified airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of an Innovative Solutions & Support (IS&S) Dual Air Data Display Unit (ADDU) and an Air Data Sensor Unit (ADS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is September 13, 2004. Comments must be received on or before October 22, 2004.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM-113), Docket No. NM289, 1601 Lind Avenue, SW., Renton, Washington, 98055-4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM289.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington,

98055-4056; telephone (425) 227-2799; facsimile (425) 227-1320.

#### **SUPPLEMENTARY INFORMATION:**

##### **Comments Invited**

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification, and thus delivery, of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

##### **Background**

On March 29, 2004, Genesis3 Engineering, Woodland Park, Colorado, applied to the FAA, Denver Aircraft Certification Office, for a supplemental type certificate (STC) to modify Dassault Model Mystere-Falcon 20-C5, 20-D5, 20-E5, and 20-F5 series and Dassault Model Fan Jet Falcon series C, D, E, F, and G airplanes. The Dassault Model Mystere-Falcon 20-C5, 20-D5, 20-E5, and 20-F5 series and Dassault Model Fan Jet Falcon series C, D, E, F, and G airplanes are small transport category