Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 316, 335, and 338

RIN 3206–AG19

Promotion and Internal Placement; Accelerated Qualifications

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise the Federal merit promotion program to give agencies greater flexibility to design internal merit selection procedures consistent with merit principles and other applicable laws, to assign employees to other positions appropriate to the appointments, and to utilize intensive training programs for employees to acquire qualifications at an accelerated rate. These changes are consistent with recommendations of the National Performance Review.

DATES: Comments must be submitted on or before April 22, 1996.

ADDRESSES: Send or deliver written comments to Leonard R. Klein, Associate Director of Employment, Office of Personnel Management, Room 6F08, 1900 E Street NW., Washington, DC 20415 (FAX 202–606–2329).

FOR FURTHER INFORMATION CONTACT: Lee Edwards on 202–606–0830, TDD 202–606–0023, or FAX 202–606–2329.

SUPPLEMENTARY INFORMATION: The National Performance Review (NPR) recommended changes in the way the Government operates. Consistent with the NPR recommendations, these proposals would streamline regulations to give agencies more authority to design internal merit selection procedures (merit promotion plans), assign employees to other positions, and utilize intensive training programs for employees to acquire qualifications at an accelerated rate. These proposals would revise the current merit promotion program requirements in 5 CFR part 335 published in the Federal Register on December 29, 1994 (59 FR 67121) and effective on January 1, 1995.

Merit Promotion Program

A continuing thread throughout the history of the merit promotion program has been the balancing of merit considerations and uniformity with agency need for flexibility to tailor programs to meet their organizational needs. Up to the 1950's, agencies could promote any employee who met minimum qualification standards. In 1950, agencies received a set of basic principles to observe in their promotion programs but still retained much latitude.

In 1959, the first real Federal Merit Promotion Program was established in response to employee, Presidential, and Congressional concerns over the limited use of systematic means of selection. For the first time, agencies were required to have specific promotion plans for the systematic and competitive consideration of employees for promotion. But the program continued to give agencies the flexibility to design programs to meet their needs.

In 1969, the program underwent a major revision to assure equitable consideration of qualified employees and selection of the most able, and to strengthen employee confidence in the fairness of the program. At that point, very detailed requirements were introduced concerning such matters as areas of consideration, methods of locating candidates, use of supervisory performance appraisals, evaluation methods to determine the best-qualified candidates, limits on use of written tests, limits on the number of best-qualified candidates that could be referred for selection, and training requirements for new supervisors.

In 1973, OPM began the process of easing back on such detailed requirements by providing more room for collective bargaining. Then in 1979, agencies were given broad authority to develop, negotiate, and manage their own promotion programs. Adoption of the revised program coincided with implementation of the Civil Service Reform Act of 1978, which expanded delegation of personnel authority to agencies and broadened the scope of collective bargaining. In this current proposal, OPM would continue to move in the same direction by further relaxing OPM detailed requirements but emphasizing the statutory platform underpinning agency merit staffing programs.

Several of the earlier program revisions were undertaken to emphasize the need for open competition and selection from among the best-qualified applicants. Those same principles are at the heart of this proposal, with the intent to foster and environment in which agencies feel free to develop different approaches to satisfy these merit considerations. Whether justified or not, some agencies feel OPM's guidance has boxed them into a set way of filling positions. The process has created delays in filling jobs and often is very labor and paper intensive, resulting in a lack of confidence in the system by both managers and employees.

While speed and efficiency in filling positions are critical to effective operations, the process must also be in accord with merit principles. One suggestion has been to allow managers to promote their ''logical'' candidates or anyone having an exceptional performance rating and dispense with open competition and comparison with other candidates. Not only does that proposal conflict with merit principles, but it is the very type of action that led to widespread complaints and subsequent adoption of the first set of program requirements in 1959.

This proposal is not intended to return agencies to the loose policies of that earlier era nor to sacrifice principles of merit and open competition. Instead, by eliminating most OPM operational requirements, we hope to encourage agencies to be more creative in developing legal practices appropriate to their unique needs, resulting in more timely promotions and greater confidence of managers and employees that deserving employees are promoted. Agencies, for example, could design their programs around unique needs, try different evaluation techniques, use automated systems, use a variety of ways to satisfy open competition, and involve managers in the process more. Furthermore, while some problems with the system are due to OPM requirements, others flow from agency rules. OPM hopes that this proposal would also generate agency initiatives to review and eliminate procedural burdens unrelated to merit and open competition.

Following is a discussion of each proposed regulation section.

Section 335.102

Agencies must continue to adopt promotion plans that provide for systematic and competitive selection from among the best-qualified candidates, based on job-related criteria, after fair and open competition. Agencies would consult or negotiate, as appropriate, with employees and unions in developing policies and practices that are accepted as fair and result in selections of the best-qualified candidates.

The foundation of agency promotion plans would be existing laws. Some of the major laws are:.

—Merit system principles, which include equal employment opportunity (5 U.S.C. 2301).
—Prohibited personnel practices (5 U.S.C. 2302).
—Reporting of certain job announcements to OPM (5 U.S.C. 3329) as implemented by 5 CFR 335.105.
—Consideration of employees absent because of military duty (38 U.S.C. chapter 43), compensable injury that does not exceed 1 year (5 U.S.C. 8151), or service with international organizations (5 U.S.C. 3582).
—Due weight for incentive awards (5 U.S.C. 3362).
—Results of performance appraisals (5 U.S.C. 4302).
—Minimum qualification requirements (5 U.S.C. 5105 and 16 U.S.C. 470h–4).
—Management's right to select or not select from among properly ranked and certified candidates and to select from other appropriate sources of candidates (5 U.S.C. 7106 and 5 CFR 7.1).
—Employment practices (including job analysis) and antidiscrimination policy (5 U.S.C. 7201–7204) as implemented by 5 CFR Part 300, Subpart A, and Part 720.

These laws are incorporated into a framework of seven requirements contained in revised § 335.102

Requirement 1 would require agencies to adopt merit staffing plans for selecting employees for advancement based solely on relative ability, knowledge, and skills after fair and open competition which assures that all receive equal opportunity. Agencies would be required to assure that promotion practices conform to the merit system principles. Agency accountability mechanisms, as recommended by the NPR, would appropriately contain a human resource management accountability component, including actions under merit staffing plans. To assist agencies in this effort, OPM is offering agencies training in the merit system principles and assistance in refocusing their accountability efforts on the principles.

Requirement 2 deals with competition requirements. At present, part 335 lists promotions and six other actions that must be competitive and six actions that agencies may except from competition. Over the last several years, OPM made several changes in these exceptions. For example, employees who accept voluntary downgrades are no longer required by OPM rules to compete to regain their former grade levels. Many employees are being encouraged to change jobs voluntarily to avoid reduction in force situations, and this change eliminated a barrier that discouraged career transitions.

The need for revisions and the rapidly changing circumstances brought about by widespread reorganizations and downsizing have convinced us that OPM no longer should specify very detailed coverage and exceptions. Agencies need the flexibility to respond to changing needs without seeking waivers or regulatory changes. At the same time, employees need assurance that merit is the focus of promotion programs.

This proposal would continue to require competition for positions at higher grades or with greater advancement potential than an employee previously held. Agencies could continue to select employees competitively for a training opportunity that results in placement in a target position.

This proposal would continue to provide for the noncompetitive promotion of employees whose position are upgraded to correct a classification error or implement a new classification standard. The exclusion of reduction in force actions also would remain unchanged.

As under the current program, agencies could except actions from competition where an employee previously held an equivalent position. Actions for brief periods could be excepted from competition, but the agency rather than OPM would determine the cut-off point for competition. Agencies could continue noncompetitive promotions for job reclassifications due to accretion of higher grade duties, but the higher grade position would have to absorb the duties of the old position.

Where agencies fill positions below the performance grade level, they could continue to provide for noncompetitive career ladder promotions. In addition, the proposal expands on the career ladder concept by adding the flexibility to permit noncompetitive movement to any position within an occupational group with a career ladder that does not exceed the journey level for that occupation.

While traditional career ladders have several advantages for both employee and manager, they focus entirely on individual positions and not on career fields or broad occupational needs of the agency. Employees selected under the same competitive process for employment in the same occupational grouping often are assigned to positions having different career ladders, or full performance levels. As a result, some employees in similar positions have to compete further for the same level of advancement that others receive noncompetitively.

Under this proposal, agencies could move employees noncompetitively within an occupational group to similar positions with a higher full performance level that does not exceed the journey level for most positions in that occupational group. Competition would be required for assignment to positions above the journey level.

The agency would determine journey levels on the basis of job classification standards. Journey level is the nonsupervisory full performance grade level at which most positions in that occupational grouping under the first level of supervision could be classified. The agency also would determine occupational groupings of similar or closely related positions based on position classified and qualification standards. An occupational grouping might include all positions in an occupational family, such as all positions in the GS–200 family. Or, the agency might set more limited groupings, such as all positions in the GS–235 series, or even more narrow.

Use of this option could expand placement opportunities for surplus employees as well as meet broader occupational needs of the agency.

Finally, this proposal would delegate to agencies the authority to adopt other exceptions in their merit staffing plans when they determine the actions would be consistent with the spirit and intent of merit principles. The exceptions must be made a part of an agency's merit staffing plan.

Requirement 3 continues existing requirements concerning recruitment and job announcements.

Requirement 4 addresses evaluation procedures. An issue that continues to arise is whether different procedures

may be used on the number of applicants. This proposal requires that selection be from among the best-qualified candidates, without any reference to numbers. Identification of the best qualified requires a qualitative review, either by the selecting official or others. This proposal does not specify how the agency determines which applicants are the best qualified, except to require that the evaluation be based on job-related requirements and be applied fairly and consistently. Within these parameters, each agency would determined the specific job-related evaluation procedure to use.

Examples of abbreviated processes that some agencies use to identify the best-qualified candidates from among small numbers of applicants: a selecting official distinguishes the best-qualified candidates based on a key knowledge, skill, or ability, and selects from that group; a subject matter expert certifies that the referred candidates are the best qualified based on job-related criteria.

Requirement 5 covers existing management selection options.

Requirement 6 covers complaints and corrective actions. The existing part 335 allows employee complaints under appropriate grievance procedures except that an employee may not grieve nonselection from among a group of properly ranked and certified candidates. We have continued that policy in this proposal.

An agency would be required to take corrective action where a violation of law, regulation, or agency plan has occurred. OPM plans to develop nonregulatory guidance to assist agencies in taking corrective action.

Requirement 7 continues existing recordkeeping requirements.

Section 335.103

Revised § 335.103 contains a provision that would enable an agency to request OPM approval to adopt policies different from those in 5 CFR part 335 if not in conflict with law. Individual agency programs or occupations may be unique or highly specialized, justifying a different approach. For example, an agency might wish to experiment with alternative dispute resolution techniques, instead of grievance procedures, to settle complaints about promotion actions. Also, agencies might seek exceptions for pilot programs under the Government Performance and Results Act (Pub. L. 103–62, August 3, 1993) to improve the management and efficiency of agency programs. In no circumstance, however, could the merit system principles, prohibited personnel practices, or other requirements of law be waived.

Section 335.104

The current § 335.104 sets minimum performance requirements for noncompetitive career ladder promotions. These promotions should rest on high performance levels, but OPM believes eligibility requirements are an appropriate agency responsibility (beyond existing OPM requirements such as qualification standards). Furthermore, the level of performance to be met is only one of several factors, such as the range of skills to be acquired, the existence of higher level work, and sufficient funds, that an agency might wish to address. We propose to delete § 335.104 and instead provide in § 335.102 that agencies will establish requirements for noncompetitive promotions.

Agency Authority To Promote, Demote, or Reassign

Inherent in the agency power to appoint employees is the power to assign employees to other duties, consistent with any applicable law (5 U.S.C. 301). However, the current 5 CFR 335.102 limits the extent to which agencies may promote, demote, or reassign certain employees in the competitive service.

OPM proposes to eliminate these restrictions and authorize agencies in revised § 335.101 to move employees to other positions consistent with the appointments under which the employees serve. The proposed change would enable agencies to utilize employees in other positions where needed and for employees to seek other opportunities. This action would primarily benefit employees under temporary appointment pending establishment of a register (TAPER). Other provisions would continue to apply, such as competition provisions of § 335.102, the reduction in force retention rights in 5 U.S.C. chapter 35, and the procedural protections and appeal rights relating to performance based and adverse actions under 5 U.S.C. chapters 43 and 75.

Vacancy Announcements

This is a reminder that § 335.105 implements 5 U.S.C. 3330, which requires that information be given to the public about certain job vacancy announcements. In addition, OPM has issued career transition assistance requirements in part 330, under which agencies must notify OPM of competitive service vacancies to be filled for more than 90 days when applications will be accepted from outside an agency's own work force.

Accelerated Qualifications

The former Federal Personnel Manual authorized agencies to establish training agreements under which employees could acquire qualifications for a higher grade position at an accelerated rate. These intensive training programs are traditionally used for critical shortage occupations at entry levels where employees are given accelerated training to obtain the necessary skills more quickly. The programs provide a valuable recruitment incentive in filling positions where qualified applicants are in extremely short supply.

To establish continuing agency authority for employees to acquire qualifications at an accelerated rate under intensive training programs, OPM proposes to add such authority to part 338. Related to this, 5 CFR 300.603(b)(6) prohibits more than two promotions in any 52-week period on the basis of a training agreement and requires OPM approval of a training agreement that provides for consecutive promotions in less than 1 year. (OPM proposed to abolish the year-in-grade waiting period [59 FR 30717, June 15, 1994, and 60 FR 2546, January 10, 1995] but has not acted on the proposal.)

Other Related Actions

Under the current 5 CFR § 335.101(b), generally a position change does not change an employee's tenure except as shown in § 316.703, which deals with status quo employees. These are primarily individuals who fail to qualify for career-conditional employment when their excepted or nonfederal positions are brought into the competitive service. They are retained as nonpermanent employees in tenure group III and are called status quo employees.

Section 316.703 requires agencies to change status quo employees to a different type of nonpermanent appointment in tenure group III when changing the employee to a different position. If the agency moves the employee back to the original position, it must change the employee back to status quo.

We propose to eliminate § 316.703 as unnecessary. This would mean that a status quo employee would remain under a status quo appointment regardless of any position change. The employee would not gain or lose any benefits by the elimination of § 316.703.

Another exception to the general rule that tenure is not affected by a position change is contained in § 335.101(c). This provides that a career-conditional employee becomes a career employee when promoted, demoted, or reassigned

to a position paid under chapter 45 of title 39, United States Code, which covers the Postal Service. This reference to title 39 positions is obsolete because the Postal Service was removed from the competitive service in 1971 by legislation. Since then, the Postal Service has operated under its own independent excepted service personnel system. Because these OPM regulations on competitive service appointments no longer apply to the Postal Service, we are eliminating the obsolete references in revised § 335.101(c) to positions paid under title 39.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Parts 316, 335, and 338

Government employees.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM proposes to amend parts 316, 335, and 338 of title 5, Code of Federal Regulations, as follows:

PART 316—TEMPORARY AND TERM EMPLOYMENT

1. The authority citation for part 316 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218. Sections 316.302 and 316.402 also issued under 5 U.S.C. 3112 and 3304(c), 22 U.S.C. 2506, 38 U.S.C. 2014, and E.O. 12721.

§ 316.703 [Removed]

2. Section 316.703 is removed.

PART 335—PROMOTION AND INTERNAL PLACEMENT

3. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–58 Comp., p. 218.

§ 335.104 [Removed and reserved]

4. Sections 335.101, 335.102, and 335.103 are revised and § 335.104 is removed and reserved, to read as follows:

§ 335.101 Position changes.

(a) Consistent with § 335.102 and, when applicable, part 319 of this chapter, an agency head is authorized to promote, demote, or reassign an employee to any competitive service position appropriate to the type of appointment under which the employee serves and consistent with all applicable statutory and regulatory requirements.

(b) The authority in this section includes time-limited promotion for a definite period. The return of an employee at any time to the position from which temporarily promoted, or a position of equivalent grade and pay, is not subject to the procedures in parts 351, 432, or 752 of this chapter if the agency had given the employee advance written notice of the conditions of the time-limited promotion.

(c) This section covers all types of appointments in the competitive service except temporary appointments not to exceed 1 year authorized by subpart D of part 316 of this chapter.

(d) A position change does not change an employee's competitive status or tenure except that:

(1) A career-conditional employee who is promoted, demoted, or reassigned to a position required by law to be filled on a permanent basis becomes a career employee; and

(2) A career employee who is promoted, demoted, or reassigned from a position required by law to be filled on a permanent basis becomes a career-conditional employees unless he or she has completed the service requirement for career tenure in § 315.201 of this chapter.

§ 335.102 Internal merit selection programs.

An agency head may promote, demote, and reassign competitive service employees in accordance with § 335.101, detail them in accordance with § 300.301 of this chapter, and reinstate and transfer individuals in accordance with part 315 of this chapter, only to positions for which the agency is administering a merit-based selection program that ensures a systematic means of competitive selection from among the best-qualified candidates available. These programs shall conform with all applicable law, including the following requirements.

(a) *Requirement 1.* Each agency must establish a merit staffing plan(s) for selecting employees for advancement base solely on relative ability, knowledge, and skills after fair and open competition which assures that all receive equal opportunity. The plans must be available in writing and list exceptions to competition. All actions are subject to the merit system principles of 5 U.S.C. 2301 and the prohibited personnel practices of 5 U.S.C. 2302. (5 U.S.C. 2301, 2302, 3301, 3341, and 3361)

(b) *Requirement 2.* (1) Competition is required in assignment or detail, for other than a limited specified period, to a position at a higher grade or with a higher full performance grade level than an employee previously held on a permanent basis. Selection requirements for training are defined in part 410 of this chapter.

(2) Competition does not apply to reduction in force actions under part 351 of this chapter, and to the upgrading of a position without significant change in an employee's duties and responsibilities due to issuance of a new classification standard or correction of an initial classification error.

(3) An agency may except (and must document in its merit staffing plan) other types of actions from competition that it determines are consistent with the spirit and intent of merit principles, including:

(i) Movement within the same occupational grouping from one position to another position that has a higher full performance grade level but does not exceed the established journey level of that occupational grouping. Journey level is the nonsupervisory full performance grade level at which most positions in that occupational grouping under the first level of supervision could be classified, as determined by the agency (or component) based on position classification standards. Occupational grouping is a group of similar or closely related positions, as determined by the agency (or component) based on position classification and qualification standards; and

(ii) The upgrading of an employee's position due to accretion of additional higher grade duties and responsibilities where the successor position absorbs the old position.

(4) A noncompetitive action under this part may be based on a previously held excepted service position only when held under another merit system with which OPM has an interchange agreement approved under § 6.7 of this chapter. A Senior Executive Service career appointee who is eligible for reinstatement under § 315.401 of this chapter may be noncompetitively reinstated or assigned to any position or grade in the competitive service for which qualified. Agencies are authorized to establish eligibility criteria for noncompetitive promotions.

(c) *Requirement 3.* Recruitment methods should be designed to attract qualified individuals from appropriate sources in an endeavor to achieve a diverse work force that represents all segments of society, including persons with disabilities. The area of recruitment should be sufficiently broad to attract quality candidates. Procedures must provide for consideration of

employees absent because of military duty, compensable injury that does not exceed 1 year, and service with international organizations, individuals on a re-employment priority list, and for any other reasons required by law or regulation or determined by the agency. Agencies must give advance notice to OPM of all competitive service positions to be filled for more than 90 days when applications will be accepted from an outside agency's own work force (5 U.S.C. 2301, 2302, 3330, 3402(a)(1)(A), 3582, 7201–7204, and 8151; 38 U.S.C. chapter 43; 5 CFR § 330.102, § 330.706, § 335.105, and part 720).

(d) *Requirement 4.* To be eligible for placement, a candidate must meet an appropriate provision of the applicable OPM qualification manual and any other legal requirements that apply. Evaluation criteria must be based on the requirements of the job to be filled and applied in a fair and consistent manner. In qualification and selection decisions, due weight, as determined by the agency, shall be given to performance appraisals and to any incentive awards or other performance recognition received by applicants. Competitive selection must be from among the best-qualified available candidates. The agency may determine how to identify the best-qualified candidates, but that identification may not be waived (5 U.S.C. 2301, 3301, 3362, 4302, and 5105; 16 U.S.C. 470h–4; 5 CFR part 300, subpart A).

(e) *Requirement 5.* Agency procedures must provide for management's right to select or not select from among properly ranked and certified candidates and to select from other appropriate sources of candidates (5 U.S.C. 7106; 5 CFR part 7.1).

(f) *Requirement 6.* An individual may seek redress, under applicable procedures, of a complaint relating to a promotion decision or action other than nonselection from a group of properly ranked and certified candidates. There is no right of appeal to OPM of individual promotion actions. An agency must take appropriate action to correct violations of the agency's merit selection procedures identified through grievances or any other means and shall follow OPM instructions concerning violations of statute of OPM regulation (5 U.S.C. 1103, 1104, and 7121; 5 CFR part 5).

(g) *Requirement 7.* Each agency shall maintain a record of each competitive action sufficient to allow reconstruction. These records may be destroyed after 2 years or after OPM has evaluated the program, whichever comes first, if the time limit for complaints has expired. The basis for each noncompetitive promotion must be documented on the personnel action (5 U.S.C. 1103 and 1104; 5 CFR part 5).

§ 335.103 Exceptions.

At the request of an agency head, OPM may approve an exception to any provision in this part when the exception is consistent with applicable statutory provisions and would enable the agency to address more effectively a specific agency need in the administration of merit staffing programs.

PART 338—QUALIFICATION REQUIREMENTS (GENERAL)

5. The authority citation for part 338 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

6. Subpart C consisting of § 338.301 is added to read as follows:

Subpart C—Accelerated Qualifications

§ 338.301 Accelerated qualifications through intensive training programs.

Agencies are authorized to establish training programs that provide intensive and directly job-related training to employees selected in accordance with parts 335 and 410 of this chapter. Such training may be substituted for all or part of the experience required by an OPM qualification standard. Agencies are not authorized to substitute such intensive training for minimum educational requirements established by OPM, or for licensing, certification, or other specific credentials required by OPM qualification standards.

[FR Doc. 96–3122 Filed 2–16–96; 8:45 a.m.]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Docket No. FV95–959–3PR]

Onions Grown in South Texas; Change in Regulatory Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would change the end of the regulatory period for onions grown in South Texas under Marketing Order 959 from June 15 to June 4 of each year. Terminating the handling regulation on June 4 would relieve restrictions on handlers who ship late season onions and help them become more competitive with handlers from non-marketing order areas without diminishing South Texas marketing order objectives. A corresponding change in the dates for the import regulation also would be made in a second document.

DATES: Comments which are received by March 21, 1996 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX 202–720–5698. 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, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: 210–682–2833; FAX 210–682–5942; or Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: 202–690–0464; FAX 202–720–5698.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR part 959), as amended, regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' This order is 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 proposing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposed 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