

**Agricultural Marketing Service****7 CFR Part 956**

[FV96-956-1 FR]

**Sweet Onions Grown in the Walla Walla Valley of Southeast Washington and Northeast Oregon; Establishment of Handler Reporting Requirements and Interest Charges on Overdue Assessment Payments****AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Final rule.

**SUMMARY:** This final rule establishes handler reporting requirements and establishes interest charges on overdue assessments. This rule will contribute to the efficient operation of the program by helping to ensure that assessments are available in a timely manner to cover budgeted expenses incurred under the marketing order. The Walla Walla Sweet Onion Committee (Committee) believes that these actions are the only alternatives available to ensure timely payments of assessments. These actions are expected to reduce the need for compliance efforts and thereby reduce the costs to administer the order.

**EFFECTIVE DATE:** August 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204-2807; telephone: (503) 326-2724; or Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 690-0464. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, PO Box 96456, room 2523-S, Washington, DC 29909-6456; telephone (202) 720-2491, FAX (202) 720-5698.

**SUPPLEMENTARY INFORMATION:** This rule is effective under Marketing Agreement and Order No. 956 (7 CFR part 956), regulating the handling of sweet onions grown in the Walla Walla Valley of southeast Washington and northeast Oregon, hereinafter referred to as the "order." The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." This final rule was recommended by the Committee, the agency responsible for the local administration of the

marketing order for sweet onions grown in the Walla Walla Valley.

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

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. If adopted, the rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

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

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

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

There are approximately 30 handlers of Walla Walla Sweet Onions subject to regulation under the marketing order and approximately 50 producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of Walla Walla Sweet Onion handlers and producers may be classified as small entities.

This final rule establishes interest charges on overdue assessments and establishes handler reporting requirements.

This final rule will contribute to the efficient operation of the program by helping to ensure that assessments are available in a timely manner to cover budgeted expenses incurred under the marketing order. Those persons large and small who pay in a timely manner will not be subject to an interest charge. The changes establishing interest charges are expected to reduce the need for compliance efforts and thereby reduce the costs to administer the order which will benefit all persons who are subject to assessments.

The preparation of one form one time each year with shipment information should not constitute a significant burden on a business unit, small or large. The estimated reporting burden per response is 0.323 hours. In addition, gift box and roadside stand sales are exempt from reporting the region to which shipments are made, which should be particularly favorable to small entities.

Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The Committee meets prior to each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Walla Walla Sweet Onions. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements tends to effectuate the declared policy of the Act.

At its February 15, 1996, meeting the Committee unanimously recommended the addition of administrative rules and regulations that provide a late payment charge for delinquent assessments and a reporting requirement for handlers.

The Act provides that each handler shall pay to the Committee such handler's pro rata share of Committee expenses that the Secretary finds are reasonable and likely to be incurred for the maintenance and functioning of the Committee. Section 956.42 authorizes the Committee to levy assessments on handlers of Walla Walla Sweet Onions to cover each handler's share of Committee expenses.

Section 956.42(f) provides the authority for the Committee to impose, with the approval of the Secretary, a late

payment or an interest charge on handlers who fail to pay any assessment in a timely manner. This final rule establishes an interest charge of 1½ percent per month to be applied to any assessment balance remaining unpaid on October 1 of each year.

The Committee depends upon handler assessments for operating funds. Last year, the first season of operation of the order, some handlers were late with their assessment payments, with fewer than half submitting their assessment payments when due. When assessments are not paid in a timely manner, the handlers paying assessments on time are placed in an unfair situation compared to the delinquent handlers.

As part of its collection efforts, the Committee requested delinquent handlers to promptly submit assessment payments. However, such requests did not substantially hasten the payment of such delinquent assessments, a few of which were over 120 days delinquent. To facilitate the collection of assessments needed for the maintenance and functioning of the Committee, the Committee recommended the establishment of an interest charge of 1½ percent per month to be applied to assessment balances unpaid after 30 days. Annual assessments are due from handlers on September 1. The 1½ percent interest charge will be applied monthly, after September 30, to the unpaid balance, including any accumulated interest.

This change is intended to encourage handlers to pay their assessments when due, thereby eliminating potential inequities towards handlers who pay their assessments on time. It contributes to the efficient operation of the program by ensuring that adequate funds are available to cover expenses incurred under the marketing order.

Section 956.80 provides authority for the Committee, with the approval of the Secretary, to require that each handler 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 under the marketing order.

Pursuant to this authority, this final rule also establishes a requirement that each handler submit an annual report, on a form provided by the Committee, showing their weekly and total yearly shipments of Walla Walla Sweet Onions by geographical region. The annual handler reporting requirement will provide the Committee with statistical information regarding total industry shipments which will be useful to the Committee in developing a budget and

in making marketing and promotion plans for the upcoming season. The form includes the total number of 50 pound equivalents of Walla Walla Sweet Onions shipped during each week of the shipping season and an end of season total. The form will also require handlers to indicate the geographical regions to which onions are shipped. Information on the geographical region to which shipments are made will be useful to the Committee in planning marketing and promotional activities. The Committee has drawn up boundaries of 11 geographical regions to help it in developing its marketing and promotional plans. To effectively promote and market Walla Walla Sweet Onions, knowledge of market conditions and access to accurate statistical information is invaluable. The Committee recommended that handlers be exempt from having to indicate the geographical region to where the onions were shipped when making roadside stand and gift box sales. The Committee feels that having to report the geographical region shipped for every bag of onions sold in these outlets will be burdensome to handlers making such shipments.

The form also requires handlers to provide their name and address to properly identify the firm, as a basis for verifying compliance with the assessment provisions of the order.

In addition to marketing and promotion planning, the information on the form will help compliance efforts by keeping the Committee informed of handlers' operations. It will enable the Committee manager to become aware of potential problems and discuss them with the handlers involved before violations occur, thus reducing the need for, and the expense of, compliance action by the Committee and the Department.

To implement these changes, a new Subpart—Rules and Regulations is added to part 956. Sections 956.142 *Interest charges.*, and 956.180 *Reports.* are included in that subpart.

The proposed rule concerning these actions was published in the July 15, 1996, Federal Register (61 FR 36827), with a 15-day comment period ending July 30, 1996. No comments were received.

The proposed rule also announced that AMS intended to request a revision to the currently approved information collection for Walla Walla Sweet Onions under the Paperwork Reduction Act of 1955 (44 U.S.C. Chapter 35). The revision of the approved information collection is necessary to cover the new annual shipment report to be submitted by handlers to the Committee.

Comments concerning this revision must be received not later than September 13, 1996.

Because there is insufficient time for normal clearance procedures, AMS has received temporary approval from the Office of Management and Budget (OMB) for the use of this form for the 1996 shipping season. The form has been added to the other 5 forms currently approved for use under OMB Number 0581-0172. The information collection revision will be sent to OMB for final approval after September 13, 1996. All comments received on the revision will be summarized and included in the request for final OMB approval.

After consideration of all relative material presented, including the committee's recommendation, and other available information, it is hereby found that this final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This rule should be effective promptly so the Committee can gather information on shipments prior to the September 1 assessment billing date; (2) this rule was unanimously recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; and (3) Walla Walla Sweet Onion handlers are aware of this rule and need no additional time to comply with the requirements.

#### 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 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. A new Subpart—Rules and Regulations consisting of sections 956.142 and 956.180 are added to read as follows:

#### **Subpart—Rules and Regulations**

##### **§ 956.142 Interest charges.**

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 1. The interest charge shall, after 30 days, 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.

#### § 956.180 Reports.

Each handler shall furnish to the Committee by September 1 of each year an annual report containing the following information, except that gift-box and roadside stand sales shall be exempt from paragraph (b):

(a) The number of 50 lb. equivalents of Walla Walla Sweet Onions shipped by each handler during each week of the shipping season and the total for the season;

(b) The geographical regions as defined by the Committee to which each shipment is made; and

(c) The name, address, and signature of each handler.

Dated: August 22, 1996.

Robert C. Keeney,

*Director, Fruit and Vegetable Division.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 13

[Docket No. 27873; Amdt. No. 13-26]

RIN 2120-AF36

#### Civil Penalties: Streamlined Enforcement Procedures for Certain Security Violations

**AGENCY:** Federal Aviation Administration (FAA), (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes streamlined procedures to be used to process civil penalty enforcement actions resulting from certain security violations. The procedures were tested as a result of recommendations made by the Vice President's National Performance Review. This streamlined enforcement process will reduce costs and improve efficiency in factually uncomplicated cases.

**EFFECTIVE DATE:** This final rule is effective August 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Brian R. Reed, Attorney, Enforcement Division (AGC-320), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267-7158.

**SUPPLEMENTARY INFORMATION:** The changes in this rule involve matters of agency organization, procedure, and practice only. While notice and public comment are not required, the rule changes are being adopted after publishing notice of a temporary Special Federal Aviation Regulation (SFAR), which was implemented to test the procedures. Public comment was invited. Two comments were received.

The first commenter recommended that all actions taken against airmen under the streamlined procedures be appealable to the National Transportation Safety Board (NTSB). The streamlined procedures contained in this rule do not, however, address the jurisdiction of the NTSB. Therefore, the suggestion is beyond the scope of this rule.

The second commenter suggested that the streamlined procedures be used only in instances where the respondent has admitted the violation because the procedures do not require legal review before an enforcement action is initiated. The commenter expressed concern that those initiating the cases would lack the qualifications to conduct an appropriate review of an enforcement investigative report in order to determine whether the FAA's allegations have been substantiated.

In response, the FAA notes that the streamlined procedures only allow for initiation of factually uncomplicated cases without initial legal review. Any investigation revealing that an alleged violator denies the violation occurred would be too factually complicated for use of the procedures, and the case would be referred to the appropriate Assistant Chief Counsel's office for review. Additionally, the evidence used in the cases affected by the streamlined procedures tends to be uncontroverted evidence contained in police records and airport documentation, as well as screener and respondent statements. FAA security agents have been trained to refer any case that contains contradictory evidence to the legal office for initiation of an enforcement action.

#### Availability of Regulation

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office

or Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-9677. Requests must include the amendment or docket number.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Federal Register electronic bulletin board service (telephone: 202-512-1661) or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service, at the toll-free number 1-800-322-2722 (1-800-FAA-ARAC). Internet users may reach the Federal Register's web page at: [http://www.access.gpo.gov/su\\_docs](http://www.access.gpo.gov/su_docs)

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

#### Background

Under 49 U.S.C. 46301(d), the FAA has authority to assess civil penalties not to exceed \$50,000 for certain violations of 49 U.S.C. Subtitle VIII, the FAA's regulations (14 CFR parts 1-199), and certain other statutes and orders (see 49 U.S.C. Subtitle III, Chapter 51). In the case of persons other than those acting as a pilot, flight engineer, mechanic, or repairman, the procedures for civil penalty assessment actions are those contained in section 13.16 and part 13, subpart G of the FAA's regulations. The current civil penalty assessment process for these actions is outlined as follows:

During the investigation phase of an enforcement action, FAA investigative personnel ordinarily notify alleged violators of an agency investigation by issuing a letter of investigation. This notification is described in FAA Order 2150.3A, Compliance and Enforcement Program, but is not required by statute, regulation, or that order. Following an investigation, a civil penalty may be assessed against individuals only after notice of the proposed charges and an opportunity for a hearing. This process is begun by issuing a notice of proposed civil penalty to an alleged violator (respondent). Section 13.16(c) delegates the authority to the FAA's Deputy Chief Counsel and certain Assistant Chief Counsel in the regions, centers, and headquarters to issue such notices.

Respondents have several options to respond to the notice of proposed civil penalty. The person charged with a violation is required to do one or more of the following: