

(b) *With respect to physical appearance:*

(1) *Reasonably free-flowing.* Pours in a fairly constant, uniform stream from the open end of a tilted container or scoop.

(2) *Very slight pressure.* Lumps fall apart with only light touch.

(3) *Lumpy.* Loss of powdery consistency but not caked into hard chunks.

(4) *Natural color.* A color that is white to light cream.

Dated: June 28, 1996.

Lon Hatamiya,

Administrator.

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7 CFR Part 958

[FV96-958-1FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Modification of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the "repacker/prepacker" size designations for all varieties of onions except white or red varieties by increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for onions in this size category. Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. This final rule will benefit producers and handlers by increasing their flexibility and efficiency in the packaging of "repacker/prepacker" size onions. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the change to the minimum size requirement also applies to all imported onions except white or red varieties.

EFFECTIVE DATE: July 15, 1996.

FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503)326-2724; FAX: (503)326-7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202)690-0464; FAX: (202)720-5698.

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

This final rule, which also affects the minimum size requirements for all varieties of imported onions, except white or red varieties, is also issued pursuant to section 8e of the Act. The provisions of section 8e and the onion import regulations are discussed later in this final rule.

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

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final 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.

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

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.

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.

Import regulations issued under the Act are based on those established under Federal marketing orders which regulate the handling of domestically produced products. Thus, this final rule should have small entity orientation, and impact both small and large business entities in a manner comparable to those issued under marketing orders.

There are currently 34 handlers subject to regulation under the marketing order and approximately 550 onion producers in the regulated production area. In addition, at least 148 importers of onions are subject to import regulations and will be affected by this final rule. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities. The majority of importers may also be classified as small entities.

This final rule changes the "repacker/prepacker" size designations for all varieties of onions except white or red varieties by increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for onions in this size category. Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. This final rule will benefit producers and handlers by allowing them to better meet the needs of their customers, who desire slightly larger "repacker/prepacker" size onions.

As provided under section 8e of the Act, the change to the minimum size requirement also applies to all imported onions except white or red varieties. The benefits to producers and handlers should apply also to importers. The slight increase in minimum size is expected also to benefit importers by recognizing recent trends in buyer preference for larger size onions.

Because this rule is expected to benefit and have a positive impact on producers, handlers, importers, and consumers of onions, the AMS has determined that the issuance of this final rule will not have a significant

economic impact on a substantial number of small entities.

Pursuant to authority contained in section 958.51 of the marketing order, the Idaho-Eastern Oregon Onion Committee (Committee), at its November 16, 1995, meeting, unanimously recommended changing the minimum and maximum sizes set forth in section 958.328(a)(3)(ii) of the handling regulation. For this size category, the Committee recommended increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for all onions except white or red varieties produced and handled in the production area. Yellow onions are the major variety produced in the regulated production area.

This final rule modifies a marketing order size category that is recognized by the onion industry as "repacker" or "prepacker" size onions. Onions in this size category are generally packed and shipped in 50-pound sacks for later repacking into various consumer packs.

The U.S. Standards for Grades of Onions were recently amended to include a classification for "repacker/prepacker" size onions (60 FR 46976, September 8, 1995), effective October 10, 1995. Section 51.2836 of the U.S. Standards defines such onions as those ranging from a minimum diameter of 1¾ inches to a maximum diameter of 3 inches. The U.S. Standards also specify that not more than 5 percent of the onions in a lot may be undersized and that not more than 10 percent may be oversized.

Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. The Committee reports that the current maximum diameter of 2½ inches for this size category is too restrictive and has resulted in a high percentage of onions being packed in a different category due to oversize. This has resulted in fewer "repacker/prepacker" size onions being available for market. With an increase in the maximum allowable diameter to 2¾ inches for "repacker/prepacker" size onions, the Committee expects the quantity of such onions available for market to increase. The Committee recommended an increase to 2¾ inches rather than 3 inches, the upper limit of the size range specified in the U.S. Standards, because the smaller size is more suitable for this industry and its customers. In addition to the increase in the maximum diameter for onions in this category, the Committee recommended that the minimum diameter be increased from 1½ inches

to 1¾ inches to be the same as the recently amended U.S. Standards.

Any costs to handlers and producers attributable to this regulation are expected to be offset by the benefits derived from improved returns. The modification increases the volume of onions marketed in this size category, and is expected to result in higher returns for producers and handlers.

Section 8e of the Act requires 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, or 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, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order 958 and Marketing Order 959, which regulates the handling of onions grown in South Texas. Pursuant to section 8e of the Act, the current import regulation (7 CFR 980.117) specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulation specifies that imported onions must meet the requirements of Marketing Order 958 during the June 5 through March 9 period each season (61 FR 25556; May 22, 1996), and Marketing Order 959 through the remainder of the year. The current import regulation also provides that all varieties of imported onions, except for white varieties, must be a minimum of 1½ inches in diameter. This final rule will change the import requirements for the period June 5 through March 9 each marketing year to provide that all varieties of onions except white or red varieties shall be a minimum of 1¾ inches in diameter. While no changes are required in the language of § 980.117, all imported onions other than white or red varieties will be required to meet the minimum size requirement herein.

The proposed rule concerning this action was published in the May 6, 1996, Federal Register (61 FR 20188), with a 30-day comment period ending June 5, 1996. No comments were received.

After consideration of all relevant matters presented, including the

information and recommendations submitted by the Committee and other available information, it is hereby found that this 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 final rule.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action will provide handlers more marketing flexibility in meeting buyer preferences; (2) the 1996 crop harvest and shipments are expected to begin in August and this action needs to be effective promptly to allow handlers to make their marketing plans; and (3) interested persons were invited to submit written comments and no comments were submitted.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is hereby amended as follows:

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

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.328 is amended by revising paragraph (a)(3)(ii) to read as follows:

§ 958.328 Handling Regulation.

* * * * *

(a) * * *

(3) * * *

(ii) U.S. No. 1, 1¾ inches minimum to 2¾ maximum diameter; or

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Dated: June 28, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–17197 Filed 7–5–96; 8:45 am]

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