

# Rules and Regulations

Federal Register

Vol. 68, No. 47

Tuesday, March 11, 2003

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV03-959-2 IFR]

#### Onions Grown in South Texas; Revision of Rules and Regulations

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

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

**SUMMARY:** This rule eliminates all container requirements from the handling regulations prescribed under the South Texas onion marketing order (order) and makes several conforming and formatting changes. The order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule provides the industry expanded flexibility to use any and all types and sizes of containers, or to ship onions in bulk shipments. This change will help handlers compete more effectively in the marketplace, better meet buyers' needs, and improve producer returns.

**EFFECTIVE DATE:** March 12, 2003; comments received by May 12, 2003, 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 E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.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:**

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, 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](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. 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.

This rule eliminates all container requirements on onion shipments from the handling regulations prescribed under the South Texas onion order and makes several conforming and formatting changes. Removing all container requirements will provide the industry expanded flexibility to use any and all types of containers preferred by consumers, buyers, and all retailers, or to ship onions in bulk shipments, which will help handlers compete more effectively in the marketplace, better meet buyers' needs, and improve producer returns. All shipments will continue to be required to meet grade, size, and inspection requirements. In addition, this rule will also: (1) Remove outdated language from § 959.104; (2) remove all references to containers and applicable language from the order's rules and regulations; (3) remove an incorrectly referenced paragraph in current § 959.322(d) *Inspection* and replace it with the correct reference; and (4) correct the name of the Texas-Federal Inspection Service office. The Committee unanimously recommended these changes at its October 8, 2002, meeting and clarified the recommendation via a mail vote on October 31, 2002. After the October 8 meeting, the Chairman appointed a subcommittee to review the Committee's recommendations. The subcommittee met on November 5, 2002, and further discussed the reasons why the changes should be made.

Section 959.52(b)(4) of the onion order provides authority to regulate size, capacity, weight, dimensions, or pack of the container or containers which may be used in the packaging, transportation, sale, preparation for market, shipment, or other handling of onions. Sections 959.52(c) allows for the modification, suspension, or termination of such regulations when warranted.

Section 959.322(c) of the order's rules and regulations outlines container requirements for onions. Currently, § 959.322(c)(1) through (7) of the