

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

[Docket No. AMS-FV-07-0043; FV07-959-2 IFR]

**Onions Grown in South Texas;  
Exemption of Onions for Export**

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

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

**SUMMARY:** This rule exempts onions being shipped to export markets from regulations prescribed 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 provides a special purpose shipment exemption for onions being shipped to export markets. Under this change, onion shipments for export will be exempt from the grade, size, quality, and inspection requirements of the marketing order. This rule will provide handlers additional flexibility in marketing onions of different grades and quality in various markets outside of the U.S. This change is expected to help the South Texas onion industry develop additional markets for its onions, while increasing returns to producers and providing an increased supply of onions to help satisfy a rapidly developing export market.

**DATES:** Effective April 10, 2007. Comments received by June 8, 2007 will be considered prior to issuance of a final rule.

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

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Regional Manager, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (956) 682-2833, Fax: (956)

682-5942, or E-mail: [Belinda.Garza@usda.gov](mailto:Belinda.Garza@usda.gov).

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone (202) 720-2491; Fax: (202) 720-8938; or E-mail: [Jay.Guerber@usda.gov](mailto: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 order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

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

This action, unanimously recommended by the Committee at its March 16, 2007, meeting, exempts onion export shipments from the grade, size, quality and inspection requirements prescribed under the South Texas onion marketing order. To effectuate the exemption, paragraphs (e)(1) and (f) of § 959.322 are modified by adding the term "export" to the list of authorized special purpose shipment categories.

Section 959.52 of the order authorizes the issuance, amendment, modification, suspension, or termination of regulations for grade, size, quality, maturity, pack, and container for any variety of onions grown in the production area. Section 959.53 provides that regulations in effect pursuant to §§ 959.42, 959.52, or 959.60 may be modified, suspended or terminated to facilitate the handling of onions for specified special purpose shipments, including export. Section 959.60 provides that whenever onions are regulated pursuant to § 959.52, such onions must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

Section 959.322 contains the order's handling regulations and includes provisions for grade, size, and inspection requirements, as well as a minimum quantity exemption, certain special purpose shipment exemptions, and experimental shipments. The handling regulations also provide safeguards to ensure that onions being shipped for special purposes are handled in accordance with order provisions.

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for South Texas onions which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Based on discussion at the March 16, 2007, meeting, the Committee has conveyed to USDA that there currently exists an extremely short supply of onions in Mexico and other countries. This shortage has fueled a greater demand for all grades of onions. The Committee indicated that there is a great deal of interest in various foreign markets for onions of varying grade, size, and quality. Texas producers and handlers are characterized by the Committee as being eager to supply this demand and are thus fully in support of relaxing the handling regulations in an effort to provide onions for the developing export markets.

The Committee also reports that the onion supply situation in Texas is hampered by a very short onion crop—

approximately 12,500 acres this year compared with approximately 18,000 acres in past seasons—and recent cold weather that has caused some quality issues in certain areas of the South Texas onion production area.

By exempting onions for export from the handling regulations, this rule will provide handlers additional flexibility in marketing onions of different grades and quality in various markets outside of the U.S. This change is expected to help the South Texas onion industry develop additional markets for its onions, while increasing returns to producers and providing an increased supply of onions to help satisfy a rapidly developing export market.

Currently, all handlers making onion shipments for relief, charity, processing, or experimental purposes are required to apply for and obtain a Certificate of Privilege from the Committee to make such shipments. Once handlers are approved for such shipments, a Report of Special Purpose Onion Shipment form must be submitted to the Committee for each such onion shipment in order to ensure that the shipments are in accordance with Committee requirements. This action will allow all shipments to export markets to also be exempt from grade, size, quality, and inspection requirements and will be tracked through the use of the Report of Special Purpose Onion Shipment form.

#### Initial Regulatory Flexibility Analysis

Pursuant to the 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 so 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. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000. Small agricultural service firms are defined as those with annual receipts of less than \$6,500,000.

There are approximately 114 producers of onions in the production area and approximately 38 handlers subject to regulation under the order. Most of the handlers are vertically

integrated corporations involved in producing, shipping, and marketing onions. For the 2005–06 marketing year, the industry's 38 handlers shipped onions produced on 17,694 acres with the average and median volume handled being 182,148 and 174,437 fifty-pound equivalents, respectively. In terms of production value, total revenues for the 38 handlers were estimated to be \$44.2 million, with average and median revenues being \$1.6 million and \$1.12 million, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all of the 38 handlers regulated by the order would be considered small entities if only their onion revenues are considered. However, revenues from other farming enterprises could result in a number of these handlers being above the \$6,500,000 annual receipt threshold. All of the 114 producers may be classified as small entities based on the SBA definition if only their revenue from onions is considered.

This rule exempts onion export shipments from the grade, size, quality and inspection requirements prescribed under the South Texas onion marketing order. To realize the exemption, paragraphs (e) and (f) of § 959.322 are modified by adding the term “export” to the list of authorized special purpose shipment categories.

Section 959.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety of onions grown in the production area. Section 959.53 provides for the exemption from the handling regulations certain kinds of onion shipments, including export.

The Committee anticipates that this rule will not negatively impact small businesses. This rule exempts onions being shipped to export markets from the order's handling regulations, and thus should provide enhanced marketing opportunities for all handlers, increased income for South Texas onion producers, and increased purchasing flexibility for foreign consumers.

The Committee considered alternatives to this recommendation. One consideration would have relaxed the minimum quality requirement of all onion shipments, both domestic and export, from U.S. No. 1 to U.S. No. 2. Although this option may have taken care of the export market demands, it was rejected early in the discussion due to the problems associated with trying to market onions that grade less than U.S. No. 1 to U.S. consumers. Also briefly considered was the option of suspending the entire handling regulation, either on a temporary basis or indefinitely. The Committee also rejected this option as being too extreme for the current situation.

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 are currently approved by the Office of Management and Budget (OMB), under OMB No. 0581–0178, Vegetable and Specialty Crops. This rule will impose minimal additional reporting or recordkeeping requirements, deemed to be insignificant, on both small and large onion handlers that export onions.

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 AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the March 16, 2007, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Furthermore, 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 the exemption of onions for export from the handling regulations prescribed under the Texas onion marketing order. 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.

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) This rule relaxes the order's regulatory requirements by exempting South Texas onions shipped to the export market from the order's handling regulations; (2) onion handlers are aware of this recommendation and need no additional time to comply with the relaxed requirements; (3) the shipping season for South Texas onions started around March 1, thus this rule should be effective as soon as possible to ensure that all handlers can take advantage of the relaxation for as much of the season as possible; and (4) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 959

Onions, Marketing agreements, Reporting and recordkeeping requirements.

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

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

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

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 959.322 is amended by revising paragraph (e)(1) and the introductory sentence of paragraph (f) to read as follows:

\* \* \* \* \*

(e) *Special purpose shipments.* (1) The minimum grade, size, quality, and inspection requirements set forth in paragraphs (a) through (c) of this section shall not be applicable to shipments of onions for charity, relief, export, and

processing if handled in accordance with paragraph (f) of this section.

\* \* \* \* \*

(f) *Safeguards.* Each handler making shipments of onions for charity, relief, export, processing, or experimental purposes shall:

\* \* \* \* \*

Dated: April 4, 2007.

**Lloyd C. Day,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 07–1749 Filed 4–4–07; 4:27 pm]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. AMS–FV–07–0027; FV07–989–1 IFR]

#### Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2006–07 Crop Natural (sun-dried) Seedless Raisins

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

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

**SUMMARY:** This rule establishes final volume regulation percentages for 2006–07 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 90 percent free and 10 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

**DATES:** Effective April 10, 2007. The volume regulation percentages apply to acquisitions of NS raisins from the 2006–07 crop until the reserve raisins from that crop are disposed of under the marketing order. Comments received by June 8, 2007, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or *Internet:* <http://www.regulations.gov>. 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.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Rose M. Aguayo, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901; Fax: (559) 487–5906; or E-mail: [Rose.Aguayo@usda.gov](mailto:Rose.Aguayo@usda.gov) or [Kurt.Kimmel@usda.gov](mailto:Kurt.Kimmel@usda.gov).

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

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 989, both as amended (7 CFR part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the “order.” The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule establishes final free and reserve percentages for NS raisins for the 2006–07 crop year, which began August 1, 2006, and ends July 31, 2007. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA