



**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 956**

[Doc. No.: AMS-SC-18-0028; SC-18-956-1]

**Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Amendments to Marketing Order 956**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Marketing Order No. 956, which regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The three amendments, which were proposed by the Walla Walla Sweet Onion Marketing Committee (Committee), were approved by producers in a referendum. This action also updates the term of office and staggered term limits for producers and handlers.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Geronimo Quinones, Marketing Specialist, or Patty Bennett, Director, 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 Email: [Geronimo.Quinones@usda.gov](mailto:Geronimo.Quinones@usda.gov) or [Patty.Bennett@usda.gov](mailto:Patty.Bennett@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 Email: Richard.Lower@usda.gov.

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing 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. Part 956 (referred to as 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 Committee, which is responsible for the local administration of the Order, is comprised of sweet onion producers and handlers operating within the area of production and a public member. Section 608c(17) of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the Order through this informal rulemaking action.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This

action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this final rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' " (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), 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. A 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 no later than 20 days after the date of entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110-246) amended section 8c(17) of the Act (7 U.S.C. 608c(17)), which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August 21, 2008). The amendment of section 8c(17) of the Act and additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders. USDA may use informal rulemaking to amend marketing orders based on the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and any other relevant matters.

The USDA's Agricultural Marketing Service (AMS) considered these factors and has determined that amending the Order as proposed could appropriately be accomplished through informal rulemaking.

The proposed amendments were unanimously recommended by the Committee following deliberations at two public meetings held on November 14, 2017, and March 3, 2018. A proposed rule soliciting comments on the amendment was issued on July 19, 2018, and published in the *Federal Register* on July 24, 2018 (83

FR 34953). One comment in support of the amendments was received. As a result, no changes to the proposed rule were made. A proposed rule and referendum order was then issued on December 11, 2018, and published in the *Federal Register* on December 14, 2018 (83 FR 64296). This document directed that a referendum among Walla Walla sweet onion producers be conducted December 17, 2018, through December 31, 2018, to determine whether they favored the proposals. To become effective, the amendments had to be approved by two-thirds of producers voting or by those producers voting in the referendum who represented at least two-thirds of the volume of Walla Walla sweet onions.

The amendments were favored by 100 percent of the producers voting and by 100 percent of the volume represented; both exceed the two-thirds requirement.

The amendments in this final rule change the Committee's size, quorum, and voting requirements. The amendments also change the term of office and stagger term limits for producers and handlers.

### **Final Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of 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 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 eight handlers of Walla Walla sweet onions subject to regulation under the Order and approximately 15 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) 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 (13 CFR 121.201).

The Committee reported that approximately 390,000 50-pound bags or equivalents of Walla Walla sweet onions were shipped into the fresh market in 2017. Based on information reported by USDA's Market News Service, the average 2017 marketing year f.o.b. shipping point price for the Walla Walla sweet onions was \$14.90 per 50-pound equivalent. Multiplying the \$14.90 average price by the shipment quantity of 390,000 50-pound equivalents yields an annual crop revenue estimate of \$5,811,000. The average annual revenue for each of the eight handlers is therefore calculated to be \$726,375 (\$5,811,000 divided by

eight), which is less than the SBA threshold of \$7,500,000. Consequently, all 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 2012 through 2016 marketing years is \$15.27 per 50-pound equivalent. NASS has not released data regarding the 2017 marketing year at this time. Multiplying the 2012-2016 marketing year average price of \$15.27 by the 2017 marketing year shipments of 390,000 50-pound equivalents yields an annual crop revenue estimate of \$5,955,300. The estimated average annual revenue for each of the 15 producers is therefore calculated to be approximately \$397,020 (\$5,955,300 divided by 15), which is less than the SBA 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.

The amendments, which were unanimously recommended by the Committee at two public meetings on November 14, 2017, and March 3, 2018, will change the Committee's size, quorum, and voting requirements. They also change the term of office and stagger term limits so that the term of office for producers and handlers will be two fiscal periods instead of three fiscal periods, and one-half instead of one-third of the producer and

handler member terms will expire every year.

These amendments will have no direct economic effect on producers or handlers. The number of producers and handlers operating in the industry has decreased, which makes it difficult to find enough members to fill positions on the Committee. Decreasing the Committee's size will make it more reflective of today's industry.

Therefore, it is anticipated that both small and large producer and handler businesses will benefit from these amendments.

The Committee considered alternatives to the proposals, including making no changes at this time. Due to changes in the industry, AMS believes the proposals are justified and necessary to ensure the Committee's ability to locally administer the program. Reducing the size of the Committee will enable it to fulfill membership and quorum requirements fully, thereby ensuring a more efficient and orderly flow of business.

#### **Paperwork Reduction Act**

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 OMB and assigned OMB No. 0581-0178 (Vegetable and Specialty Crops). No changes in those requirements are necessary as a result of this action.

Should any changes become necessary, they would be submitted to OMB for approval.

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

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 citizens to access Government information and services, and for other purposes.

The Committee's meetings were widely publicized throughout the Walla Walla sweet onion production area. All interested persons were invited to attend the meetings and encouraged to participate in Committee deliberations on all issues. The Committee meetings were public, and all entities, both large and small, were encouraged to express their views on these proposals.

A proposed rule concerning this action was published in the *Federal Register* on July 24, 2018 (83 FR 34953). Copies of the proposed rule were mailed or sent via facsimile to all Committee members and all interested parties. The proposed rule was made

available through the internet by USDA and the Office of the *Federal Register*. A 60-day comment period ending September 24, 2018, was provided to allow interested persons to respond to the proposals. One comment was received. The comment submitted was in support of the proposals; therefore, no changes were made to the proposed amendments.

A proposed rule and referendum order was then issued on December 11, 2018, and published in the *Federal Register* on December 14, 2018 (83 FR 64296). This document directed that a referendum among Walla Walla sweet onion producers be conducted December 17, 2018, through December 31, 2018, to determine whether they favored the proposals. To become effective, the amendments had to be approved by two-thirds of producers voting or by those producers voting in the referendum who represented at least two-thirds of the volume of Walla Walla sweet onions.

The amendments were favored by 100 percent of the producers voting and by 100 percent of the volume represented; both exceed the two-thirds requirement.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Richard Lower at his previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

**Order Amending the Order Regulating the Handling of Sweet Onions  
Grown in the Walla Walla Valley of Southeast Washington and  
Northeast Oregon <sup>1</sup>**

**Findings and Determinations**

*(a) Findings and Determinations Upon the Basis of the  
Rulemaking Record.*

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the Order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The Order, as amended, and as hereby further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The Order, as amended, and as hereby further amended, regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon in the same manner as, and is applicable only to, persons in the respective

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<sup>1</sup>This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

classes of commercial and industrial activity specified in the Order;

3. The Order, as amended, and as hereby further amended, is limited in application to the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The Order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of onions produced in the production area; and

5. All handling of onions produced in the production area as defined in the Order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

*(b) Determinations.*

It is hereby determined that:

1. Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping of onions covered under the Order) who during the

period June 1, 2017, through May 31, 2018, handled not less than 50 percent of the volume of such onions covered by said Order, as hereby amended, have signed an amended marketing agreement; and

2. The issuance of this amendatory order, further amending the aforesaid Order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period of June 1, 2017, through May 31, 2018, were engaged within the production area in the production of such onions. Such producers also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

3. The issuance of this amendatory order together with a signed marketing agreement advances the interests of growers of onions in the production area pursuant to the declared policy of the Act.

**Order Relative to Handling**

*It is therefore ordered,* that on and after the effective date hereof, all handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon shall be in conformity to, and in compliance with, the terms and conditions of the said Order as hereby proposed to be amended as follows:

The provisions amending the Order contained in the proposed rule issued by the Administrator on July 19, 2018, and published in the *Federal Register* on July 24, 2018, (83 FR 34953) will be and are the terms and provisions of this order amending the Order and are set forth in full herein.

**List of Subjects in 7 CFR Part 956**

Onions, Marketing agreements, Reporting and recordkeeping requirements.

Dated: April 2, 2019.

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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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. Amend § 956.20 by revising paragraph (a) to read as follows:

**§ 956.20 Establishment and membership.**

(a) The Walla Walla Sweet Onion Marketing Committee, consisting of seven members, is hereby established. The Committee shall consist of four producer members, two handler members, and one public member. Each member shall have an alternate who shall have the same qualifications as the member.

\* \* \* \* \*

3. Amend § 956.21 by revising to read as follows:

**§ 956.21 Term of office.**

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of grower and handler Committee members and their respective alternates shall be two fiscal periods beginning on June 1 or such other date as recommended by the Committee and approved by the Secretary. The terms shall be determined so that one-half of the grower membership and one-

half of the handler membership shall terminate each year. Members and alternates shall serve during the term of office for which they are selected and have been qualified, or during that portion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, or until their successors are selected and have qualified.

(b) The term of office of the initial members and alternates shall begin as soon as possible after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. One-half of the initial industry grower and handler members and alternates shall serve for a one-year term and one-half shall serve for a two-year term. The initial as well as all successive terms of office of the public member and alternate member shall be for three years.

(c) The consecutive terms of office for all members shall be limited to two two-year terms. There shall be no such limitation for alternate members.

4. Amend § 956.28 by revising paragraph (a) to read as follows:

**§ 956.28 Procedure.**

(a) Four members of the Committee shall constitute a quorum, and four concurring votes shall be required to pass any motion or approve any Committee action, except that

recommendations made pursuant to § 956.61 shall require five  
concurring votes.

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