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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Doc. No. AMS-SC-19-0115; SC20-956-1 FR]

**Sweet Onions Grown in Walla Walla Valley of Southeast
Washington and Northeast Oregon; Increased Assessment Rate**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Walla Walla Sweet Onion Marketing Committee (Committee) to increase the assessment rate established for the 2020 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724 or Email: Barry.Broadbent@usda.gov or GaryD.Olson@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, implements an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). 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. 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 locally administers the Order and is comprised of producers and handlers of Walla Walla sweet onions operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted

from Executive Order 12866 review. Additionally, because this 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. Under the 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 be applicable to all assessable Walla Walla sweet onions for the 2020 fiscal period 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 no later than 20 days after the date of the entry of the ruling.

This final rule increases the assessment rate from \$0.10 per 50-pound bag or equivalent, the rate that was established for the 2017 and subsequent fiscal periods, to \$0.15 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2020 and subsequent fiscal periods.

The 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 are familiar with the Committee's needs and with the costs of goods and services in their local area and are 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 2017 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate of \$0.10 per 50-pound bag or equivalent of Walla Walla sweet onions handled. That assessment rate continued in effect from fiscal period to fiscal period until modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 13, 2020 and unanimously recommended expenditures of \$84,200 and an assessment rate of \$0.15 per 50-pound bag or equivalent of Walla Walla sweet onions handled for the 2020 and subsequent fiscal periods. In comparison, last fiscal period's budgeted expenditures were \$99,800. The assessment rate of \$0.15 is \$0.05 higher than the rate previously in effect. The Committee recommended increasing the assessment rate to provide sufficient income, along with interest income and reserve funds, to cover all of the Committee's budgeted expenses for the 2020 fiscal period. Funds in the reserve are expected to be \$104,377 at the end of the 2020 fiscal period, which is within the Order's requirement of no more than approximately two fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2020 fiscal period include \$47,400 for administrative, \$26,000 for promotions, \$5,000 for travel, \$5,000 for research, and \$800 for miscellaneous expenses. Budgeted expenses for these items in 2019 were \$47,400, \$41,600, \$5,000, \$5,000, and \$800 respectively.

The Committee derived the recommended assessment rate by considering anticipated expenses, an estimated crop of 389,952 50-pound bags or equivalents of Walla Walla sweet onions, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at \$58,493 (389,952 50-pound bags or equivalent x \$0.15 assessment rate), along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses of \$84,200.

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 will be in effect 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 would be undertaken as necessary. The Committee's 2020 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final 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 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 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 approximately 15 producers of Walla Walla sweet onions in the regulated area and approximately 11 handlers of Walla Walla sweet onions who are subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than \$30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the national average producer price for non-storage onions for the 2011-2015 marketing years ranged from \$15.10 to \$22.10 per hundredweight. The average over those years was approximately \$18.30 per hundredweight, or \$9.15 per 50-pound equivalent. NASS suspended reporting of non-storage onion prices in 2015. With total production at 414,800 50-pound bags or equivalent for the 2019 season, and using the price range from the 2011-2015 years for which there is NASS data, the total 2019 farm gate value of the Walla Walla sweet onion crop could be estimated to be between \$6,264,688 and \$9,168,848. Dividing the crop value by the estimated number of producers (15) yields an estimated average receipt per producer of between \$417,646

and \$611,257 which is well below the SBA threshold for small producers.

USDA Market News reported free on board (FOB) price of \$1.00 per 50-pound bag or equivalent of Walla Walla sweet onions for the 2019 season. Multiplying this FOB price by total 2019 shipments of 414,880 50-pound bags or equivalent results in an estimated gross value of Walla Walla sweet onion shipments of \$8,712,480. Dividing this figure by the number of handlers (11) yields estimated average annual handler receipts of \$792,044, which is below the SBA threshold for small agricultural service firms. Therefore, using the above data and assuming a normal distribution, the majority of producers and all of the handlers of Walla Walla sweet onions may be classified as small entities.

This rule increases the assessment rate collected from handlers for the 2020 and subsequent fiscal periods from \$0.10 to \$0.15 per 50-pound bag or equivalent of Walla Walla sweet onions. The Committee unanimously recommended 2020 expenditures of \$84,200 and an assessment rate of \$0.15 per 50-pound bag or equivalent of Walla Walla sweet onions. The assessment rate of \$0.15 per 50-pound bag or equivalent is \$0.05 higher than the rate previously in effect. The volume of assessable Walla Walla sweet onions

for the 2020 fiscal period is estimated at 393,953 50-pound bags or equivalent. Thus, the \$0.15 per 50-pound bag or equivalent rate should provide \$58,493 in assessment income (389,952 50-pound bags or equivalent x \$0.15 assessment rate). Income derived from handler assessments, along with interest 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 2020 fiscal period include \$47,400 for administrative, \$26,000 for promotions, \$5,000 for travel, \$5,000 for research, and \$800 for miscellaneous expenses. Budgeted expenses for these items in 2019 were \$47,400, \$41,600, \$5,000, \$5,000, and \$800 respectively.

In recent years, the Committee has utilized its reserve funds to partially fund its budget expenditures. The Committee recommended increasing the assessment rate to fully fund budgeted expenditures without drawing down the funds held in reserve too quickly. This action will maintain the Committee's reserve balance at a level that the Committee believes is appropriate and is compliant with the provisions of the Order.

Prior to arriving at this budget and assessment rate the Committee discussed various alternatives, including

maintaining the current assessment rate of \$0.10 per 50-pound bag or equivalent rate and increasing the assessment rate to a different amount. However, the Committee determined that the recommended assessment rate will fully fund budgeted expenses and avoid drawing down reserves at an unsustainable rate.

This rule increases 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, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meeting was widely publicized throughout the Walla Walla sweet onion industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 13, 2020, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection 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 OMB and assigned OMB No. 0581-0178 Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any 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. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final 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 citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on March 31, 2020 (85 FR 17768). Copies of the proposed rule were also mailed or sent via e-mail to all Walla Walla sweet onion handlers. The proposal

was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending June 1, 2020, was provided for interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://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 will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 956

Marketing agreements, Reporting and recordkeeping requirements, Walla Walla sweet onions.

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

**PART 956 - WALLA WALLA 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, 2020, an assessment rate of \$0.15 per 50-pound bag or equivalent is established for Walla Walla sweet onions.

Bruce Summers,

Administrator,

Agricultural Marketing Service.

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