



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS-SC-16-0116; SC17-956-1 IR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule implements a recommendation from the Walla Walla Sweet Onion Marketing Committee (Committee) for a decrease in the assessment rate established for the 2017 and subsequent fiscal periods from \$0.22 to \$0.10 per 50-pound bag or equivalent of sweet onions handled. The Committee locally administers the marketing order and is comprised of producers and handlers of sweet onions operating within the area of production along with one public member. Assessments upon sweet onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], 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, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>.

Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1220 SW Third Ave, Suite 305, Portland, OR 97204; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 956, as amended (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the "order." The 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 (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Walla Walla sweet onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable sweet onions beginning January 1, 2017, and continue until amended, suspended, or terminated.

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. Such 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 decreases the assessment rate established for the Committee for the 2017 and subsequent fiscal periods from \$0.22 to \$0.10 per 50-pound bag or equivalent of sweet onions handled.

The Walla Walla sweet onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Walla Walla sweet onions, and one public member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2008 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment

rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 6, 2016, and unanimously recommended 2017 expenditures of \$93,250 and an assessment rate of \$0.10 per 50-pound bag or equivalent of sweet onions. In comparison, last year's budgeted expenditures were \$95,250. The assessment rate of \$0.10 is \$0.12 lower than the rate currently in effect. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

The major expenditures recommended by the Committee for the 2017 fiscal period include \$63,250 for administrative expenses, \$24,700 for research and promotion, \$4,000 for travel, and \$1,300 for miscellaneous/contingency. Budgeted expenses for these items in 2016 were \$57,300, \$36,200, \$1,500, and \$250 respectively.

The assessment rate recommended by the Committee was derived by multiplying anticipated shipments of Walla Walla sweet onions by various assessment rates. Applying the \$0.10 per 50-pound bag or equivalent assessment rate to the Committee's 325,000 50-pound bag or equivalent crop estimate should provide \$32,500 in assessment income. Thus, income derived from handler assessments and other

income (\$750), plus \$60,000 from the Committee's monetary reserve would be adequate to cover the recommended \$93,250 budget for 2017. Funds held in the reserve were \$237,354 as of November 30, 2016. The Committee estimates a reserve of \$177,354 at the end of 2017 fiscal period (December 31, 2017), which would be within the maximum permitted by the order of approximately two fiscal period's operational expenses (\$ 956.44).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the

assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2017 budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 businesses 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.

There are 9 handlers of Walla Walla sweet onions subject to regulation under the order and approximately 30 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having

annual receipts of less than \$7,500,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

During the 2016 marketing year, the Committee reported that approximately 304,500 50-pound bags or equivalents of Walla Walla sweet onions were shipped into the fresh market. Based on information reported by USDA's Market News Service, the average 2016 marketing year f.o.b. shipping point price for the Walla Walla sweet onions was \$19.55 per 50-pound equivalent. Multiplying the \$19.55 average price by the shipment quantity of 304,500 50-pound equivalents yields an annual crop revenue estimate of \$5,952,975. The average annual revenue for each of the 9 handlers is therefore calculated to be \$661,442 (\$5,952,975 divided by 9), which is considerably less than the Small Business Administration threshold of \$7,500,000. Consequently, all of the Walla Walla sweet onion handlers could be classified as small entities.

In addition, based on information provided by the National Agricultural Statistics Service (NASS), the average producer price for Walla Walla sweet onions for the 2011 through 2015 marketing years is \$16.24 per 50-pound

equivalent. NASS has not released data regarding the 2016 marketing year at this time. Multiplying the 2011-2015 marketing year average price of \$16.24 by the estimated 2017 marketing year shipments of 325,000 50-pound equivalents yields an annual crop revenue estimate of \$5,278,000. The estimated average annual revenue for each of the 30 producers is therefore calculated to be approximately \$175,933 (\$5,278,000 divided by 30), which is less than the Small Business Administration threshold of \$750,000. In view of the foregoing, the majority of Walla Walla sweet onion producers, and all of the Walla Walla sweet onion handlers, may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2017 and subsequent fiscal periods from \$0.22 to \$0.10 per 50-pound bag or equivalent of sweet onions. The Committee also unanimously recommended 2017 expenditures of \$93,250. The assessment rate of \$0.10 is \$0.12 lower than the previously established assessment rate. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

The quantity of assessable sweet onions for the 2017 fiscal period is estimated at 325,000 50-pound bags or equivalents. Thus, the \$0.10 rate should provide \$32,500 in assessment income. Income derived from handler assessments, along with interest, other income, and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2017 fiscal period include \$63,250 for administrative expenses, \$24,700 for research and promotion, \$4,000 for travel, and \$1,300 for miscellaneous/contingency. Budgeted expenses for these items in 2016 were \$57,300, \$36,200, \$1,500, and \$250 respectively.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Lower assessment rates were also considered, but not recommended, because they would have reduced the financial reserve more than desired.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2017 fiscal period could range between \$12.00 and \$27.00 per 50-pound bag or equivalent of sweet onions. Therefore, the estimated assessment revenue for the 2017 fiscal period as a percentage of total producer revenue is expected to range between 0.37 and 0.83 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 6, 2016, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments

on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Walla Walla sweet 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.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it 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) The 2017 fiscal period begins

on January 1, 2017, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable sweet onions handled during such fiscal period; (2) this action decreases the assessment rate for assessable sweet onions beginning with the 2017 fiscal period; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 956 is amended as follows:

PART 956 - SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 956.202 is revised to read as follows:

§ 956.202 Assessment rate.

On and after January 1, 2017, an assessment rate of \$0.10 per 50-pound bag or equivalent is established for Walla Walla sweet onions.

Dated: February 21, 2017

Bruce Summers
Acting Administrator
Agricultural Marketing Service

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