Proposed Rules

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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

[Docket Nos. 98AMA–FV–956–1;FV98–956–1]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendment of Marketing Agreement and Order No. 956

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and opportunity to file exceptions.

SUMMARY: This recommended decision invites written exceptions on proposed amendments to the marketing agreement and order for sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon. The proposed amendments would broaden the scope of the order by adding authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, a proposal is included to make a minor change in the Walla Walla Sweet Onion Committee (committee) name. The committee is responsible for local administration of the order. These proposals are intended to improve the operation and functioning of the Walla Walla sweet onion marketing order program.

DATES: Written exceptions must be filed by October 23, 1998.

ADDRESSES: Written exceptions should be filed with the Hearing Clerk, U.S. Department of Agriculture, room 1081–S, Washington, DC 20250–9200, Facsimile number (202) 720–9776. Four copies of all written exceptions should be submitted and they should reference the docket numbers and the date and page number of this issue of the **Federal Register**. Exceptions will be made available for public inspection in the Office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, Washington, D.C. 20250–0200; telephone: (202) 720–1509, or Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491; Fax (202) 205–6632.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 25, 1998, and published in the April 1, 1998, issue of the **Federal Register** (63 FR 15787).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to the proposed amendment of Marketing Agreement and Order No. 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), and the opportunity to file written exceptions thereto. Copies of this decision can be obtained from Kathleen M. Finn whose address is listed above.

This action is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the ''Act,'' and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The proposed amendment of Marketing Agreement and Order No. 956 is based on the record of a public hearing held in Walla Walla, Washington, on April 7, 1998. Notice of this hearing was published in the **Federal Register** on April 1, 1998. The notice of hearing contained proposals submitted by the committee.

The committee's proposed amendments would add the authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions. In addition, the committee proposed changing its name from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS), U.S. Department of Agriculture, proposed to allow such changes as may be necessary to the order, if any or all of the above amendments are adopted, so that all of its provisions conform with the proposed amendment.

At the conclusion of the hearing, the Administrative Law Judge fixed May 8, 1998, as the final date for interested persons to file proposed findings and conclusions or written arguments and briefs based on the evidence received at the hearing. None were filed.

Material Issues

The material issues of record addressed in this decision are as follows:

(1) Whether to add the authority for grade, size, quality, maturity, and pack regulations, mandatory inspection, marketing policy statements, and minimum quantity exemptions; and

(2) Whether to change the committee name to the Walla Walla Sweet Onion Marketing Committee.

Findings and Conclusions

The findings and conclusions on the material issues, all of which are based on evidence presented at the hearing and the record thereof, are:

Material Issue Number 1

The Walla Walla sweet onion marketing order was promulgated in May 1995. The order sets forth the production area, which consists of designated parts of Walla Walla County, Washington, and designated parts of Umatilla County, Oregon. The order authorizes production and marketing research and marketing development and promotion projects, including paid advertising. In addition, the order authorizes the establishment of container marking requirements.

The promulgation record indicates that the production area was designated

as it currently is because it was determined that the unique soil and growing conditions in that highly localized area constituted the definitive and smallest geographical area recognized for the production of Walla Walla sweet onions. The proponents of the marketing order did not want any other geographic area to have the authority to use the ''Walla Walla Sweet Onion'' name. The promulgation hearing record indicated that growers in the Walla Walla Valley spent time and effort attempting to market the Walla Walla sweet onion as one that has unique characteristics because of the area where it is grown. Other growers and handlers were selling onions produced outside the production area and marketing them as Walla Walla sweet onions, which the record indicated was detrimental to the integrity of the name Walla Walla sweet onions.

In addition, the proponents of the marketing order believed that research and promotion efforts were imperative if the industry was to remain competitive with other sweet onion areas. The proponents of the marketing order believed that pooling available resources under a marketing order for marketing and production research and promotion would allow the industry to expand existing markets, create new ones, improve grower returns and compete with other sweet onion growing areas.

At the April 7, 1998, hearing on the proposed amendments to the marketing order, the record revealed that prior to the promulgation proceedings, the industry discussed including authority for quality and size regulations in the order at that time. However, because of consternation on the part of some growers about how quality and size regulations would impact their individual businesses, it was determined not to include the proposals at that time. The intent was that the aspects of the marketing order that were included during the promulgation proceeding would address the major problems facing the industry.

Testimony at the amendment hearing indicated that the committee now realizes that poor quality on the market is a serious marketing problem. The committee believes that market share is being lost because of inconsistent quality of Walla Walla sweet onions.

The committee has discussed quality problems since the order was promulgated and delegated some of the discussions to a compliance subcommittee. Recently, more serious discussions concerning quality issues revealed that the majority of the industry supported moving toward establishing minimum quality and size authority in the order.

Currently, the Walla Walla sweet onion industry is comprised of 71 industry members, 33 of which are registered handlers. There are a total of 64 growers, which includes growers who are also handlers. There are 7 commercial packinghouses that pack approximately 90 percent of the industry's onions.

In 1997, 43 percent of the Walla Walla sweet onion crop was shipped to the Pacific Northwest United States (U.S.); 20 percent to North Central U.S.; 12 percent to export markets; 10 percent to the Western/Southwestern U.S.; 7 percent to the Western U.S.; and 3 percent or less to the Rocky Mountain states, Southeast and Northeast U.S. and to roadside stands.

In 1988, 1,800 acres of Walla Walla sweet onions were planted. In 1997, 900 acres of Walla Walla sweet onions were planted and harvested. This represents a 50 percent decline in plantings since 1988. Similarly, acres harvested have decreased from 1,600 in 1988 to 900 in 1997. Yields during this period ranged from 600 50-pound containers to 820 50-pound containers per acre and averaged 734 50-pound containers. Production of Walla Walla sweet onions for 1988 was 1,280,000 50-pound containers. In 1997, production was 666,000 50-pound containers, a 48 percent decrease in production in the last 10 years.

Record testimony indicates that the major reasons for the decreases in plantings and production relate to uncertainty of grower returns, and the increased competition from other sweet onion production areas. These other sweet onion areas have established higher quality standards than Walla Walla sweet onions, and have made substantial promotional efforts that make the competition with these areas challenging. In addition, poor shelf life and storability problems concern many Walla Walla sweet onion industry members. Although research is being conducted on behalf of the committee to address these quality problems, it has been difficult to keep pace with the competition.

The record testimony indicated that large wholesale and chainstore markets have been lost due to quality and shelf life problems and that if these issues were addressed successfully, these markets could be regained. With a higher quality onion, more distant markets could be established and production could increase significantly.

The season-average f.o.b. prices for Walla Walla sweet onions have ranged from a low of $4.14 per 50-pound container in 1983 to a high of $11.95 per 50-pound container in 1991. Prices have generally trended upward, but have been highly variable, which suggests unsteady market conditions. The average price over an 18-year period is $7.45 per 50-pound container.

Since 1981, U.S. per capita consumption of fresh onions has increased from 10.7 pounds per year to 17.5 pounds per year. A witness testifying for the committee stated that other onion groups and associations are promoting various onion products and increasing consumer awareness and use of onions, in general. This grower-handler further stated that Walla Walla sweet onions still have a nationally recognizable name. He believed that if the industry could improve the quality of their onions and be consistent with that quality, the industry could stabilize their market, regain consumer and chainstore confidence, and gain some of this share of the market indicated by the increased per capita consumption of onions.

Walla Walla sweet onions are a type of sweet onion. Sweet onions are distinguished from other onion groups by their sweet taste and the absence of the strong, pungent taste of yellow, red, white and other storage onions and are usually only available during the spring and summer months. Generally, these onions do not store well and have a short shelf life. In addition, sweet onions usually bring higher prices than other onions.

Other sweet onion growing areas that compete with Walla Walla sweet onions at some time during its season are: Georgia Vidalia Onions; Texas hybrid 1015Y's (spring and summer crops), Maui Sweets from Hawaii, and New Mex. Sweets from New Mexico.

Statistical data shows that Vidalia and Maui Sweet onions have increased their acres harvested while others have declined. Texas has the largest volume of acres harvested (average—14,839 acres) while Maui has the smallest (average—142 acres). Surprisingly, these two onion areas have the lowest yield per acre. Although yields in all onion producing areas are highly variable, New Mexico and Walla Walla have the highest yields.

Texas, New Mexico and Vidalia sweet onions have the highest production, with Vidalia sweet onions experiencing the most dramatic increase in production in recent years. Walla Walla and Maui onions have the lowest production, mostly due to the amount of acres planted in recent years.

Maui onions' f.o.b. prices are the highest among the sweet onion

producing areas with an average price of $43 per 50-pound container over the last 18 years. Vidalia onions are second with an average price of $14 per 50-pound container for a nine-year period. These two onion groups have clearly differentiated their production from the other sweet onion groups and are receiving premium prices. These higher prices may be based on superior quality and taste. However, these premium prices demonstrate the marketing potential for other sweet onion producing areas. Walla Walla sweet onions averaged $7.50 per 50-pound container during this same period.

Comparing Vidalia onions with Walla Walla sweet onions for the nine-year period that Vidalia onion data has been available, Vidalia onion prices have always been higher than Walla Walla sweet onion prices. The difference in f.o.b prices ranges from a low of $1.50 per 50-pound container in 1994 to a high of $9.90 per 50-pound container in 1990. The average difference between the two prices is $5.

Crop value statistics (based on price and production) for the sweet onion producing areas show that while Maui onions receive the highest prices, its total crop value is the lowest of the six producing areas due to its low level of production. Vidalia and New Mexico onion crop values have been increasing, while Texas, Maui, and Walla Walla's crop values have been stagnant or slowly declining. The high crop values of Vidalia onions are the result of increasing levels of production and higher prices.

A witness for the committee testified that poor quality and shelf life of Walla Walla sweet onions limits marketing firms to distribute their products into the nearer markets, particularly the Pacific Northwest. The grower-handler testified that these shipping patterns tend to saturate these markets. If quality and shelf life were improved, more product could be shipped outside of the Pacific Northwest area and thereby, increase production and improve crop values of Walla Walla sweet onions.

Record testimony indicates that the potential exists for Walla Walla sweet onions to become more competitive with other sweet onion growing regions. A witness for the committee testified that he believes that part of the Vidalia onion industry's success has been due to the proximity of the growing area to a large population base on the East Coast. However, if the quality of Walla Walla sweet onions was improved, more onions could be shipped to those areas where sweet onions are widely accepted by consumers, which would result in an increase in total production of Walla Walla sweet onions.

The season for Walla Walla sweet onions generally begins in middle or late June and continues until the end of July. The season is approximately 6 weeks long. The Department's Market News Service collects data on Walla Walla sweet onions. Prices are published for jumbo and medium 50-pound sacks and cartons. This data shows that in most seasons, the prices start relatively high. As the season progresses, prices generally fall. The high prices at the beginning of the season are due to the low supply of sweet onions at that time of the season and the high demand as summer approaches. The quality at the beginning of the season sets the market tone for the remainder of the season. If quality is high at the beginning of the season, this makes a favorable impression on receivers as well as consumers. With high quality onions at the start of the season, consumers are more willing to become repeat customers. However, if quality is low at the beginning of the season, receivers as well as consumers will be disappointed. This low quality will result in consumers shopping for alternative sweet onions and they will not be repeat purchasers.

This seasonal price behavior where prices start high and then fall may cause producers to harvest onions before they are fully matured. This may result in poor quality onions being sold on the market which tends to make an unfavorable impression on consumers, supermarkets, and other outlets that handle Walla Walla sweet onions.

Most Walla Walla onions meet U.S. No. 2 grade but the majority do not meet U.S. No. 1. Testimony revealed that the committee would not make a recommendation to impose a minimum grade requirement that would be difficult for most handlers to make and would result in a higher volume of onions being unmarketable. Initially, the committee would likely recommend a minimum grade, less than a U.S. No. 1, such as a modified U.S. Commercial, with stronger maturity requirements. This would enable handlers and growers to modify their operations in a cost-effective manner. In time, as growers and handlers realize the benefits of minimum quality and size requirements, they would be more prepared to further increase the quality of their onions.

Record evidence revealed that the Walla Walla sweet onion marketing season is shortening because of the typical high prices at the beginning of the season. A witness for the committee testified that he believes that growers are harvesting immature onions in order to obtain these higher prices. The witness stated that immature onions on the market early in the season have a negative impact on the market at the middle and the end of the season. He further testified that growers are concerned with this and are targeting this problem. He believes that these problems could be alleviated to a great extent by establishing quality standards for defects such as sprouting and staining which would address the maturity problem early in the season and increase demand for Walla Walla sweet onions for a longer period. He further stated that if a higher quality product is consistently available, promotional efforts would be enhanced. These efforts would improve buyers' confidence in purchasing Walla Walla sweet onions.

Statistical data evidenced on the record indicates that Walla Walla sweet onions are currently sorted by size and packed in cartons or sacks. Different prices are realized between sacks and cartons and between jumbo and medium sized onions. Higher prices are received for cartons as compared to sacks. Higher prices are received for jumbo as compared with medium size onions. Data shows that larger sized onions receive an average of $3 a container more than smaller onions.

The record revealed that when purchasing sweet onions, consumers prefer a larger onion. There is a perception that sweet onions should be larger than storage onions. Consumers are willing to pay a premium price for a larger sweet onion. Proper seed spacing during planting is a critical factor in producing larger onions. In addition, handlers who can pack larger onions can realize larger returns.

Since the majority of handlers are already sorting onions by size, record evidence revealed that handlers would not have to purchase new equipment should these proposals be implemented. A grower-handler testified that the majority of the larger handlers always try to pack to certain established quality and size standards. Costs associated with handlers modifying their grading facilities would be minimal because most handlers already have the equipment necessary to implement these proposals. These proposals, if implemented, would require that all handlers conform to the same established quality and size standards, which would provide a consistent product to buyers and consumers. A primary cost associated with these proposals would be the cost of inspection procedures, which are

discussed later in this recommended decision.

Another potential cost item is the cost associated with growers having to purchase additional or improved equipment in order to meet minimum quality or size standards. A handler testified that growers could update their mechanical seeders so that the seeds could be planted equidistant from each other, which would result in onions with better shape and uniformity and larger onions. There are increasingly more growers that are purchasing this equipment or contracting with other growers that have the seeders. Seed coating or pelleting is another alternative to achieve better seed placement, which is less expensive than the purchase of a highly advanced seeder. The seed coating adds a clay-like material to the exterior of the seed, so that the seeders do not cause two or three seeds to drop at the same time. It appears that costs associated with growers modifying their cultural practices to abide by minimum quality and size standards would be minimal and offset by improved returns.

Currently, there are limited secondary outlets for Walla Walla sweet onions. Record testimony indicates that the primary outlets for non-marketable or cull onions are livestock feed, charitable institutions or disposal. A minimal amount is sent to processors, but there are no returns realized other than the reduced cost of packing.

If quality control and size provisions were implemented, it could be assumed that more onions would become non-marketable which could produce hardships for some producers. A witness for the committee testified that if a U.S. Commercial grade were established as a minimum quality standard, about 5 to 10 percent of the onions would not meet that grade and would have to be disposed of in secondary outlets. The witness testified that increased grower returns would offset any increase in cull onions. In addition, if a minimum quality or size standard were established, this would provide an incentive for growers to modify and improve their cultural practices so that only onions that would make that quality or size standard would be sent to the packing houses. This would minimize the percentage of onions that do not make quality or size standards.

The inspection and certification portion of the proposed amendments would require that during any period when Walla Walla sweet onions are regulated, the onions would be inspected by representatives of the Federal-State Inspection Service. The proposal contains a provision regarding re-inspection procedures. Handlers who handle a specified minimum quantity would be exempt from inspection, but still be required to meet any minimum quality or size regulations in effect. The minimum quantity would be established at 2,000 pounds or less of onions per shipment, but could be modified through informal rulemaking, if necessary.

The Federal-State Inspection Service Office that is responsible for inspecting Walla Walla sweet onions is currently located in Pasco, Washington, less than 50 miles from Walla Walla. According to record testimony, inspectors would be staffed in Walla Walla during the season if mandatory inspection was implemented.

Inspection costs in the State of Washington are computed on an hourly basis or a per unit basis, whichever is greater. If the hourly rate is used, the rate applies to the total number of the inspector's hours, including travel time. Depending upon the workload, inspectors could be based in Walla Walla during the season, which would lessen travel costs. Record testimony indicated that the hourly inspection rate is $26, with a two-hour minimum, or $52, for inspection or $208 for an eight-hour day. However, the State of Washington Agriculture Code regulations appearing at Chapter 16–400–210 WAC provide that the hourly inspection rate is $23, with no minimum time required. In accordance with the Rules of Practice and Procedure governing the formulation of marketing agreements and orders (7 CFR Part 900), official notice is taken of the fees set forth in the State of Washington regulations at Chapter 16–400–210 WAC. The fee schedule will be used in our analysis. On a per unit basis, the inspection fee is $.04 per 50-pound unit.

As stated above, inspection costs are computed on an hourly basis or a per unit basis, whichever is greater. For example, if an inspection was requested on 100 50-pound containers and the inspection lasted one hour, the per unit cost for inspecting the lot would be $4, and the per hour cost would be $23. Under this scenario, the handler would be charged $23 for the inspection, the greater amount. This would average $.23 per unit.

Under the current fee schedule, it would be necessary for the inspection office to inspect over 4,600 50-pound units of onions per day in order to maintain the fee at $.04 per 50-pound unit. If handlers do not handle over 4,600 50-pound units per day, their inspection costs would be computed at the hourly rate. Even for handlers who normally handle that volume, there would be times during the season, particularly in the beginning and end of the season, where the volume of onions inspected would not be at a level where the $.04 per 50-pound unit could be used. The fees would convert to the hourly rate.

Record testimony indicated that the committee is concerned with increased costs associated with these proposals, particularly, the costs of inspection. The committee discussed options to address these concerns and developed two remedies intended to alleviate the cost burdens on small handlers. First, the committee recommended adding authority in the order for the committee to contract with the Federal-State Inspection Service and pay for all inspections of Walla Walla sweet onions. Second, the committee recommended an exemption from inspection for handlers of small lots of onions.

Under the scenario of contracting with the inspection service, each handler would pay a separate assessment for inspection costs at a per unit price. All handlers would pay the same price per bag for inspection, whether exempt or not. Under such a contract, the larger volume handlers would pay more of the inspection costs because they handle so many more onions. In this manner, the burden of inspection costs for smaller volume handlers would be minimized. This was discussed at committee meetings with representatives of the inspection service.

Testimony confirmed that travel costs would be lessened if an inspector was based in Walla Walla. However, the witness indicated that $.04 per 50-pound unit would be the minimum cost for the inspection. Costs could increase depending on the workload. If the workload was light, such as late in the season when the quantities of onions are diminishing, it could be more costly for an inspector to conduct inspections on smaller lots. It could be necessary to convert the cost to an hourly cost, which would exceed $.04 per 50-pound unit.

A witness for the committee stated that there were discussions at committee meetings regarding contractual relationships with the inspection service but factors such as inspection of small quantities would need to be addressed in the contract. The inspector testified that the inspection office must cover the cost of inspectors and if there was not a full day's work in Walla Walla, the inspector would need to travel elsewhere. These situations would need to be factored

into any contractual agreements. Because of the variables associated with inspecting Walla Walla sweet onions, a witness for the committee estimated the cost of inspection would range between $.04 and $.06 per 50-pound unit if the per unit price were used in a contractual agreement.

Another option the committee developed to address the issues of costs on small handlers would provide an exemption for handlers who handle up to, but not more than 2,000 pounds of Walla Walla sweet onions per shipment. These handlers would be exempt from inspection requirements, but these exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. Handlers could make more than one exempt shipment per day as long as each shipment was at or below the 2,000-pound exemption. These exempt onions would not be exempt from assessments. The committee would be able to recommend modification of the minimum quantity exemption through informal rulemaking, if necessary. The committee would be responsible for monitoring compliance with this proposal. If necessary, the committee would conduct spot inspections at the committee's expense to ensure that inspection-exempt onions were meeting the established quality and size regulations.

A witness for the committee projected that the committee manager's work hours may need to be increased in order to monitor compliance with these proposals, which could result in increased administrative costs for the committee. The committee projects a possible increase of $3,000, or a 3 percent increase in the current committee budget.

Currently, there are 7 commercial packers that pack approximately 90 percent of the industry's onions. The remaining 10 percent are handled by approximately 26 handlers. If the 2,000 pound minimum quantity exemption were implemented, it is estimated that 50 percent of the remaining 26 handlers would be exempt from inspection. This would represent approximately 42 acres (25,000 50-pound containers), or 5 percent of the crop. This minimum quantity exemption addresses concerns regarding possible increased costs that could be encountered by small handlers without jeopardizing the objectives of a quality and size program.

Record testimony revealed that consideration to modify this exemption provision would primarily relate to the effectiveness of the amount exempted. If it was determined that 2,000 pounds or less was insufficient, the committee could recommend raising the amount. A similar recommendation could be made if it was determined the amount was too large and too many onions were exempt from inspection. In making any recommendations, consideration would be given to alleviating any inordinate cost burden on handlers without jeopardizing the objectives of quality and size requirements. Testimony indicated that the committee does not believe it would ever recommend eliminating the minimum quantity exemption.

The cost of inspection is a primary cost factor related to these proposals. The record reveals that the industry is ready to accept this additional cost in order to improve the competitiveness of the industry. It is believed in the long run, increased production, increased prices, and increased demand for Walla Walla sweet onions would offset these inspection costs. The committee is concerned with increased costs and is willing to take steps to mitigate these costs for the benefit of the industry. It is believed that without implementation of these proposals, the industry cannot improve and may continue to decline.

Adding quality and size provisions to the marketing order would provide an incentive for producers to allow their onions to fully mature, resulting in a more favorable impression of the onions purchased. Consumers prefer larger onions and are willing to pay a premium price for large sweet onions. A better quality and larger onion would provide an opportunity to establish consistent quality and size of onions throughout the season. This would tend to benefit consumers with a higher quality of onion and would benefit producers through a higher demand for their product. In the long run, high quality, seasonal product would build name recognition and help enhance demand for Walla Walla sweet onions.

It is determined that there would be costs associated with implementing these proposals. The primary costs relate to inspection fees and administration by the committee for overseeing the program. In addition, it is possible that some growers would need to modify their cultural practices and handlers would need to modify their packing operations in order to provide a higher quality product.

Witnesses testifying at the hearing represented small and large handlers and growers. The majority of the industry is prepared to incur some additional costs because they believe, that in the long run, increased production and sales, and higher grower returns and buyer confidence in Walla Walla sweet onions would offset any increased costs. In fact, some growers testified that these proposals were not strong enough. They would have been even more supportive of the proposals if stronger quality requirements had been included.

One grower-handler testified that unless the minimum grade regulations were established higher than a U.S. Commercial grade, they would not benefit his company. He believed that the minimum grade should not be lower than the standards to which most handlers already pack. In addition, this grower-handler was concerned about the committee being under-funded and wanted to be assured that these proposals would be properly funded and that other programs, such as the promotion program, would not suffer. In testimony, a witness noted that the committee has considered the funding issues and has determined that if these proposals were implemented, additional income would be realized in the long run, which could be used for promotions and research projects.

Another grower-handler testified that the industry used to ship higher quality onions but perhaps because of lack of competition, the quality decreased. Competition in the sweet onion business has dramatically increased in recent years. The grower-handler stated that the purpose of these proposals is for the industry to put a better quality onion in the bag from the start, and then the onion would be a better product when it reaches the consumer. As far as costs, this grower-handler stated that the committee considered the costs very seriously and even discussed the cost burden between larger and smaller handlers. He believed the minimum quantity exemption addresses such concerns.

This grower-handler also testified that Walla Walla sweet onions are labor intensive and expensive to produce. With a quality control system in place, poor quality onions could not be shipped by handlers. Acreage could be increased, better prices could be realized, and positive name recognition would result. Increased acreage and production would result in additional funds for promotion and research, including development of controlled atmosphere storage for Walla Walla onions. In addition, the major cost of these proposals, the cost of inspection, is not considered a high cost item compared to the cost of labor and growing costs. Preharvest costs of production are estimated to increase by 0.4 to 0.6 percent an acre due to inspection. Because so much is invested up front per acre, a premium price is

necessary for growers to realize a reasonable return.

A witness for the proposals testified that lack of quality controls has depleted repeat business. This handler did not believe that handlers would need to purchase new equipment to implement grading schemes in their businesses.

A witness testified that if these proposals are implemented, possible increased administrative costs of $3,000 are projected. These costs relate to the additional duties involved in overseeing compliance of the inspection-exempt onions. The committee manager position is currently a part-time position. The witness testified that the committee has discussed increasing the hours of the manager's position to provide adequate coverage of the new duties.

A witness for the committee indicated that an advertising agency conducted market research at seven retail chains in the Los Angeles, California area. The research concluded that the retail trade perception of the Walla Walla sweet onion is that it is a high cost, high shrink, and short shelf life alternative to low cost alternatives already in the Los Angeles area. Retailers are concerned with paying a premium price for a product with inconsistent quality.

Record evidence revealed that without the implementation of these proposals, the Walla Walla sweet onion industry would remain stagnant or decline further. With the tremendous rise in consumption of fresh onions, and the success of other sweet onion producing areas, it is clear that this industry has the potential to improve. These proposals would enhance that opportunity.

The industry has attempted to regulate quality voluntarily. Prior to implementation of the marketing order, the Walla Walla Sweet Onion Commission, a voluntary organization composed of producers and handlers, implemented quality requirements for its members. These requirements restricted the sale of U.S. No. 2 grade onions and culls from fresh market use, and included random inspections. Common defects that caused the onions to fail to meet these conditions were seed stems, immaturity, and decay. Because of the voluntary nature of these imposed requirements, this project was unsuccessful.

Although the marketing order currently addresses problems the industry is facing with the establishment of a production area and the authority to conduct promotions and research projects, it is lacking in that the current authorities cannot directly address the quality problems that are detrimental to the industry. The record evidence revealed that the establishment of quality control and size requirements would specifically address the marketing problems being experienced by the industry. The evidence showed conclusively that the industry is facing further decline if nothing is done to improve the quality of the onions marketed. Adding these authorities to the order would enhance the program's effectiveness and provide the committee with the tools needed to administer a productive, more useful program.

The committee is composed of 10 voting members. Seven concurring votes, or a super majority, would be needed to pass a recommendation relative to quality and size requirements. Other committee actions require a simple majority or six votes. With the requirement of preparing an annual marketing policy, the committee would review market conditions each year. The committee could recommend that no regulations be imposed on handlers.

It is determined that the costs related to implement these proposals would be offset by improved grower returns, increased production, re-established markets, new markets, and more effective promotional efforts. Handlers are willing to impose these requirements on themselves to save their industry. The record evidence provided a compelling justification of these proposals.

Therefore, the proposals relating to authorizing quality control and size requirements by adding new § 956.15 (Grade and Size), § 956.16 (Pack), § 956.60 (Marketing Policy), 956.70 (Inspection and Certification) and amending §§ 956.62 (Container Markings) and 956.64 (Minimum Quantities) are recommended.

As stated above, implementation of the above proposals would entail adding and modifying several sections of the Walla Walla Sweet Onion marketing order. These sections are interrelated and should be considered together. For instance, there would be no need to have a minimum quantity exemption if there were no mandatory inspection requirements. If it is determined that these proposals would not address problems facing the industry, none of the above proposals would be implemented.

A new § 956.14, a definition for ''grading'', would not be added to the order. In the proposal, grading is defined as synonymous with ''preparing for market'' and means the sorting or separation of Walla Walla Sweet Onions into grades, sizes, and packs for market purposes.

Currently, the term ''grading'' does not appear in the marketing order. It is also not used in the proposed amendatory text. Testimony indicated that the possibility exists for this term to be used in future regulations.

If these proposals are adopted and regulations implemented, handlers would be required to implement grading schemes in their operations. Informal rulemaking actions would be necessary to implement any minimum quality and size requirements. If this term is necessary in the future, it can easily be included in the regulations without having this term defined in the order. Therefore, this section is not proposed herein.

A new § 956.15, a definition for ''grade and size'', should be added to the order. In the proposal, ''grade'' means any of the officially established grades of onions and ''size'' means any of the officially established sizes of onions, each set forth in the U.S. Standards for grades of onions or the States of Washington and Oregon standards. This section would authorize modifications or variations to these standards if recommended by the committee and approved by the Secretary.

It was determined that the above Federal and State standards would be a commonly accepted basis for the committee to use in recommending regulations on quality and size. The committee's intent is to have this language flexible so that any subsequent amendments to these grade standards would be applicable to the order.

Testimony indicated that it is common practice in the industry to refer to onions by grades and/or sizes and these definitions would provide a basis for making recommendations for regulations. The proposal includes the authority to make variations from the U.S. and State standards. This would allow the committee flexibility in determining an appropriate quality or size to recommend which may deviate from what the standards specify, but better serve the needs of the industry. The definitions for grade and size are recommended.

A new § 956.16, Pack, should be added to the order. ''Pack'' would be defined as a quantity of Walla Walla sweet onions specified by grade, size, weight, or count or by type or condition of container recommended by the committee and approved by the Secretary. Normally, onions are sorted by grade or size. The intent of having a definition for pack is to reduce the incidences of co-mingling grades and

sizes that could dissuade customers from purchasing the products. This would provide the authority to restrict different grades and sizes to certain containers in order to obtain higher prices and increase sales. An example provided by a witness for the committee at the hearing related to the possibility of establishing a premium pack which would require a higher quality onion to be shipped in a container marked ''premium.'' The definition for pack is recommended.

A new § 956.60, Marketing Policy, should be added to the order. Specifically, this provision would require that the committee annually consider and prepare a policy for marketing onions grown in the production area prior to the beginning of the season. The committee's marketing policy would rely on the conditions that exist at the time the policy is adopted and projections for the upcoming season. It is therefore, essential that the committee have as much information as possible concerning marketing conditions, including information that affects supply and demand.

Primary information that would assist the committee in determining its marketing policy are supplies of Walla Walla sweet onions, expected harvest, expected yield, quality, quality and supplies of competing onions, and consumer preferences. The marketing policy would provide a means of determining the recommendation of regulations relating to quality and size for that year in order to prevent onions of inferior quality or small size from being marketed. The marketing policy would also assist the committee in recommending quality and size regulations that would bring producers the greatest possible return consistent with the supply and demand conditions, while protecting the interest of consumers by making available for purchase better quality and preferred sizes of onions. The marketing policy would focus on the optimization of returns to growers given the conditions in the industry that year.

The committee would consider several factors in determining its marketing policy. These factors include market prices for sweet onions, supplies of sweet onions (including competitors), the trend and level of consumer income, establishment and maintenance of orderly marketing conditions, orderly marketing on behalf of the public, and other relevant factors. A witness for the committee indicated that all of this information is available through industry sources, the Department, and University Extension Services. These available resources along with the expertise of the committee members would guide the committee in making informed effective marketing policies that would benefit growers and consumers.

The committee would submit a report to the Secretary setting forth the marketing policy and notify producers and handlers of the report. Testimony indicated that the report would need to be prepared well ahead of the shipping season, perhaps in January or February. A specific due-date for the marketing policy could be established through informal rulemaking, but the committee is aware that the policy must be prepared well enough in advance of the season in order to be effective and in order to effectuate timely regulations.

The marketing policy could also be amended depending on changed supply and demand situations. Any amendments would be reported to the Secretary and to producers and handlers.

Requiring the preparation of an annual marketing policy statement is a good business practice to implement when establishing the authority for quality control provisions. It would set forth a process for the committee to follow and consider and provide adequate timeframes to be effective. Therefore, this section is recommended.

Section 956.62, Issuance of Regulations, should be amended and re-titled. This section is currently entitled ''Container markings'' and sets forth the authority to recommend regulations for fixing the marking of containers that may be used in the packaging or handling of Walla Walla sweet onions.

The section would still include the regulations regarding container markings but this proposal expands the section by adding the authority for recommending regulations to the Secretary on quality and size. The proposed amendment of this section would include the limitation of shipments of Walla Walla sweet onions by: regulating grades, sizes, qualities or maturities of Walla Walla sweet onions in any or all portions of the production area during any period; regulating grades, sizes, qualities or maturities for different varieties or packs for any period; and establishing minimum standards of quality and maturity. This section also provides that the Secretary may amend, terminate, or suspend any or all portions of any regulation issued under this section.

Portions of the production area or certain varieties could be regulated, and record testimony revealed that this was recommended to cover possible problems should a certain growing area or variety experience a specific problem during the year, possibly due to adverse weather conditions in one growing area. The overall intent of this proposal is to establish the ability to make recommendations for the entire industry and production area. Testimony revealed that the proposal was meant to be flexible and cover a variety of situations that could occur so that the amendment, if implemented, could be more effective.

The proposed amendment is adequate to cover the needs of the industry and has sufficient flexibility to cover any unusual circumstances that may arise. Therefore, this section is recommended.

Section 956.64, Minimum Quantities, should be amended. This section currently provides for establishing minimum quantities for which Walla Walla sweet onions would be exempt from assessments, container markings, and special purpose shipment requirements. The proposal amends the section by adding a minimum quantity exemption for inspection requirements.

Under this proposal, each handler could ship a maximum of 2000 pounds of sweet onions per shipment without regard to inspection requirements. However, the exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. This requirement could be modified through informal rulemaking.

The reason for the exemption is to provide a benefit for smaller handlers. Onions would still be required to meet established quality and size standards. It is estimated that only 5 percent of the crop would not be inspected. If circumstances warrant modification of the exemption amount in the future, it could be accomplished through informal rulemaking. The amount of the exemption could be raised or lowered depending on the effectiveness of the quality and size program and the impact on handlers, especially small handlers. Testimony revealed that reference should be made to § 956.70, ''Inspection and certification'' in the last sentence in the section. This reference has been added to the amendatory language. Therefore, this section is recommended as modified.

The committee proposes adding a new § 956.70, Inspection and Certification. This section sets forth the inspection requirements if these proposals are implemented. The section states that during periods of regulation, no onions, unless exempted, could be handled unless a representative of the Federal-State Inspection Service or another inspection service designated by the Secretary inspects the onions. This section allows for modification of

these requirements through informal rulemaking.

If onions are regraded, resorted, or repacked, the prior inspection would be invalid. If the onions are regraded, resorted or repacked, they must be re-inspected to ensure that the quality or size established is met prior to shipment of re-inspected onions. These requirements could also be modified through informal rulemaking.

The committee could recommend that appropriate seals, stamps, or tags identify the inspected onions, or that other identification be affixed to the containers or master containers.

The committee could recommend the length of time for which an inspection is valid and inspection certificates would be made available to the committee. Finally, the section would authorize the committee to enter into an agreement with the inspection service with respect to costs of inspection and the committee would collect pro-rata shares of such costs from handlers.

The portion relating to contracting with the inspection service would cover a situation where the committee would try to lessen the financial burden on handlers, especially by paying for all inspections and assessing a pro-rata share back to the handlers. A witness representing the inspection service testified that this was possible but variables would have to be incorporated into any contractual arrangement to cover all costs incurred by the inspection service. It is reasonable to allow this provision in the order should a contractual arrangement be necessary, to provide additional flexibility. Section 956.70(f) of this section has been modified to clarify that the inspection service is as set forth in paragragh (a) of that section.

Regarding the identification procedures, the committee could recommend that all onions have positive lot identification or PIQ (Partners in Quality) certification. These procedures are identification processes developed by the Department's inspection service to aid in maintaining identity and integrity of products after inspection. The proposed amendment was written as such to allow for flexibility in determining the most effective and beneficial procedure to use. For example, if a new identification process is developed by the Department, the proposed amendment would allow the committee to consider and recommend this new process.

Regarding establishing a time of validity for inspection certificates, testimony revealed that Walla Walla sweet onions are not stored and have a short shelf life. Three to five days is the maximum that onions should be stored. Therefore, it is anticipated that the committee could recommend a certificate validity of three to five days.

These inspection procedures are normal and customary procedures set forth in marketing orders when mandatory inspection requirements are authorized. They provide sufficient flexibility without losing effectiveness. Therefore, this section is recommended.

Material Issue Number 2

The committee proposes to change its name from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee. This proposal would entail an amendment to paragraph (a) of § 956.20, Establishment and membership, which sets forth the name of the committee. The reason for the proposed change is to better reflect the goals and accomplishments of the committee.

The committee believes adding the word ''marketing'' to their name would better reflect the goals of the committee and better portray the image sought. The committee is charged with improving the marketing practices of Walla Walla sweet onions by using the authorities in the marketing order and therefore, this proposal should be authorized.

The Agricultural Marketing Service proposed to make such changes as may be necessary to the order to conform with any amendment that may result from the hearing. No necessary conforming changes have been identified by the Department.

Small Business Considerations

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that growers and handlers would not be unduly burdened by any additional regulatory requirements, including those pertaining to reporting and recordkeeping, that might result from this proceeding.

During the 1996–97 crop year, approximately 33 handlers were regulated under Marketing Order No. 956. In addition, there were about 64 producers of Walla Walla sweet onions in the production area. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Twenty-four of the 33 handlers are also producers who handle their own onions. There are seven commercial packinghouses that pack approximately 90 percent of all Walla Walla sweet onions. In the 1996–97 season, the average f.o.b. price for Walla Walla sweet onions was $8.70 per 50-pound sack. Total production for the 1996–97 season was 666,000 50-pound containers. A handler who packed over 550,000 50-pound units would exceed the SBA definition of a small handler. According to record evidence, there are two dominant handlers in the industry and at least one of these handlers could be considered a large handler under this definition. The record revealed that all Walla Walla sweet onion growers would be considered small producers. Therefore, it can be concluded that the majority of growers and handlers would be considered small businesses.

The marketing order, promulgated in 1995, currently defines the production area where onions must be grown to be designated as Walla Walla sweet onions. It also provides the authority to fund research and promotion activities through assessments on handlers, as well as establish container regulations. Although the marketing order as currently written addresses some of the marketing problems facing the industry, the Walla Walla sweet onion industry continues to experience marketing problems.

Economic data presented on the record indicates that the acres planted have decreased from 1,800 in 1988 to 900 acres planted in 1997. This is a 50% decrease since 1988. Similarly, acres harvested have decreased from 1,600 in 1988 to 900 in 1997.

In addition, the data shows production has decreased dramatically from 1,280,000 50-pound containers in 1988 to 666,000 50-pound containers in 1997. This is a 48% decrease in production in the last 10 years.

Total crop values have declined from $9,345,000 in 1989 to $5,794,000 in

1997. This is a 38% decrease in total crop values in 9 years.

U.S. per capita consumption of fresh onions has increased from 10.7 pounds per year in 1981 to 17.5 pounds per year in 1997. This is a 64% increase in per capita use of fresh onions, while the production of Walla Walla sweet onions has decreased. This increased consumption shows that this industry has the potential to improve.

In addition, economic data shows that competition from other sweet onion producing areas has increased dramatically. Producers of Walla Walla sweet onions have lost market share to other sweet onions such as Georgia Vidalia onions, California Imperial onions, Hawaii Maui Sweets, New Mex. Sweets from New Mexico, and Texas hybrid 1015Y's.

The acres harvested and production of Vidalia onions have increased by 236% and 447%, respectively, since 1989. The Vidalia sweet onion industry's normal harvesting and shipping season begins in the middle of April and ends in late July. The Vidalia onion industry has been successful in extending its shipping season into September and October by establishing controlled atmosphere storage capabilities. This may be having a price dampening effect on Walla Walla sweet onions because of the overlap of shipping seasons and direct competition caused by the extended season of Vidalia onions.

Of the six sweet onion-producing areas in the U.S., Walla Walla sweet onion prices are lower than Maui, Vidalia and Texas onions. In addition, the economic report presented on the record shows that Vidalia onions always receive higher prices than Walla Walla sweet onions with an average price differential of $5 per 50-pound container.

The Walla Walla sweet onion season begins in middle or late June and continues until the end of July. The shipping season lasts for approximately six weeks. Prices for Walla Walla sweet onions at the beginning of the season start relatively high. As the season progresses, prices generally fall. This seasonal price behavior has resulted in producers harvesting onions before they are fully matured. This has led to poor quality onions being sold on the market that make an unfavorable impression on consumers, supermarkets, and other outlets that handle Walla Walla sweet onions. In addition, this situation appears to have shortened the marketing season.

The quality at the beginning of the season has a tendency to set the market tone for the remainder of the season. If quality is high at the beginning of the season, this makes a favorable impression on buyers as well as consumers. With high quality onions at the start of the season, consumers are likely to become repeat customers. However, if quality is low at the beginning of the season, receivers as well as consumers are disappointed. Initial low quality will result in consumers shopping for alternative sweet onions and they will not be repeat purchasers.

Minimum quality and size requirements are established under marketing orders to ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns. The objective of implementing quality control and size provisions under marketing orders is to make the markets work more efficiently, improve quality, and to market preferred sizes. The use of quality and size standards through a grading scheme benefits consumers by assuring the buyers that they are getting high quality produce of desirable size. This helps build consumer demand in the long run. Minimum quality and size standards are deemed desirable because they prevent the shipment of poor quality produce, which ends up harming producers' ability to sell their product and consumers' willingness to buy.

The reputation of Walla Walla sweet onions has deteriorated over the recent years due to the poor quality of some of the onions marketed. Record evidence indicated that a surveillance project conducted during the 1997 harvest season by the Washington State Department of Agriculture on behalf of the committee noted that a significant amount of onions sold within the immediate Walla Walla area did not meet minimum U.S. standards. Walla Walla sweet onions usually meet at least U.S. No. 2 grade, but only a small volume meets U.S. No. 1 grade.

Establishing quality and size provisions under the Walla Walla sweet onion marketing order would provide an incentive for producers to allow their onions to fully mature, resulting in a higher quality of onion marketed. Establishing quality and size requirements would ensure consistent quality and acceptable sizes of onions throughout the season. This tends to benefit consumers through a higher quality of onion and benefits producers with a higher demand for their product. In the long run, high quality, seasonal produce builds name recognition and helps enhance demand.

The Walla Walla sweet onion industry has attempted to voluntarily implement quality control. Prior to implementation of the marketing order, the Walla Walla Sweet Onion Commission, a voluntary organization composed of producers and handlers, implemented quality rules for its members. These rules restricted the sale of U.S. No. 2 grade onions and culls from fresh market use, and included random inspections. Common defects that caused the onions to fail to meet these requirements were seed stems, immaturity, and decay. Because of the voluntary nature of these imposed regulations, this project was unsuccessful.

Currently, the marketing order allows only onions grown in the designated production area to be marketed as Walla Walla sweet onions. Research activities as well as promotional activities are also authorized under the current order. Broadening the scope of the order by authorizing minimum quality and size requirements would add another marketing tool to help the industry solve marketing problems, especially those related to quality. Minimum quality and size requirements would allow the industry to improve their name recognition with a quality product. Amending the order by authorizing the establishment of minimum quality and size requirements would help to expand markets and deliver a more consistent quality product of desirable size to the consumer.

Without any quality and size provisions in place, industry members can place substandard product on the market that is severely impacting the credibility and marketability of all Walla Walla sweet onions. Because of these current practices, the industry is experiencing problems establishing and maintaining markets in areas that have traditionally been strong. The industry has lost markets due to poor quality, short shelf life and increased competition from other sweet onion producing areas.

Minimum quality and size requirements would help alleviate some of these problems and work to improve producer returns by strengthening consumer and retail demand. Mandatory inspection requirements would make all producers and handlers responsible for the quality of the industry's output. Poor quality would not be mixed with better quality. The record revealed that most handlers are already sorting by size. The Department's Market News Service reports prices for jumbo and medium onions, which further indicates that handlers are sorting by size. Most handlers also pack to a certain quality standards, usually based on U.S. grade standards. Therefore, handlers would

not be required to drastically modify their packing operations or purchase new equipment. The committee considered grower and handler costs very seriously and even discussed the cost burden between larger and smaller handlers. The minimum quantity exemption should address such concerns.

Growers may be faced with a potential cost item related to improved equipment that could be needed in order to meet minimum quality or size standards. A handler testified that growers could update their mechanical seeders so that the seeds could be planted equidistant from each other, which would result in onions with better shape, more uniformity and larger size. There are increasingly more growers that are purchasing this equipment or contracting with other growers that have the seeders. Seed coating or pelleting is another alternative for better seed placement, which is less expensive than the purchase of a highly advanced seeder. The seed coating adds a clay-like material to the exterior of the seed, so that the seeders do not cause two or three seeds to drop at the same time. It appears that costs associated with growers modifying their cultural practices to abide by minimum quality and size standards would be minimal and offset by improved producer returns.

A witness for the committee testified that the benefits of including the authority for minimum quality and size standards would far outweigh any negative impact to producers and handlers and the industry could start rebuilding markets and creating new ones.

The Federal-State Inspection Service Office that is responsible for inspecting Walla Walla sweet onions is currently located in Pasco, Washington, less than 50 miles from Walla Walla. According to record testimony, inspectors would be staffed in Walla Walla during the season if mandatory inspection was implemented.

Inspection costs in the State of Washington are computed on an hourly basis or a per unit basis, whichever is greater. If the hourly rate is used, the rate applies to the total number of the inspector's hours, including travel time. Depending upon the workload, inspectors could be based in Walla Walla during the season, which would lessen travel costs. Record testimony indicated that the hourly inspection rate is $26, with a two-hour minimun, or $52, for inspection or $208 for an eight-hour day. However, the State of Washington Agriculture Code regulations appearing at Chapter 16–400–210 WAC provide that the hourly inspection rate is $23, with no minimum time required. In accordance with the Rules of Practice and Procedure governing the formulation of marketing agreements and orders (7 CFR part 900), official notice has been taken of the fees set forth in the State of Washington regulations at Chapter 16–400–210 WAC. The fee schedule will be used in our analysis. On a per unit basis, the inspection fee is $.04 per 50-pound unit.

As stated above, inspection costs are computed on an hourly basis or a per unit basis, whichever is greater. For example, if an inspection was requested on 100 50-pound containers and the inspection lasted one hour, the per unit cost for inspecting the lot would be $4, and the per hour cost would be $23. Under this scenario, the handler would be charged $23 for the inspection, the greater amount. This would average $.23 per unit.

Under the current fee schedule, it would be necessary for the inspection office to inspect over 4,600 50-pound units of onions per day in order to maintain the fee at $.04 per 50-pound unit. If handlers do not handle over 4,600 50-pound units per day, their inspection costs would be computed at the hourly rate. Even for handlers who normally handle that volume, there would be times during the season, particularly in the beginning and end of the season, where the volume of onions inspected would not be at a level where the $.04 per 50-pound unit could be used. The fees would convert to the hourly rate.

Record testimony indicated that the committee is concerned with increased costs associated with these proposals, particularly, the costs of inspection. The committee discussed options to address these concerns and developed two remedies intended to alleviate the cost burdens on small handlers. First, the committee recommended adding authority in the order for the committee to contract with the Federal-State Inspection Service and pay for all inspections of Walla Walla sweet onions. Second, the committee recommended an exemption from inspection for handlers of small lots of onions.

Under the scenario of contracting with the inspection service, each handler would pay a separate assessment for inspection costs at a per unit price. All handlers would pay the same price per bag for inspection, whether exempt or not. Under such a contract, the larger volume handlers would pay more of the inspection costs because they handle so many more units of onions. In this manner, the burden of inspection costs for smaller volume handlers could be minimized. This was discussed with representatives of the inspection service.

A Washington State inspector confirmed that travel costs would be lessened if an inspector was based in Walla Walla. However, the inspector indicated that $.04 per 50-pound unit would be the minimum cost for the inspection. Costs could increase depending on the workload. If the workload was light, such as late in the season when the quantities of onions are diminishing, it could be more costly for an inspector to conduct inspections on smaller lots. It could be necessary to convert the cost to an hourly cost, which would exceed $.04 per 50-pound unit.

There have been discussions regarding contractual relationships with the inspection service but factors such as inspection of small quantities would need to be addressed in the contract. The inspector testified that the inspection office must cover the cost of inspectors and if there was not a full days work in Walla Walla, the inspector would need to travel elsewhere. These situations would need to be factored into any contractual agreements. A witness for the proposals testified that because of the variables associated with inspecting Walla Walla sweet onions, it is estimated the cost of inspection would range between $.04 and $.06 per 50-pound unit if the per unit price were used in a contractual agreement. The committee could consider only contracting with the inspection service during the busiest parts of the season in order to keep the inspection cost lower. The committee could also consider only regulating for part of the season.

Another option the committee developed to address the issues of costs on small handlers would provide an exemption for handlers who handle up to, but not more than 2,000 pounds of Walla Walla sweet onions per shipment. These handlers would be exempt from inspection requirements, but these exempt onions would still be required to meet the quality and size requirements in effect at the time of shipment. Handlers could make more than one exempt shipment per day as long as each shipment was at or below the 2,000-pound exemption. These exempt onions would not be exempt from assessments. The committee would be able to recommend modification of the minimum quantity exemption through informal rulemaking, if necessary. The committee would be responsible for monitoring compliance with this proposal. If necessary, the

committee would conduct spot inspections at the committee's expense to ensure that inspection-exempt onions were meeting the established quality and size regulations.

Record testimony indicated the implementation of these proposals could necessitate that the committee increase the manager's work hours in order to monitor compliance with these provisions. This could result in the need to recommend an increase in the marketing order assessment rate. However, an increase is not expected because the increased production, demand, and expanded markets would help to supply ample funds to administer the program without increasing the assessment rate.

When the committee was considering amending the marketing order to include quality and size requirements, a compliance subcommittee was appointed to address concerns of small producers and handlers. The subcommittee is composed of producers and handlers who developed the minimum quantity exemption provisions of the committee's proposals. The subcommittee considered different options during their deliberations and determined that the current proposed amendments were the most advantageous to small growers and handlers while still allowing quality objectives to be met.

Inspection requirements would not apply to shipments of Walla Walla sweet onions that are 2,000 pounds or less. However, these onions would be required to meet any minimum requirements in effect at the time of shipment. This would be enforced through periodic spot examinations conducted by the committee. A general consensus among industry members was that establishing a minimum quantity exemption was necessary to relieve any undue financial burden on small volume handlers. The committee would be responsible for monitoring compliance with this proposal by conducting spot inspections, if necessary, at the committee's expense. It is estimated that compliance with these proposals could increase administrative costs for the committee by $3,000, or a 3 percent increase in the current committee budget.

As previously stated, 7 commercial handlers pack 90 percent of the industry's crop. Approximately 26 handlers handle the remaining 10 percent. With the 2,000 pound inspection exemption implemented, it is estimated that 50 percent of the remaining 26 handlers would be exempt from mandatory inspection. This represents approximately 42 acres or 25,000 50-lb. units, which is 5 percent of the crop. Therefore, it appears that at least 13 handlers would be exempt from inspection, while 95 percent of the production would still be inspected. This proposed amendment would minimize the impact on small handlers without jeopardizing quality objectives.

These exempt onions would not be exempt from assessments. In addition, exempt onions would still be required to meet the minimum quality and size requirements established by the committee and approved by the Secretary. Committee staff would conduct spot inspections to monitor the exempt handlers' activities. The proposal allows for modification of this provision depending on industry needs. The committee does not believe it would ever recommend not having a minimum quantity exemption.

A witness for the proposals testified that the only cost increase would be the cost of inspection. He further stated that the cost of inspection is a minor cost item, compared to labor and growing costs. Walla Walla sweet onion production is labor-intensive and high cost. A premium price is necessary for the onions to pay the costs of production.

This witness testified that a grower normally has $1,800 to $2,000 an acre invested in production prior to harvest. Using this estimate and assuming a yield of 190 50-pound units per acre, inspection costs (estimated at $.04 to $.06 per 50-pound unit) are estimated to be $7.60 to $11.40 per acre, or an estimated 0.4 to 0.6 percent increase of pre-harvest cost.

Following is an example of possible costs associated with implementing quality and size standards. Testimony revealed that if a U.S. Commercial grade were established as a minimum quality standard, 5 to 10 percent of the onions would not meet that grade and would have to be disposed of in secondary outlets. Using last year's production figures (1996–97), 666,000 50-pound containers were produced for sale. If 10 percent would not make U.S. Commercial grade, 66,600 50-pound containers would need to be disposed of in secondary outlets. It is estimated that 5 percent of the crop, or 33,300 pounds, would be exempt from inspection. Therefore, approximately 566,100 50-pound containers would need to be inspected. Using the high inspection cost estimate of $.06 per container, inspection costs for the entire crop would be $33,966. Seven commercial packing houses pack 90 percent of the crop which would account for $30,569.40 of the costs. The remaining 26 small handlers would be responsible for the remaining inspection costs of $3,396.60, or approximately $131 per handler for inspection fees for that season.

Minimum quality and size standards would maintain the integrity of the product so that the commodities' overall quality image is not diminished by a low quality sample. The principle objective of a grading system is to make the market work more efficiently. Minimum quality and size requirements would improve information between buyers and sellers. Contracts could be made based on grade specifications, and buyers need not personally inspect each lot of product. Standardization of quality and size reduces uncertainty between buyers and sellers, and this helps reduce marketing costs. The goal of an effective grading system is to improve quality and size. Minimum quality and size standards would help ensure that substandard produce does not find its way to the market and destroy consumer confidence and harm producers' returns.

The ability of producers of Walla Walla sweet onions to increase the demand for their product depends on their ability to differentiate their product and to create a favorable image (including quality) with consumers. In recent years, this favorable image has deteriorated. Culling out low quality produce of undesirable size, even though the demand for it may be elastic, may increase total returns. The price increase from the higher quality sold is expected to be large enough to offset the effect of the reduced quantity sold, even after the costs of culling are covered.

Record evidence also shows that the collection of information under the marketing order would not be effected if the amendments were made to the marketing order. No increase in information collection would occur with the adoption of the amendments alone. However, if these proposals are implemented and the committee recommends regulations to impose quality and size requirements, it is possible that additional information would be needed from handlers to aid in administering the program effectively. It is also possible that because inspection certificates would be received by the committee, needed information could be collected from the certificates and the information collection requirements could be reduced. Whatever information collection changes result from any regulations, the committee and the Department would submit such changes to the Office of Management and Budget (OMB) for approval. Current information collection requirements for

part 956 are approved by OMB under OMB number 0581–0172.

The proposed amendment to modify the name of the committee from the Walla Walla Sweet Onion Committee to the Walla Walla Sweet Onion Marketing Committee would have no regulatory impact on handlers or growers.

Accordingly, this action would 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.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. All of these amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

While the implementation of quality and size requirements may impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of these costs may be passed on to growers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the meetings regarding these proposals as well as the hearing date were widely publicized throughout the Walla Walla Sweet onion production area industry and all interested persons were invited to attend the meetings and the hearing and participate in committee deliberations on all issues. All committee meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues. Finally, 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. Thirty days is deemed appropriate because the committee would like to have the opportunity to discuss these amendments if they are implemented and recommend appropriate regulations prior to the 1999 season which starts in June 1999. All written exceptions timely received will be considered and a grower referendum will be conducted before these proposals are implemented.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

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.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and 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 marketing agreement and order, as hereby proposed to be amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as hereby proposed to be amended, regulate the handling of Walla Walla sweet onions grown in the production area in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which a hearing has been held;

(3) The marketing agreement and order, as hereby proposed to be amended, are limited in their application to the smallest regional production area which 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; and

(4) All handling of Walla Walla sweet onions grown in the production area as defined in the marketing agreement and order, as hereby proposed to be amended, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

Recommended Amendment of the Marketing Agreement and Order

For the reasons set out in the preamble, 7 CFR part 956 is proposed to be amended as follows:

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHWEST 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 §§ 956.15 and 956.16 are added to read as follows:

§ 956.15 Grade and size.

Grade means any of the officially established grades of onions, including maturity requirements and *size* means any of the officially established sizes of onions as set forth in the United States standards for grades of onions or amendments thereto, or modifications thereof, or variations based thereon, or States of Washington or Oregon standards of onions or amendments thereto or modifications thereof or variations based thereon, recommended by the committee and approved by the Secretary.

§ 956.16 Pack.

Pack means a quantity of Walla Walla Sweet Onions specified by grade, size, weight, or count, or by type or condition of container, or any combination of these recommended by the committee and approved by the Secretary.

§ 956.20 [Amended]

3. In § 956.20, paragraph (a) is amended by adding the word ''Marketing'' immediately following the word ''Onion'' in the first sentence.

4. In part 956, a new § 956.60 is added to read as follows:

§ 956.60 Marketing policy.

(a) *Preparation.* Prior to each marketing season, the committee shall consider and prepare a proposed policy for the marketing of Walla Walla Sweet Onions. In developing its marketing policy, the committee shall investigate

relevant supply and demand conditions for Walla Walla Sweet Onions. In such investigations, the committee shall give appropriate consideration to the following:

(1) Market prices for sweet onions, including prices by variety, grade, size, quality, and maturity, and by different packs;

(2) Supply of sweet onions by grade, size, quality, maturity, and variety in the production area and in other sweet onion producing sections;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for Walla Walla Sweet Onions;

(5) Orderly marketing of Walla Walla Sweet Onions as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports.* (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy, and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare an amended or revised marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

5. Section 956.62 is revised to read as follows:

§ 956.62 Issuance of regulations.

(a) Except as otherwise provided in this part, the Secretary shall limit the shipment of Walla Walla Sweet Onions by any one or more of the methods hereinafter set forth whenever the Secretary finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the Act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, qualities, or maturities of any or all varieties of Walla Walla Sweet Onions, or combinations thereof, during any period or periods;

(2) Regulate the handling of particular grades, sizes, qualities, or maturities of Walla Walla Sweet Onions differently, for different varieties or packs, or for any combination of the foregoing, during any period or periods;

(3) Provide a method, through rules and regulations issued pursuant to this part, for fixing the size, capacity, weight, dimensions, markings or pack of the container or containers, which may be used in the packaging or handling of Walla Walla Sweet Onions, including appropriate logo or other container markings to identify the contents thereof;

(4) Regulate the handling of Walla Walla Sweet Onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity.

(b) The Secretary may amend any regulation issued under this part whenever the Secretary finds that such amendment would tend to effectuate the declared policy of the Act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever the Secretary finds that such regulation or amendment obstructs or no longer tends to effectuate the declared policy of the Act.

6. Section 956.64 is revised to read as follows:

§ 956.64 Minimum quantities.

During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this part, each handler may handle up to, but not to exceed, 2,000 pounds of Walla Walla Sweet Onions per shipment without regard to the inspection requirements of this part: *Provided,* That such Walla Walla Sweet Onion shipments meet the minimum requirements in effect at the time of the shipment pursuant to § 956.62. The committee, with the approval of the Secretary, may recommend modifications to this section and the establishment of such other minimum quantities below which Walla Walla Sweet Onion shipments will be free from the requirements in, or pursuant to, §§ 956.42, 956.62, 956.63, and 956.70, or any combination thereof.

7. In part 956, a new center heading and § 956.70 are added to read as follows:

Inspection

§ 956.70 Inspection and certification.

(a) During any period in which shipments of Walla Walla Sweet Onions are regulated pursuant to this subpart, no handler shall handle Walla Walla Sweet Onions unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to §§ 956.63 and 956.64, or both. Upon recommendation of the committee, with approval of the Secretary, inspection providers and certification requirements may be modified to facilitate the handling of Walla Walla Sweet Onions.

(b) Regrading, resorting, or repacking any lot of Walla Walla Sweet Onions shall invalidate prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship Walla Walla Sweet Onions after they have been regraded, resorted, repacked, or in any other way further prepared for market, unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate: *Provided,* That such inspection requirements on regraded, resorted, or repacked Walla Walla Sweet Onions may be modified, suspended, or terminated under rules and regulations recommended by the committee, and approved by the Secretary.

(c) Upon recommendation of the committee, and approval of the Secretary, all Walla Walla Sweet Onions that are required to be inspected and certified in accordance with this section shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of the Federal-State or Federal inspector, or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When Walla Walla Sweet Onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may enter into an agreement with an inspection service with respect to the costs of the inspection as provided by paragraph (a) of this section, and may collect from handlers their respective pro rata shares of such costs.

Dated: September 17, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

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