

regulations authorizes ten containers (25-pound, 50-pound, 2-pound, 3-pound, 5-pound, and 10-pound bags; 20-pound, 25-pound, 40-pound, and 50-pound cartons) for use by onion handlers. Section 959.322(f)(2) exempts gift packages of onions not exceeding 25 pounds per package from the container requirements of § 959.322(c) if the onions have not previously been handled. Also, § 959.322(f)(4) authorizes the Committee to approve other types of containers for experimental or testing purposes.

In recent years, there has been a proliferation in package requirements from buyers intent on providing either unique packaging for their stores or special carton sizes for their racking or handling equipment. American retailers desiring to emulate European marketing concepts in display developments (and supporting handling systems) in the U.S. and Canadian marketplace have significantly influenced this process. The evolution of the club and discount stores, design alterations tailored to protecting the commodity from damage during shipment and/or store presentation, and the development of new packaging materials, for example, returnable plastic containers (RPCs) have also greatly influenced the marketplace. The supply side, for reasons of efficiency, has resisted this growth when possible. However, buyer influence is such that no shipper can or will deny buyers new cartons, knowing that other shippers will readily adopt them. The shippers are all impacted by the surge in packaging demands. Many retailers have asked handlers to pack onions in specific RPCs, master containers, and containers other than the currently approved permanent containers. Container dimensions can vary slightly depending on the manufacturers. During previous seasons, handlers applied for and obtained Committee approval to use other containers on an experimental basis. Safeguarding the use of such experimental containers is an additional burden for the Committee.

Because this trend seems certain to continue in the future, the Committee concluded that the best and most economical resolution of the issue concerning the number of containers would be to simply eliminate the container requirements, thereby permitting shippers to respond to buyer requests as they see fit.

The trend toward even more unique and specialized packaging generally is governed by the desire of the retail community to receive produce in "display-ready" packaging consistent with the retailer's image and marketing

plan for each type and size of store. At the same time, the packaging must meet the buyer's expectations for structural integrity and consistency with that buyer's handling practices. Although the increased flexibility does complicate the marketplace, and may result in inefficiencies, it is what retailers think consumers want, and therefore, is prerequisite to selling onions. Maximum efficiency would result from the adoption of a single uniform footprint, but an effort over the past two years to win acceptance of such a footprint has been virtually abandoned because it is contrary to trends in buyer requirements. Furthermore, foodservice buyers also have specialized container requirements often different from retailer requirements. In the end, however, the confusion is held to a minimum by the simple fact that onions normally are sold by weight and grade, which is consistent regardless of packaging.

Eliminating all container requirements in the handling regulations will enable the industry to ship onions in any and all containers preferred by consumers, buyers, and all retailers, which would benefit producers, handlers, buyers, and consumers to Texas onions enabling the industry to compete more effectively in the marketplace. This action will help the industry in providing consumers with high quality onions, promoting buyer satisfaction, and improving producer returns. This action will not impact the onion import requirements.

Removing container requirements requires that all references to containers and applicable language also be removed from the order's rules and regulations, including references to onions for peeling, chopping, and slicing. Reference to these types of fresh processing methods will only be made in the introductory text of § 959.322 in order to avoid confusion with other types of processing, which re exempt from grade, size, and inspection requirements. In addition, several conforming and formatting changes are being made to clarify or remove some outdated language. Specifically, in § 959.104 *Fiscal period* the first sentence and first part of the second sentence needs to be removed. In § 959.322(d)(1), the reference to (f)(3)(ii) needs to be removed because no such section exists, and should be replaced with the correct reference to shipments for experimental purposes. The incorrect section was inadvertently placed in the regulation. Also, in paragraph (d)(1) the name of the inspection office should be corrected to reflect the correct name of the local

inspection office and should include the Inspection Service's name referred to in the order. In addition, paragraphs (f)(2), (f)(3), and (f)(5) will be removed because they will no longer be applicable when container requirements are eliminated.

#### 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.

There are approximately 90 producers of onions in the production area and approximately 35 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 2001–02 marketing year, the industry's 35 handlers shipped onions produced on 16,148 acres with the average and median volume handled being 152, 446 and 136,810 fifty-pound bag equivalents, respectively. In terms of production value, total revenues for the 35 handlers were estimated to be \$39.9 million, with average and median revenues being \$1.1 million and \$1.0 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