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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[FV96-956-3 PR]

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: Proposed rule.

SUMMARY: This rule would establish container marking requirements for all shipments of Walla Walla Sweet Onions, and establish exemptions from assessment and container marking requirements for certain special purpose shipments of Walla Walla Sweet Onions. This rule would 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.

DATES: Comments must be received by March 12, 1997.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, South Building, 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: 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 proposed 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 proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. If adopted, the proposed rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

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.

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, section 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 proposed § 956.163.

At its next regularly scheduled meeting 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 proposed rule combines the recommendations from the two Committee meetings into one rulemaking action.

The first proposal would establish in § 956.162 container marking

requirements under the order. When the Walla Walla Sweet Onion industry began the process of formulating Marketing Order 956, 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. Provisions regarding container markings are specified in proposed § 956.162.

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 this proposed rule, 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, is still a primary concern for both promotional and compliance purposes, and that steps should be taken to add specific container marking regulations.

Committee members, as well as industry participants at the meeting, agreed that the use of a widely recognized logo would 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. Committee members believe that, after purchasing onions represented to them as being Walla Walla Sweet Onions, buyers would rarely return to purchase more due to the lack of confidence such a sale had 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 the proposed regulation allow handlers a period of time to utilize current packaging inventory before being required to use containers 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 agreed 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 would allow adequate time for handlers to exhaust current container inventories. Proposed § 956.162(b) provides such a grace period for handlers, 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 requirement should not apply to shipments to these two small outlets. This exemption is specified in proposed § 956.163.

The container marking requirement would 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 should decrease the amount of time the manager spends tracing and tracking these onions to ensure that they are not onions from outside the production area being sold as Walla Walla Sweet Onions.

The Committee's second recommendation would add § 956.163 providing 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.

Proposed § 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities.

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 marketing 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 ranging 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 this proposal discussed at the meetings was to not recommend the additions 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 the proposed regulations. Without container marking requirements, the Committee believes the current marketing and compliance problems, basic reasons behind the promulgation of the marketing order, would 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 proposed rule would provide 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 would 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 proposed 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, three handlers, and a public member, represent small entities. Additionally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 956 be 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. In part 956, new §§ 956.162 and 956.163 are added to read as follows:

§ 956.162 Container markings.

Effective (*Insert date one date after day of publication of the final rule in the Federal Register*), 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 (*Insert date two years after publication after the effective date of the final rule*).

§ 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.

Dated: February 4, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97-3137 Filed 2-7-97; 8:45 am]

BILLING CODE 3410-02-P

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580-AA51

Regulations Issued under the Packers and Stockyards Act: Poultry Grower Contracts, Scales, Weighing

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Agency is considering the need for issuing substantive regulations to address concerns in the poultry industry with respect to contract payment provisions tied to the performance of other growers, with respect to feed deliveries to contract