

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 959

[Docket No. FV00-959-2 IFR]

#### Onions Grown in South Texas; Change in Container Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This rule revises the container requirements for shipping onions to fresh processors under the South Texas onion marketing order. The marketing order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule provides handlers additional marketing flexibility by allowing them to ship onions for peeling, chopping, and slicing in bulk trailer loads, 48-inch deep bulk bins, and tote bags. These changes will allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to compete with other suppliers of onions for fresh processing.

**DATES:** Effective February 17, 2000; comments received by April 17, 2000 will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

#### FOR FURTHER INFORMATION CONTACT:

Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice 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 the Secretary 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 the Secretary 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 the Secretary'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 revises the container requirements for onion shipments for peeling, chopping, and slicing currently prescribed under the South Texas onion marketing order. Handlers will be allowed to ship onions for peeling, chopping, and slicing in bulk trailer loads, 48-inch deep bulk bins, and tote bags. Currently, onions for these purposes may only be shipped in 47 inch by 37½ inch by 36 inch deep bulk bins, having a volume of 63,450 cubic inches (hereinafter referred to as the "36-inch deep bulk bin"), or containers deemed similar by the Committee. A dimension tolerance for the bulk containers is also being added. All handlers shipping onions for peeling, chopping, and slicing will continue to be required to meet grade, size, inspection, and safeguard requirements. The additional method of shipment and containers will allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to compete with other suppliers of onions for fresh processing.

These changes were first unanimously recommended by the Committee at its meeting on September 16, 1999. At that meeting, the Chairman appointed a subcommittee to review the Committee's recommendations. On October 19, 1999, the Committee met again and unanimously approved the subcommittee's recommendations detailed herein.

Section 959.52 of the South Texas onion marketing order authorizes the establishment of grade, size, quality, maturity, and pack and container regulations for shipments of onions. Section 959.52(c) allows for the modification, suspension, or termination of such regulations when warranted. Section 959.53 authorizes changes to the order's regulations to facilitate the handling of onions for relief, charity, experimental purposes, export, or other purposes recommended by the Committee and approved by the Secretary. Section 959.54 of the order provides authority for the Committee to

establish that onions handled for special purposes are handled only as authorized. Section 959.60 provides that whenever onions are regulated pursuant to § 959.52, such onions must be inspected by the inspection service and certified as meeting the applicable requirements. Section 959.80 of the order authorizes handler reporting requirements.

Section 959.322(f) of the order's rules and regulations provides specific safeguards for certain special purpose shipments of onions. Furthermore, paragraph (f)(3) of § 959.322 provides authority for the shipment of onions for fresh peeling, chopping, and slicing in 36-inch deep bulk bins, or containers deemed similar by the Committee. Such shipments are exempt from the container requirements specified in paragraph (c) of § 959.322, but are required to be handled in accordance with the safeguard provisions of § 959.54, and meet the grade requirements in paragraph (a), the size requirements in paragraph (b), the inspection requirements in paragraph (d), and the safeguard requirements in paragraph (g) of § 959.322.

Currently, § 959.322(f)(3) allows onion shipments for peeling, chopping, and slicing in 36-inch deep bulk bins, or containers deemed similar by the Committee. The Committee recommended that shipments of onions to these outlets be authorized in bulk trailer loads, 48-inch deep bulk bins (with the same length and width dimensions as the 36-inch deep bulk bin), and tote bags, and that the provisions on containers deemed similar be removed because it has caused confusion in the industry. In its place, the Committee recommended implementation of a dimension tolerance.

The market for onions for fresh processing uses has grown dramatically in the last five years. The food service industry is the fastest growing market for onions in the United States. Consumption of onions has increased, especially for onions used in restaurants, salad bars, and cafeterias in fresh peeled, chopped, or sliced form. Fresh process is an increasingly important market for the domestic onion industry, and is expected to continue growing.

Buyers of onions for fresh processing continually demand flexibility in container availability, and the Committee is always looking for ways to strengthen and expand the market for South Texas onions. The Committee believes that South Texas may enhance its ability to take full advantage of available marketing opportunities for

fresh peeling, chopping, and slicing onions with the more flexible shipping container requirements. The more flexible containers and method of shipment may allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to better compete with other suppliers of onions for fresh processing. The changes are expected to open new markets for South Texas and help the industry increase its fresh processed onion market share. The Committee estimates that these changes may help the industry double shipments into these outlets.

Because the demand for fresh processed onions is increasing and Texas has not been able to market more of its crop in the conveyances and containers the trade desires, the trade has been going to other competing areas, that are not restricted by regulations, leaving Texas at a disadvantage. Presently, other onion-growing areas can ship onions in bulk loads for peeling, chopping, and slicing purposes, but the South Texas onion industry cannot do so because the regulations restrict shipments to 36-inch deep bulk bins. Competition from other onion production areas demands that the South Texas onion industry be able to quickly respond to buyer demands for other types of shipments. Also, other onion producing areas not bound by restrictions have the flexibility to ship fresh processing onions as needed by buyers. The added flexibility of these changes will allow handlers to meet the competition from other areas and better meet buyer's needs.

The Committee also recommended adding tightly-woven mesh plastic tote bags 36 inches by 36 inches by 66 inches long with a capacity of approximately 2,000 pounds of onions for shipment to fresh processors. These tote bags are returnable and have four handles that are placed to fit forklifts. Ties are attached to each end of the bags and the onions may be dumped by unfastening the bottom tie. Use of these bags will help speed up the unloading process, saving time and money for the fresh processors.

The total volume specification of 63,450 cubic inches for the 36-inch bulk bin currently included in the regulation does not allow any flexibility in the dimension of the container and the phrase "or containers deemed similar by the committee" lacks specificity and could result in confusion. The Committee believes that a more precise tolerance is needed so that there is no room for misinterpretation by the industry. The Committee, therefore, recommended removing the phrase

"and having a volume of 63,450 cubic inches, or containers deemed similar by the committee" and adding in its place provisions establishing a dimension tolerance of 2 inches for each dimension on all bulk containers used for shipping onions for peeling, chopping, and slicing. The 2-inch tolerance for each dimension on all bulk containers will allow handlers to pack onions for peeling, chopping, and slicing in containers with dimensions slightly different from the sizes specified in the regulation. Identifying a specific dimension tolerance in the regulation will prevent misunderstandings, and provide handlers packing flexibility. The addition of the container dimension tolerance recognizes the difficulty in producing containers with precise measurements all of the time.

The Committee recommended that the regulation specify that only 3-inch and larger onions be shipped for these purposes because smaller onions cannot be processed efficiently using available machinery. However, the provisions under which this action is being implemented do not authorize the establishment of a minimum size different than the 1-inch minimum currently in place for all shipments. Therefore, this recommendation is not being implemented. Lastly, minor changes are being made to the handling regulation for clarity.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 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 80 producers of South Texas onions in the production area and 37 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Most of the handlers in South Texas are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 1998-99

marketing year, onions produced in the production area were shipped by the industry's 37 handlers with the average and median volume handled being 147,669 and 102,478 fifty-pound bag equivalents, respectively. In terms of production value, total revenues from the 37 handlers were estimated to be \$43.7 million, with average and median revenues being \$1.1 million, and \$820,000, 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 the 37 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 80 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 \$500,000.

This rule revises the container requirements for onion shipments for peeling, chopping, and slicing currently prescribed under the South Texas onion marketing order. Shipments of onions for these purposes will be permitted in bulk loads, 48-inch deep bulk bins, and tote bags, in addition to the currently approved 36-inch deep bulk bin. A dimension tolerance for the bulk containers will also be added. All handlers shipping onions for peeling, chopping, and slicing will continue to be required to meet grade, size, inspection, and safeguard requirements.

This rule change will allow South Texas onion handlers to supply existing markets, may open up new markets to satisfy fresh processor demand, and may allow the industry to be more competitive in the marketplace. Allowing shipments of onions to fresh processors in bulk loads, 48-inch bulk bins, and tote bags, in addition to the

current 36-inch deep bulk bin, is expected by the Committee to double the shipments of Texas onions to fresh processed buyers. The increase in shipments is expected because the changes will allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to compete with other suppliers of onions for fresh processing.

At the meetings, the Committee discussed the impact of these changes on handlers and producers and believed that the benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities. The increased shipping flexibility is expected to be equally beneficial to all shippers regardless of size.

An alternative to this action would be to maintain the status quo, however, the Committee believes that the current regulation does not address the needs of handlers desiring to expand their fresh process onion marketing efforts. The Committee believes that the regulations should be modified to address these needs. The Committee further believes that not allowing different types of bulk shipments for peeling, chopping, and slicing will be detrimental to the South Texas onion industry. Allowing shipments of onions in additional bulk bins and in bulk loads will meet the industry's objective of marketing more onions. These changes should provide the industry with additional marketing opportunities and should allow the industry to be more competitive.

Currently, all handlers making onion shipments for relief, charity, processing, experimental purposes, or peeling, chopping, and slicing are required to apply for and obtain a Certificate of Privilege from the Committee to make such shipments. No additional reporting burden is estimated in making such applications because all 37 of the handlers in the Texas onion industry routinely apply each season for these certificates and this is expected to continue. However, this action will impose additional reporting requirements on the 37 onion handlers. Because this action is expected to foster increased shipments, the handlers are expected to file more Reports of Special Purpose Onion Shipments. This report accompanies each shipment and takes about .083 hours to complete. It is used to verify proper disposition of the onions. Currently, each of the 37 handlers ship approximately 15 loads of onions for special purposes. The Committee estimates that this rule change will double the number of shipments going to these outlets to 30 loads per handler, which will result in

an estimated burden to the previously-mentioned 37 handlers of about 92 hours.

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 accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and are being assigned OMB No. 0581-0187. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meetings were widely publicized throughout the onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the October 19, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 17 members, of which 10 are producers and 7 are handlers. Also, the Committee has subcommittees to review certain issues and make recommendations to the Committee. The subcommittee met on October 12, 1999, and discussed this issue in detail. The meeting was a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses. A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <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.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS has obtained emergency approval for a new information collection request for Onions Grown in South Texas, Marketing Order No. 959.

*Title:* Onions Grown in South Texas, Marketing Order No. 959.

*OMB Number:* 0581-New.

*Type of Request:* New collection.

*Abstract:* Marketing order programs provide an opportunity for producers of fresh fruits, vegetables, and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of good quality produce and adequate returns to producers. Under the Act, industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order's operations and issue regulations recommended by a committee of representatives from each commodity industry.

The South Texas onion marketing order, which has been operating since 1961, authorizes the issuance of grade, size, quality, pack, and container requirements. The order also has authority for research and development projects. Regulatory provisions apply to onions shipped within and out of the area of production to any market, except those specifically exempted by the marketing order. Pursuant to section 8e of the Act, import grade and size requirements are implemented on onions imported into the United States.

The order, and rules and regulations issued thereunder, authorize the Committee, the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions. The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the South Texas onion marketing order program.

The Committee has developed forms as a convenience to persons who are required to file information with the Committee that is needed to carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order, and the rules and regulations issued thereunder. South Texas onions are shipped from March 1 through June 4 and these forms are used accordingly.

The information collected would be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

This collection consists of a requirement for handlers to file a Report

of Special Purpose Onion Shipments with the Committee when shipping onions for fresh processing outlets. Shipments of South Texas onions for special purposes are exempt from certain requirements under the order. However, onions for peeling, chopping, and slicing must meet grade, size, inspection, and safeguard requirements of the order. Use of this form is authorized under § 959.322(g)(4). The Report of Special Purpose Onion Shipment would be completed for each load of onions for special purposes, including onions for peeling, chopping, and slicing, by each of the 37 reporting handlers. The estimated annual burden hours is about 92 hours.

The Committee believes that to improve returns to producers and handlers, handlers should be encouraged to develop new outlets. This action is expected to encourage additional onion shipments by allowing handlers to ship onions for fresh processing using different methods of shipping. The information supplied by the applicant handler would provide the Committee with information necessary to ensure that the onions are disposed of as intended.

The information collection burden is as follows:

*Estimate of Burden:* Public reporting burden for the Report of Special Purpose Onion Shipment form is estimated to average 5 minutes per response.

*Respondents:* Handlers of onions grown in South Texas.

*Estimated Number of Respondents:* 37.

*Estimated Number of Responses per Respondent:* 30 annually.

*Estimated Total Annual Burden on Respondents:* 92 hours.

*Comments:* Comments are invited on: (1) Whether the new collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0187 and South Texas Onion Marketing Order No. 959, and be sent to the USDA in care of the Docket Clerk at

the address above. All comments received will be available for public inspection during regular business hours at the same address.

Because there was not enough time for a normal clearance procedure, AMS has obtained temporary approval from OMB for this new collection for the upcoming shipping season expected to begin in early March 2000. At a later time, the new collection will be added to the collection currently approved for use under OMB Number 0581-0178.

All responses to this notice will be summarized and included in the request for OMB approval of 0581-0178. All comments will also become a matter of public record.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the container requirements for shipping onions to fresh processors currently prescribed under the South Texas onion marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements for shipping onions to fresh processors and provides additional marketing flexibility for the industry to ship onions; (2) this rule needs to be in place for the 2000 season beginning March 1, 2000, so the industry may take advantage of the relaxed requirements; (3) the Committee unanimously recommended these changes at public meetings, and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period, which is considered appropriate in view of this above, and any comments received will be considered prior to finalization of this rule.

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

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

**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 (f)(3)(i) is redesignated as (f)(3) and revised to read as follows:

**§ 959.322 Handling regulation.**

\* \* \* \* \*

(f) \* \* \*

(3) *Peeling, chopping, and slicing.*

Upon approval of the committee, onions for peeling, chopping, and slicing may be shipped in bulk loads, bulk bins with inside dimensions of 47 inches × 37½ inches × 36 or 48 inches deep, and tote bags 36 inches by 36 inches by 66 inches long, with a weight capacity of approximately 2,000 pounds. A tolerance of 2 inches for each dimension shall be permitted. Such shipments shall be exempt from paragraph (c) of this section, but shall be handled in accordance with the requirements of paragraphs (a), (b), (d), and (g) of this section.

\* \* \* \* \*

Dated: February 10, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–3655 Filed 2–15–00; 8:45 am]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF JUSTICE****Immigration and Naturalization Service****8 CFR Part 214**

[INS No. 2038–99]

RIN 1115–AF68

**Adding Cleveland, Ohio, Ft. Myers, Florida, and San Jose, California to the List of Ports-of-Entry Accepting Applications for Direct Transit Without Visa**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations by adding Cleveland, Ohio, Ft. Myers, Florida, and San Jose, California, to the list of ports-of-entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, an alien must make application for admission to the United States for direct transit without visa. This change is

necessary to accommodate the increase in international commerce serving Cleveland, Ohio, Ft. Myers, Florida, and San Jose, California.

**DATES:** This rule is effective February 16, 2000.

**FOR FURTHER INFORMATION CONTACT:**

Robert F. Hutnick, Assistant Chief Inspector, Immigration and Naturalization Service, 425 I Street, NW, Room 4064, Washington, DC 20536, telephone number (202) 616–7499.

**SUPPLEMENTARY INFORMATION:****What Does This Final Rule Change?**

This final rule adds Cleveland, Ohio, Ft. Myers, Florida, and San Jose, California, to 8 CFR 214.2(c)(1) as ports-of-entry where, except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without visa must be made.

**Why Is the Service Making This Change?**

The Cleveland Hopkins International Airport in Cleveland, Ohio, recently began daily nonstop service between Cleveland and the United Kingdom's London Gatwick Airport. Passengers wishing to travel between Canada and London via Cleveland will benefit from this rule change. The Southwest Florida International Airport in Ft. Myers, Florida, has added additional international passenger service, specifically arrivals transiting between the German Federal Republic and Mexico. In addition, the designation of the airport at San Jose, California, as a transit without visa port-of-entry will allow carriers to accept passengers transiting between the Far East and Latin America. By allowing these airports to accept applications for direct transit without visa, they will be able to accommodate these transit air passengers.

**Administrative Procedures Act**

Compliance with 5 U.S.C. 553(a)(2) as to notice of proposed rulemaking and delayed effective date is unnecessary as this rule relates to agency management, and accordingly, is not a “rule” as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore the reporting requirement of 5 U.S.C. 801 does not apply.

**Regulatory Flexibility Act**

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has

reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely allows the Cleveland, Ohio, Ft. Myers, Florida, and San Jose, California, airports to accommodate individual international passengers by providing authority to carriers to accept applications for direct transit without visa.

**Executive Order 12866**

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulatory Planning and Review” section 1(b), Principles of Regulation. This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by OMB.

**Executive Order 13132**

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

**List of Subjects in 8 CFR Part 214**

Administrative practice and procedure, Aliens, Passports, and Visas.

Accordingly, part 214 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

**PART 214—NONIMMIGRANT CLASSES**

1. The authority citation for part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

**§ 214.2 [Amended]**

2. In § 214.2, paragraph (c)(1) is amended in the fourth sentence by:

a. Adding “Cleveland, OH,” immediately after “Christiansted, VI,”

b. Adding “Ft. Myers, FL,” immediately after “Fairbanks, AK,” and by

c. Adding “San Jose, CA,” immediately after “San Francisco, CA,”.