

that all of the 35 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the \$5,000,000 annual receipt threshold. All of the 90 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed \$750,000.

This rule invites comments on revisions to the rules and regulations prescribed under the South Texas onion order. This rule eliminates container requirements on onion shipments in § 959.322 of the order's handling regulations, 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, 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. This rule change will allow South Texas onion handlers to supply existing markets and will allow the industry to be more competitive in the marketplace. Allowing shipments of onions in all types of containers or in bulk is expected to increase shipments of Texas onions because there will no longer be any container restrictions.

In addition, this rule will also: (1) Remove outdated language from § 959.104; (2) remove all references to containers and applicable language from the order's rules and regulations; (3) remove an incorrectly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. Section 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 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 upon the manufacturer. During previous seasons, handlers applied for and obtained Committee approval to use these 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 or 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 quite obviously results 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 of Texas onions enabling the industry to compete more effectively in the marketplace. 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. References to containers for onions for peeling, chopping, and slicing are also removed. 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 are exempt from grade, size, and inspection requirements and to correct § 959.322(g)(1). 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 need to be