

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1997-98 and subsequent fiscal periods from \$0.003 to \$0.002 per hundredweight. The Committee unanimously recommended 1997-98 expenditures of \$44,400 and an assessment rate of \$0.002 per hundredweight of potatoes. The assessment rate of \$0.002 is \$0.001 less than the rate currently in effect. As the Committee's reserve exceeds the amount authorized in the order of two fiscal periods' operational expenses, the Committee voted to lower its assessment rate and use more of the reserve to cover its expenses.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but recommended that the major expenditures for the 1997-98 fiscal period should include \$18,800 for an agreement with the Washington State Potato Commission to provide miscellaneous services to the Committee and \$6,000 for compliance audits. The Committee also discussed the alternative of not decreasing the assessment rate. However, it decided against this course of action because continuation of the higher rate would not allow it to bring its operating reserve in line with the maximum amount authorized under the order. The reduced assessment rate will require the Committee to use more of its reserve for authorized expenses, and help bring the reserve within authorized levels.

Potato shipments for the year are estimated at 10,000,000 hundredweight, which should provide \$20,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum permitted by the order.

Recent price information indicates that the grower price for the 1997-98 marketing season will range between \$5.00 and \$8.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 1997-98 fiscal period as a percentage of total grower revenue will range between .025 and .04 percent.

This action will reduce the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers.

However, these costs will be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely

publicized throughout the Washington potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 7, 1997, 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 information on the regulatory and informational impacts of this action on small businesses.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Washington potato 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.

After consideration of all relevant matter 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 Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1997-98 fiscal period begins on July 1, 1997, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such 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 final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

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

§ 946.248 [Amended]

2. Section 946.248 is amended by removing "July 1, 1996," and adding in its place "July 1, 1997," and by removing "\$0.003" and adding in its place "\$0.002."

Dated: April 7, 1997.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.
[FR Doc. 97-9477 Filed 4-11-97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[FV96-956-3 FR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Container Marking Requirements and Special Purpose Shipment Exemptions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule (1) establishes container marking requirements for all shipments of Walla Walla Sweet Onions, and (2) establishes exemptions from assessment and container marking requirements for certain special purpose shipments of Walla Walla Sweet Onions. This rule will contribute to the efficient marketing of Walla Walla Sweet Onions and assist in program compliance. This rule was recommended by the Walla Walla Sweet Onion Committee (Committee), the agency responsible for the local administration of the marketing order for sweet onions grown in the Walla Walla Valley.

EFFECTIVE DATE: This final rule becomes effective April 15, 1997.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2043; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room

2525-S, Washington, DC 20090-6456; telephone: (202) 690-3919. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491; Fax (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 956 (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." This order is authorized by 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It 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 the 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 date of the entry of the ruling.

The Committee meets regularly throughout each season to consider recommendations for implementation, modification, suspension, or termination of the regulatory requirements for Walla Walla Sweet Onions. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations in conjunction with information submitted by the

Committee and from other industry and government sources.

This final rule (1) establishes container marking requirements for all shipments of Walla Walla Sweet Onions, and (2) establishes exemptions from assessment and container marking requirements for certain special purpose shipments of Walla Walla Sweet Onions. This rule will contribute to the efficient marketing of Walla Walla Sweet Onions and assist in program compliance, and was recommended by the Committee.

The Committee met twice to recommend adding container marking requirements and exemption for special purpose shipments to the marketing order's Subpart—Rules and Regulations provisions which are authorized in the order. Section 956.62 provides authority for the Committee, with the approval of the Secretary, to establish a method for fixing the markings of containers used in the packaging or handling of Walla Walla Sweet Onions. Further, based upon recommendations submitted by the Committee, § 956.63 provides authority for the Secretary to issue regulations in regard to assessment and container marking requirements to facilitate the handling of Walla Walla Sweet Onions for specified purposes.

The Committee met October 8, 1996, and recommended that all Walla Walla Sweet Onions produced in the production area and shipped to the fresh market be packed in containers marked with the "Genuine Walla Walla Sweet Onion" logo. The Committee also recommended exemption from assessments for sweet onions shipped to outlets specified in § 956.163.

At its next regularly scheduled meeting on November 12, 1996, the Committee reconfirmed the recommendations to establish container marking requirements and exempt specified shipments from assessments. At that meeting, the Committee also recommended exempting shipments specified in § 956.163 from container marking requirements. This rule combines the recommendations from the two Committee meetings into one rulemaking action.

The first action establishes container marking requirements in § 956.162. When the Walla Walla Sweet Onion industry began the process of formulating the order, a primary objective was to help promote product identity at wholesale, retail, and consumer levels, while at the same time deterring the marketing of non-sweet onions, or onions grown outside the production area, as Walla Walla Sweet Onions. The Committee is authorized to use a trademarked logo developed by

the Walla Walla Sweet Onion Commission and the Walla Walla Area Chamber of Commerce. The logo was developed and patented by the Walla Walla Sweet Onion Commission in December 1991, and currently is widely recognized by the onion industry.

The logo has been used by the Committee on promotional material and correspondence since the Committee obtained the license to use it on April 19, 1996. During both the subcommittee and the regular Committee meetings held to develop the recommendation for the regulation specified in § 956.162, all participants agreed that containers of Walla Walla Sweet Onions should be marked with the Committee's registered logo. Discussion during the meetings indicated that product identity, just as it was during the formulation of the order, continues to be a primary concern for both promotional and compliance purposes, and that effort should be made to add specific container marking regulations.

Committee members and other industry members agree that the use of the widely recognized logo will have a positive effect on the economic returns for the entire industry. One of the major problems for this industry has been the marketing of non-Walla Walla Sweet Onions, grown either in the traditional production area or outside of it, as Walla Walla Sweet Onions. It is the Committee's belief that, buyers, having purchased onions represented to them as being Walla Walla Sweet Onions, will rarely return to purchase more due to the lack of confidence such a sale fostered. This had, and still has, the effect of curtailing demand and reducing returns to producers.

Some of the handler members on the Committee recommended that this regulation allow handlers a period of time to utilize current packaging inventory before being required to use containers marked with the Committee's logo. These individuals expressed concern that some handlers may have significant container inventory with pre-printed graphics and other markings. Comments by handlers at the meeting indicated that the expense and burden of disposing of their container inventory, or, alternatively, adding decals, stickers, or stamps to the existing containers would be significant. The Committee agrees that, although handlers should make every effort to begin using the logo on containers as soon as possible, a grace period of two crop years allows adequate time for handlers to exhaust current container inventories. Section 956.162(b) provides such a grace period, subject to

Committee verification of handler container inventories.

The Committee recommended that the logo be clearly displayed as either a decal or an imprint on all containers, and that there should be no specific requirements for the size and color of the markings. As it is a common industry practice to ship onions in field pack bulk bins containing more than 500 pounds net weight from the field to road-side stands and farmers' markets where they are bagged for resale, the Committee recommended that the container marking requirements should not apply to shipments to these two small outlets. This exemption is specified in § 956.162(b). The proposed rule on this action incorrectly stated that this exemption was specified in § 956.163.

The container marking requirements will contribute to the efficient marketing of Walla Walla Sweet Onions by ensuring better product identification, building buyer confidence, increasing returns to the industry, and enhancing Committee compliance efforts. During the shipping season, the Committee manager frequently visits handling operations to ensure that these operations are complying with marketing order requirements. Requiring that the registered logo be displayed on the container will decrease the amount of time the manager spends tracing and tracking these onions to ensure that they are not non-sweet onions, or onions from outside the production area, being sold as Walla Walla Sweet Onions.

When considering § 956.163, which provides exemptions for shipments made to certain non-fresh use outlets, Committee members stated that most Walla Walla Sweet Onions are shipped into the fresh market. However, a small percentage of the onions are utilized for other purposes, including relief and charitable organizations, livestock feed, planting and plants, salad onions, processing, disposal of culls, and seed. For the exemption to apply to shipments made to relief or charitable organizations, the Committee included a provision in its recommendation that such shipments must be donated and not sold.

Section 956.163 clearly indicates which shipments are exempted from assessments and container marking requirements. This is intended to lessen the chance of confusion on the part of the regulated industry and alleviate potential administrative and compliance problems for the Committee, thereby facilitating the marketing of Walla Walla Sweet Onions.

Notice of this action was published in the **Federal Register** (62 FR 5933) on February 10, 1997. Interested persons were invited to submit written comments. The deadline for such comments ended March 12, 1997. No comments were received.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final 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 35 handlers of Walla Walla Sweet Onions subject to regulation under the order and approximately 60 producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000.

The region in which Walla Walla Sweet Onions are produced is a relatively small production area, encompassing only a portion of Oregon's Umatilla County and Washington's Walla Walla County. Produced on an estimated 850 acres, the industry's total 1996 Walla Walla Sweet Onion pack-out approximated 20,106,200 pounds. Based on assessments collected on 50-pound cartons or sacks, Committee records for the 1996 season show that 18 handlers shipped 500 or fewer units, eight handlers shipped between 500 and 5,000 units, four handlers shipped between 5,000 and 50,000 units, and five handlers shipped between 50,000 and 100,000 units.

Information provided by the Department's Fresh Fruit and Vegetable Market News officials in Yakima, Washington, indicates that 1996 F.O.B. prices on jumbo Walla Walla Sweet Onions, packed in 50-pound cartons, ranged from a high of \$16.00 early in the season to a low at the end of the season of \$10.00. On the other end of the scale, medium Walla Walla Sweet Onions, packed in 50-pound mesh sacks, ranged from early season, high returns of

\$14.00 per sack down to a low at the season's conclusion of \$6.00 per sack. Handlers have stated that packing costs average between \$4.00 and \$5.00 per 50-pound carton, and around \$3.00 per 50-pound sack. Committee records indicate that individual farms currently have acreage dedicated to the production of Walla Walla Sweet Onions in the range from 1 to 160 acres.

About 25 of the 35 regulated handlers of Walla Walla Sweet Onions are also producers and generally pack their own onions in the field while harvesting them. These onions are usually marketed direct to consumers through road-side stands and farmers' markets or through mail order sales. Only about 10 of these handlers own and operate commercially sized packing facilities and market the majority of their onions through large wholesale and retail outlets. Based on current information, the majority of Walla Walla Sweet Onion handlers and producers may be classified as small entities.

The only alternative to the proposal discussed at the meetings was to not recommend the rulemaking action at all. The Committee determined that such an alternative would not be acceptable to the industry because of the significant benefits expected as a result of these regulations. Without container marking requirements, the Committee believes that the current marketing and compliance problems, basic reasons behind the promulgation of the marketing order, will not be alleviated. As for the foregoing special purpose shipment exemptions, the Committee concluded that the absence of a list of shipments exempt from assessments and container marking requirements would perpetuate confusion and compliance problems, as well as increase the economic, reporting and recordkeeping burden on handlers.

This final rule provides that containers of Walla Walla Sweet Onions for shipment to fresh markets be marked with the Committee's registered logo, and that specified shipments of Walla Walla Sweet Onions be exempt from such container marking requirements and from assessments. This action will not impose any additional reporting or recordkeeping requirements on either small or large handlers of Walla Walla Sweet Onions. Additionally, the benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

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. 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 production area. All interested persons were invited to attend the meetings. The Committee actively seeks participation in its deliberations at all of its meetings. Both the October 8 and November 12, 1996, meetings were open to the public and representatives of both large and small entities expressed their views on these and related issues. The majority of the Committee, composed of six producers and three handlers, as well as a public member and respective alternates for each position, represent small entities. Additionally, in the proposed rule published in the **Federal Register** (62 FR 5933) on February 10, 1997, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses. A copy of the proposal was also made available on the Internet by the U. S. Government Printing Office. The comment period ended March 12, 1997, and no comments were received concerning the impacts of this action on small businesses.

After consideration of all relevant matter 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 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 1997 shipping season begins in June; (2) handlers are well aware of this action which was discussed at two open public meetings which were widely publicized in the production area; and (3) a proposed rule was published on this action and provided for a 30-day comment period. No comments were received.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and record keeping 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. New sections 956.162 and 956.163 are added to Subpart—Rules and Regulations to read as follows:

§ 956.162 Container markings.

Effective April 15, 1997, no handler shall ship any container of Walla Walla Sweet Onions except in accordance with the following terms and provisions:

(a) Each container of Walla Walla Sweet Onions shall be conspicuously marked with the "Genuine Walla Walla Sweet Onion" logo. The marking may be in the form of a decal or a stamped imprint of any color and size: *Provided*, That the decal or stamped imprint must be placed in plain sight and easy to read.

(b) Walla Walla Sweet Onions may be handled not subject to the marking requirements of this section when handlers ship such onions pursuant to § 956.163, or ship such onions in field packed bulk bins containing more than 500 pounds net weight for sale to roadside stands and farmers' market operators for repacking and direct consumer sale: *Provided*, That subject to Committee verification of handler container inventories, handlers may use their existing inventories of unmarked containers until April 15, 1999.

§ 956.163 Handling for specified purposes.

(a) Assessment and container marking requirements specified in this part shall not be applicable to shipments of onions for any of the following purposes:

(1) Shipments of Walla Walla Sweet Onions for relief or to charitable institutions: *Provided*, That such shipments must be donated and not sold in order for this exemption to apply;

(2) Shipments of Walla Walla Sweet Onions for livestock feed;

(3) Shipments of Walla Walla Sweet Onions for planting and for plants;

(4) Shipments of Walla Walla Sweet Onions as salad onions;

(5) Shipments of Walla Walla Sweet Onions for all processing uses including, pickling, peeling, dehydration, juicing, or other processing;

(6) Shipments of Walla Walla Sweet Onions for disposal;

(7) Shipments of Walla Walla Sweet Onions for seed.

(b) [Reserved]

Dated: April 7, 1997.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 97–9479 Filed 4–11–97; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 982

[Docket No. FV96–982–2 FIR]

Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1996–97 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell hazelnuts for the 1996–97 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market. The percentages are intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts and provide reasonable returns to producers. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: May 14, 1997.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., Room 369, Portland, OR 97204; telephone (503) 326–2055 or Mark A. Slupek, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 205–2830. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; FAX (202) 720–5698.