

outdated language. Specifically, in § 959.104 *Fiscal period* the first sentence and first part of the second sentence were removed. In § 959.322(d)(1), the reference to (f)(3)(ii) was removed because no such paragraph existed and was replaced with the correct reference to shipments for experimental purposes. The incorrect reference was inadvertently placed in the regulation. Also, in paragraph (d)(1) the name of the inspection office was corrected to reflect the correct name of the local inspection office and the Inspection Service's name referred to in the order. In addition, paragraphs (f)(2), (f)(3), and (f)(5) were removed because they are no longer applicable now that container requirements have been eliminated.

In the interim final rule, newly redesignated paragraph (c)(1) of § 959.322 on inspection was revised to include exceptions for activities under paragraphs (d), (e)(1), and (e)(2)(i) of this section. The last reference should have been (e)(2) and it is corrected by this action.

Final 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 final 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 of 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 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 revises the rules and regulations prescribed under the South Texas onion order. This rule continues to eliminate container requirements on onion shipments in § 959.322 of the order's handling regulations, 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, which helps handlers compete more effectively in the marketplace, better meet buyers' needs, and helps improve producer returns. All shipments will continue to be required to meet grade, size, and inspection requirements. This rule change allows South Texas onion handlers to supply existing markets and allows the industry to be more competitive in the marketplace. Allowing shipments of onions in all types of containers or in bulk will increase shipments of Texas onions because there are no longer any container restrictions.

In addition, this rule 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 replaces 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.

Previously, § 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, § 959.322(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 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