

Proposed Rules

Federal Register

Vol. 75, No. 69

Monday, April 12, 2010

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

[Doc. No. AMS-FV-10-0020; FV10-956-1 PR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Changes to Reporting and Assessment Due Dates

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on proposed changes to the reporting and assessment date requirements prescribed under the marketing order regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon. The marketing order is administered locally by the Walla Walla Sweet Onion Marketing Committee (hereinafter referred to as the "Committee"). This rule would revise the submission due date for certain handler reports and assessment payments from September 1 to September 30. The proposed changes would allow handlers additional time to compile requisite information and submit it to the Committee. It is expected that this action would improve handler compliance with the administrative requirements of the marketing order.

DATES: Comments must be received by May 12, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or Internet: <http://www.regulations.gov>. All comments should reference the document number and the date and

page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist or Gary Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440, or E-mail: Barry.Broadbent@ams.usda.gov or GaryD.Olson@ams.usda.gov. Small businesses may request information on complying with this regulation by contacting Antoinette Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Antoinette.Carter@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of sweet onions in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law

and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposal invites comments on revisions to the due dates currently prescribed in the order's administrative rules for certain reports and assessment payments. This rule would change the submission due date for handler shipment statements and assessment payments for Walla Walla sweet onions shipped prior to September 1 (hereinafter referred to as "regular season") from September 1 to September 30. The proposed due date change would allow handlers needed time to compile information, file reports, and pay assessments. It is expected that this action would improve handler compliance with the order's reporting and assessment requirements. The proposed rule was unanimously recommended by the Committee at its February 2, 2010, meeting.

Currently, § 956.80 of the order provides that, upon request of the Committee, with the approval of the Secretary, each handler shall furnish to the Committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the Committee to perform its duties. In addition, § 956.42(a) provides that each person who first handles Walla Walla sweet onions shall pay assessments to the Committee upon demand.

Section 956.180(b) of the order's administrative rules currently prescribes that each handler shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments*. For Walla Walla sweet onions handled prior to September 1, such report shall be furnished to the Committee by September 1. In addition, § 956.142 currently provides that, for Walla Walla Sweet Onions handled prior to September 1, annual assessments are due September 1.

At its meeting on February 2, 2010, the Committee recommended that the

order's reporting and assessment due dates for regular season shipments be changed to allow handlers additional time to fulfill these requirements. At the time the order was promulgated in 1995, the Walla Walla sweet onion shipping season typically concluded at the end of July or early in August. As such, the Committee established a September 1 deadline for submitting reports and paying assessments, which gave handlers most of the month of August to accumulate information and prepare their reports and assessment payments.

Recently, however, handlers have indicated to the Committee that advancements in Walla Walla sweet onion production and storage techniques have extended the regular season for the shipment of such onions until the end of August. As a result, it has become more difficult for handlers to gather the information required in time to meet the September 1 deadline for reporting shipments and paying assessments. Changing the due date for submission of the handler's shipment statement and assessment payment for regular season shipments from September 1 to September 30 would allow handlers the needed time to complete the requirements and submit them to the Committee.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, 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 in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 28 handlers of Walla Walla sweet onions who are subject to regulation under the marketing order and approximately 37 Walla Walla sweet onion producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

Based on information from the Committee for the 2009 shipping

season, handlers shipped 621,218 50-pound equivalents of Walla Walla sweet onions. At an average price of \$11.50 per 50-pound equivalent, total handler revenue was approximately \$7,144,000 and average revenue per handler was approximately \$255,100. Also based on information from the Committee, producers harvested an average of 24 acres of Walla Walla sweet onions, with an average production of 699 50-pound equivalents per acre. With an average farm gate value of \$8.75 per 50-pound equivalent, Walla Walla sweet onion producers averaged approximately \$146,800 in gross receipts for the year. Based on this information, the majority of handlers and producers of Walla Walla sweet onions may be classified as small entities under SBA's standards.

This proposal would revise the due dates currently contained in §§ 956.180 and 956.142 of the order for the submission of regular season handler reports and assessment payments for Walla Walla sweet onions handled from June 1 through August 31. The deadline for submitting reports and assessment payments for such onion shipments would be revised from September 1 to September 30. The proposed change would not affect reporting and assessment payment due dates for late season Walla Walla sweet onions shipped during the September 1 through May 31 period, which would remain 30 days after the end of the month in which the onions were handled. The proposed due date change would allow handlers needed time to compile information, file reports and pay assessments. Authority for this action is provided in §§ 956.42(f) and 956.80.

The order provides that each handler who ships Walla Walla sweet onions shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments* and shall pay a pro rata assessment. Currently, handlers who handle Walla Walla sweet onions prior to September 1 are required to submit the shipment statement by September 1. Late season shipments of Walla Walla sweet onions handled after September 1 are required to be reported within 30 days after the last day of the month in which the sweet onions were shipped. Handler assessments are due the same date that the shipment statements are due. Interest charges of 1½ percent of the unpaid balance are imposed on any assessments which are not paid within 30 days of their due date.

At its February 2, 2010, meeting, the Committee discussed whether the current due dates for certain reports and assessment payments needed to be changed to allow more time for handlers

to comply with the marketing order's requirements. Handlers stated at the meeting that advancements in both the production and storage of Walla Walla sweet onions had extended the marketability of their product well into August, whereas, traditionally, their primary marketing season ended around the end of July. As such, the handlers explained that there is now less time between the end of their shipping period and the reporting deadline to compile information, complete reports and pay their assessments. The Committee staff indicated that compliance with the order's reporting and assessment requirements would likely improve if handlers were given additional time to fulfill them.

The Committee discussed alternatives to this change, including extending the due dates even further; requiring submission of reports and assessments monthly instead of at the end of the regular season; changing the due dates, but adding a late penalty; and not making any changes. However, the Committee believes that the proposed changes adequately address the concerns of the handlers while maintaining sufficient consequences for noncompliance and reasonable timelines for the administration of the order.

This rule is not expected to have any economic impact on handlers or producers of any size. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

Information collected under this order is currently approved under OMB No. 0581–0178. This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large Walla Walla sweet onion handlers. As stated above, information collected would not change with this rule; only the date on which the collection is required to be submitted would be revised. 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.

AMS is committed to complying with the E–Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

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

In addition, the Committee's meeting was widely publicized throughout the

Walla Walla sweet onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 2, 2010, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because this rule, if adopted, should be in place as soon as possible to inform handlers of the new reporting and assessment payment deadlines for the upcoming shipping season, which begins in June 2010. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 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 NORTHEAST OREGON

1. The authority citation for 7 CFR part 956 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 956.142 to read as follows:

§ 956.142 Interest charges.

For Walla Walla Sweet Onions handled prior to September 1, the Committee shall impose an interest charge on any handler who fails to pay his or her annual assessments within thirty (30) days of the due date of September 30. For Walla Walla Sweet Onions handled during the period September 1 through May 31, the Committee shall impose an interest charge on any handler who fails to pay his or her assessments within thirty (30) days of the last day of the month in which such shipments are made. The interest charge shall be 1½ percent of

the unpaid assessment balance. In the event the handler fails to pay the delinquent assessment amount within 60 days following the due date, the 1½ percent interest charge shall be applied monthly thereafter to the unpaid balance, including any accumulated interest. Any amount paid by a handler as an assessment, including any charges imposed pursuant to this paragraph, shall be credited when the payment is received in the Committee office.

3. Revise the introductory text of § 956.180(b) to read as follows:

§ 956.180 Reports.

* * * * *

(b) Each handler shall furnish to the Committee a *Handler's Statement of Walla Walla Sweet Onion Shipments* containing the information in paragraphs (a)(1), (a)(2), and (a)(3) of this section, except that gift box and roadside stand sales shall be exempt from paragraph (a)(2) of this section: *Provided*, That for Walla Walla Sweet Onions handled prior to September 1, such report shall be furnished to the Committee by September 30, and that for Walla Walla Sweet Onions handled during the period September 1 through May 31, such report shall be furnished to the Committee no later than thirty (30) days after the end of the month in which such onions were handled:

* * * * *

Dated: April 7, 2010.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. 2010–8267 Filed 4–9–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1245

[Doc. No. AMS–FV–07–0091; FV–07–706–PR–2A]

RIN 0581–AC78

Establishment of a U.S. Honey Producer Research, Promotion, and Consumer Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and Referendum Order.

SUMMARY: This proposed rule would establish a new U.S. honey producer funded research and promotion program under the Commodity Promotion, Research, and Information Act of 1996 (1996 Act). The proposed U.S. Honey

Producer Research, Promotion and Consumer Information Order (Proposed U.S. Producer Order) was submitted to the Department of Agriculture (Department) by the American Honey Producers Association (AHPA). The Department is conducting an initial referendum to ascertain whether the persons to be covered by and assessed under the Proposed U.S. Producer Order favor the Order prior to it going into effect. The Proposed U.S. Producer Order would provide that producers pay an assessment to the U.S. Honey Producer Board (Proposed Board) at the rate of \$0.02 cents per pound of U.S. honey produced and shall only be imposed on U.S. producers. A producer who produces less than 100,000 pounds of U.S. honey per year would be eligible for a certificate of exemption. The Proposed U.S. Producer Order would be implemented if it is approved by a majority of the producers voting in the referendum, which also represent a majority of the volume of U.S. honey produced during the representative period by those voting in the referendum. A separate final rule on referendum procedures is being published in this issue of the **Federal Register**.

DATES: The voting period is May 17, 2010 through June 4, 2010. To be eligible to vote, producers must have produced 100,000 or more pounds of honey from January 1, 2008 through December 31, 2008. Ballots will be mailed to all known honey producers on or before May 17, 2010. Ballots must be received by the referendum agent no later than the close of business by 4:30 p.m. (Eastern Time) on June 4, 2010.

ADDRESSES: Copies of the Proposed U.S. Producer Order may be obtained from: Referendum Agent, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0244, Room 0632–S, Washington, DC 20250–0244; *telephone:* (202) 720–9915 or (888) 720–9917 (toll free); or *facsimile:* (202) 205–2800; or can be viewed at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Kimberly Coy, Marketing Specialist, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, Room 0634–S, 1400 Independence Ave., SW., Washington, DC 20250–0244; *telephone* (202) 720–9915 or (888) 720–9917 (toll free); *Fax:* (202) 205–2800 or e-mail kimberly.coy@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Commodity Promotion, Research, and