

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 925 which was published at 69 FR 21689 on April 22, 2004, is adopted as a final rule without change.

Dated: August 10, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 956

[Docket No. FV04-956-1 FIR]

Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Special Purpose Shipping Regulations and Modification of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established procedures to allow the grading, packing, or storing of Walla Walla sweet onions outside the production area established under the Walla Walla sweet onion marketing order, and modified handler reporting requirements. The marketing order regulates the handling of sweet onions grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon and is administered locally by the Walla Walla Sweet Onion Marketing Committee (Committee). Allowing sweet onion market preparation to occur outside the production area increases the marketing options for Walla Walla sweet onions and may reduce marketing costs. Modification of the reporting requirements contributes to the efficient operation of the program and enhances compliance with the special purpose shipment procedures established in this rule.

EFFECTIVE DATE: September 15, 2004.

FOR FURTHER INFORMATION CONTACT:

Barry Broadbent, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue,

Suite 385, Portland, Oregon 97204-2807; Telephone: (503) 326-2724; Fax: (503) 326-7440; or e-mail: Barry.Broadbent@usda.gov; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 956, both as amended (7 CFR part 956), regulating the handling of Walla Walla sweet onions grown in 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the 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 the 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 the 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.

Minimum grade, size, maturity, container, and pack requirements are authorized under the order, but currently only container markings are regulated. This rule continues in effect the implementation of procedures and safeguard requirements that allow grading, packing, or storing of Walla Walla sweet onions outside the production area, but within the States of Oregon and Washington. Persons desiring to ship, as well as those desiring to receive Walla Walla sweet onions for grading, packing, or storing outside the production area must apply and report to the Committee on forms provided by the Committee. This rule also continues in effect the additional requirement that handlers must submit a preseason registration form as well as provide additional information on the handler's shipment statement.

Section 956.63 of the order provides authority for the USDA to issue special regulations to facilitate the shipping of Walla Walla sweet onions for grading, packing, or storing outside the production area. Further, § 956.66 provides authority for the establishment of such safeguards as may be necessary to ensure that Walla Walla sweet onions are shipped for the purpose so authorized. Reporting requirements are authorized in § 956.80.

The Committee met on December 8, 2003, and unanimously recommended the establishment of procedures and safeguard requirements to allow the grading, packing, or storing of Walla Walla sweet onions outside the production area. At that meeting, the Committee also unanimously recommended expanding the current handler reporting requirements to include a preseason registration form. The Committee met again on February 10, 2004, and made a unanimous recommendation to broaden the scope of the handler shipment statement to include a listing of producers whose product was handled and the quantity handled for each producer. Committee members believe that this rule will: (1) Allow shippers to use grading, packing, or storing facilities that will be most beneficial to their individual circumstances; (2) contribute to the efficient operation of the program by improving Committee information; and (3) enhance compliance with the provisions of the order.

The grading, packing, and storing costs associated with preparing Walla Walla sweet onions for market may vary between onion packing facilities inside and outside the production area. There may also be differences in the type and variety of packaging options, the transportation alternatives available, or

the level of services offered by individual onion packing facilities inside and outside the production area. This rule allows shippers of Walla Walla sweet onions the flexibility to pack and ship product from the most advantageous facility available, regardless of where in Oregon or Washington that facility is located.

Some examples of situations in which this rule benefits the industry are: (1) A packer outside the area of production is experimenting with modified atmosphere packaging that increases the shelf life of sweet onions; (2) a Walla Walla sweet onion producer is part owner of a packing facility located outside the area of production and wishes to pack and store sweet onions in that facility; (3) a packing facility outside the area of production can offer rail service for shipping and a rail siding is not available within the production area; and (4) a fresh produce marketing company that has a packing facility outside the area of production desires to begin packing and shipping Walla Walla sweet onions.

The Committee believes that the regulations established under the order create orderly marketing, are good for consumers, encourage repeat purchases, and ultimately improve returns to producers. Therefore, the Committee recommended the establishment of safeguards to ensure that all Walla Walla sweet onions graded, packed, or stored outside the production area are ultimately subject to the requirements established under the order.

Persons desiring to ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area must apply to the Committee on a *Shippers/Receivers Application for Certificate of Privilege*, (SRACP) Form No. 3. Applicants must complete and submit a SRACP form each year prior to shipping or receiving Walla Walla sweet onions for grading, packing, or storing outside the production area. Information collected on the application includes the company name, contact name, address, contact telephone numbers, signature of the shipper or receiver, date, and such other information as the Committee may require. Applicants must agree to furnish reports on shipments of sweet onions made under the Certificate of Privilege and must certify that all shipments of production area onions for grading, packing, or storing outside the production area will be made in accordance with order provisions. Those parties acting as receivers under the Certificate of Privilege must further agree to forward all assessments due on sweet onions handled to the Committee

office. If approved, the Committee manager will sign the application, assign a Certificate of Privilege number for tracking purposes, and return a copy of the application to the applicant. If denied, the applicant will be notified in writing of the reasons for denial and have an opportunity to appeal the Committee's decision.

After the Committee approves the applications of both the shipper and the receiver, Walla Walla sweet onions may be shipped out of the production area for grading, packing, or storing. When the parties conclude shipping or receiving, both the shipper and receiver must submit to the Committee a *Special Purpose Shipment Report*, (SPSR) Form No. 4. Information collected on the SPSR includes the Certificate of Privilege number as assigned by the Committee, company name, contact name, address, contact telephone numbers, names of the individuals or companies shipped to or received from, the total quantities of onions shipped or received in 50-pound equivalents, the signature of the shipper or receiver, date, and such other information as the Committee may require.

The SPSR, as well as any assessments due, must be submitted to the Committee no later than 30 days after the date of the last shipment or receipt of Walla Walla sweet onions under the Certificate of Privilege. The SPSR also reiterates that it is the receiver of sweet onions shipped under the Certificate of Privilege that is responsible for payment of the administrative assessment. Shippers and receivers will only be required to submit one (1) of these reports annually.

This rule also continues in effect increased handler-reporting requirements by requiring the submission of a *Walla Walla Sweet Onion Handler Registration Form*, (Registration) Form No. 2, and by expanding the scope of the information required on the existing *Handler's Statement of Walla Walla Sweet Onion Shipments*, (Form No. 1; Form FV-141) (Statement). Each year prior to the shipping season, but in no case later than May 31, all persons desiring to handle Walla Walla sweet onions during the forthcoming season must complete a Registration form and submit it to the Committee. Information collected on this form includes: Company name, contact name, signature, date, addresses, and contact telephone numbers; brands or labels to be marketed; estimated acres of production to be packed; and such other information as the Committee may require.

The previous Statement, which was submitted to the Committee at the end

of each shipping season, required handlers to report the quantity of Walla Walla sweet onions handled during the season. This action continues in effect the expansion of the information collected on the Statement to include reporting the quantity of Walla Walla sweet onions handled on behalf of each producer. Information collected on the Registration and modified Statement forms will greatly enhance order compliance by allowing the Committee to compare the collected data with information from other sources for corroboration. This will ultimately assist the Committee in monitoring onion shipments and in the collection of assessments. For example, acreage and production information voluntarily provided by producers will be reconciled with similar information collected from handlers to help ensure that all assessable sweet onion shipments have been properly reported and that assessments have been correctly collected.

This information collection is important to the Committee in light of the regulation relaxation that allows the grading, packing, or storing of Walla Walla sweet onions outside the production area. The Committee believes that enhancing the scope of the reporting requirements is the best way to maintain oversight of the special purpose shipment procedures as modified herein. In addition to enhancing the Committee's compliance efforts, the collection of handler profile information such as addresses and contact numbers will also be useful to the Committee for maintaining contact with handlers throughout the season.

Final Regulatory Flexibility Analysis

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 28 handlers of Walla Walla sweet onions subject to regulation under the 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 \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$750,000.

The Committee estimates that in 2003, 674,038 50-pound containers of Walla Walla sweet onions were marketed at an average FOB price of about \$11.50 per container. The total industry value at shipping point was approximately \$7,751,437, leaving an average annual gross receipt per handler of \$276,837. Thus, a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

Committee meetings are widely publicized in advance of the meetings and are held in a location central to the production area. The meetings are open to all industry members and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Committee recommendations can be considered representative of small business interests in the industry.

This rule continues the implementation of procedures that allow persons to ship or receive Walla Walla sweet onions outside the area of production for grading, packing, or storing purposes. Persons desiring to do so must first apply to the Committee. The applicants must certify that all Walla Walla sweet onions graded, packed, or stored outside the production area will meet any minimum grade, size, maturity, container, pack, or inspection requirements established under the order. Previously, only container, assessment, and reporting requirements were implemented under the order. After the Committee completes its review of the application and determines that everything is in order, applicants will be granted a Certificate of Privilege authorizing them to ship or receive Walla Walla sweet onions outside the production area for market preparation. At the end of the shipping season, both the shipper and receiver must submit reports to the Committee regarding the quantity of Walla Walla sweet onions handled under Certificate of Privilege. The authority for this action is provided in §§ 956.63 and 956.66.

In addition, this rule continues in effect the expansion of the handler reporting requirements by adding a preseason handler registration form and expanding the scope of information required on the handler's shipment report. These changes provide the Committee with more comprehensive

handler information that improves handler compliance and enhances safeguards already in place. The additional information gathered from the new mandatory report complements the modification to the current reporting requirements and contributes to greater efficiency in the operation of the program. The improved safeguards and oversight afforded the Committee with these reporting requirement changes are essential in maintaining compliance with procedures for market preparation outside the production area. The authority for this action is provided in § 956.80.

Regarding the impact of this action on affected entities, this rule imposes minimal additional costs. The Committee estimates that about 10 persons may desire to ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area during each marketing year. Such shippers and receivers must complete a *Shippers/Receivers Application for Certificate of Privilege*, (Form No. 3) and submit it to the Committee for approval each year prior to shipping or receiving any Walla Walla sweet onions for grading, packing, or storing outside the production area. Once the Committee has approved the application, the parties will be free to handle sweet onions for market preparation out of the production area.

After Walla Walla sweet onions have been handled pursuant to the Certificate of Privilege, both the shipper and receiver must submit a *Special Purpose Shipment Report* (Form No. 4), to the Committee no later than 30 days after the date of the last shipment or receipt of onions. The Committee estimates that 10 shippers and receivers will each be obligated to submit one (1) of these reports annually. The annual industry burden associated with the information collection on both forms is estimated to total approximately 3.6 hours.

The addition of a preseason registration form and the expansion of the existing reporting requirements for all Walla Walla sweet onion handlers also imposes minimal additional costs on the industry. Persons desiring to handle Walla Walla sweet onions must complete and submit a *Walla Walla Sweet Onion Handler Registration Form* (Form No. 2), prior to May 31 of each year. Handlers of sweet onions must also submit a *Handler's Statement of Walla Walla Sweet Onion Shipments* (Form No. 1; Form FV-141) that is more detailed than the one previously used. The Committee estimates that 28 handlers are affected, with a total annual industry burden of

approximately 25.76 hours for both forms.

The Committee considered one alternative to the part of this proposal that allows Walla Walla sweet onions to be graded, packed, or stored out of the area. The alternative was to prohibit any grading, packing, or storing of Walla Walla sweet onions outside the production area. The Committee felt that this alternative would have limited the flexibility of shippers in making marketing decisions related to the grading, packing, or storing of Walla Walla sweet onions and it was therefore rejected. Allowing the shipment of Walla Walla sweet onions outside the production area for grading, packing, or storing is a relaxation of order requirements and any costs related to additional reporting is outweighed by the benefits of allowing such shipments.

The alternatives that the Committee discussed with regard to increasing handler reporting requirements were: (1) Maintain the status quo and make no changes in the reporting requirements; and (2) make the submission of the registration form and producer information on the shipment statement voluntary instead of mandatory. Both of these options were rejected as not sufficiently addressing the need for better handler information. Enhanced information collection will help improve the Committee's ability to ensure industry compliance with the order. This is especially important in light of the relaxation changes in the order regulations allowing grading, packing, or storing outside the production area.

This rule continues to impose an additional reporting and recordkeeping burden on persons who ship or receive Walla Walla sweet onions for grading, packing, or storing outside the production area. This action requires three new Committee forms and modification of a previous form. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements on these three new Committee forms and the modification of the previous form were approved by the Office of Management and Budget (OMB) under OMB Control No. 0581-0221 on April 13, 2004.

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. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meetings were widely publicized throughout the sweet onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the December 8, 2003, and the February 10, 2004, meetings were public meetings and all entities, both large and small, were able to express their views.

An interim final rule concerning this action was published in the **Federal Register** on April 26, 2004 (69 FR 22377). Copies of the rule were mailed by the Committee's staff to all Committee members and Walla Walla sweet onion handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and the USDA. That rule provided a 60-day comment period which ended June 25, 2004. No comments were received.

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/fv/maob.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 22377, April 26, 2004) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 956

Marketing agreements, Onions, Reporting and recordkeeping requirements.

PART 956—SWEET ONIONS GROWN IN THE WALLA WALLA VALLEY OF SOUTHEAST WASHINGTON AND NORTHEAST OREGON

■ Accordingly, the interim final rule amending 7 CFR part 956 which was published at 69 FR 22377 on April 26, 2004, is adopted as a final rule without change.

Dated: August 10, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-18612 Filed 8-13-04; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV04-989-1 FIR]

Raisins Produced From Grapes Grown in California; Final Free and Reserve Percentages for 2003-04 Crop Natural (Sun-Dried) Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule that established final volume regulation percentages for 2003-04 crop Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is locally administered by the Raisin Administrative Committee (Committee). The volume regulation percentages are 70 percent free and 30 percent reserve. The percentages are intended to help stabilize raisin supplies and prices, and strengthen market conditions.

EFFECTIVE DATE: Effective September 15, 2004. The volume regulation percentages apply to acquisitions of NS raisins from the 2003-04 crop until the reserve raisins from that crop are disposed of under the order.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989),

both as amended, regulating the handling of raisins produced from grapes grown in California, 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."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order provisions now in effect, final free and reserve percentages may be established for raisins acquired by handlers during the crop year. This rule continues to establish final free and reserve percentages for NS raisins for the 2003-04 crop year, which began August 1, 2003, and ends July 31, 2004. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect final volume regulation percentages for 2003-04 crop NS raisins covered under the order. The volume regulation percentages are 70 percent free and 30 percent reserve, and were established through an interim final rule published on April 22, 2004 (69 FR 21695). Free tonnage raisins may be sold by handlers to any market. Reserve raisins must be held in a pool for the account of the Committee and are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the Committee to handlers for free use or to replace part of the free tonnage raisins they exported; used in diversion programs; carried over as a hedge against a short crop; or disposed of in other outlets not competitive with