

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 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 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 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 does 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 were also removed. Reference to these types of fresh processing methods only was 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 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 had inadvertently been 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.

The opportunities and benefits of this rule will be equally available to all onion handlers regardless of their size of operation. The recommended changes benefit the entire South Texas onion industry.

The alternatives were to suspend the container requirements for a certain period of time or leave the regulations as they are. However, the Committee believed that the best action was to eliminate all requirements completely to provide expanded flexibility.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the October 8, 2002, meeting

was a public meeting and all entities, both large and small, were able to express their views on this issue. Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee and these meetings also are open to the public. In this case, a subcommittee met on November 5, 2002, to further discuss this action. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on March 11, 2003. Copies of the rule were mailed by the Committee's staff to all Committee members and alternates and to the entire South Texas onion industry. In addition, the rule was made available through the Internet by the *Office of the Federal Register* and USDA. This rule provided a 60-day comment period which ended May 12, 2003. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, with a minor change, as published in the **Federal Register** (68 FR 11463, March 11, 2003) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR part 959, which was published at 68 FR 11463 on March 11, 2003, is adopted as a final rule with the following change:

#### PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. In § 959.322, paragraph (c)(1), "(e)(2)(i)" is revised to read "(e)(2)".