

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 continues in effect the elimination of all container requirements on onion shipments from the handling regulations prescribed under the South Texas onion order and several conforming and formatting changes. Removing all container requirements provides 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 help improve producer returns. All shipments will continue to be required to meet grade, size, and inspection requirements. In addition, this rule also continues to: (1) Remove outdated language from § 959.104; (2) remove all references to containers and applicable language from the order's rules and regulations; (3) remove an incorrectly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 recommendations 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, shipments, or other handling of onions. Section 959.52(c) allows for the modification, suspension, or termination of such regulations when warranted.

Before the issuance of the interim final rule, § 959.322(c) of the order's rules and regulations outlined container requirements for onions. Section 959.322(c)(1) through (7) of the regulations authorized 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) exempted gift packages of onions not exceeding 25 pounds per package from the container requirements of § 959.322(c) if the onions had not previously been handled. Also, § 959.32(f)(4) authorized 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 shipments 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 was 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 enables the industry to ship onions in any and all containers preferred by consumers, buyers, and all retailers, which benefits producers, handlers, buyers, and consumers of Texas onions and enables the industry to compete more effectively in the marketplace. This action continues to help the industry in providing consumers with high quality onions, promoting buyer satisfaction, and improving producer returns. This action does not impact the onion import requirements.

Removing container requirements required 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 is only 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. In addition, several conforming and formatting changes were made to clarify or remove some