

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule would 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. 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 proposed rule would change the fiscal period from June 1 through May 31 to January 1 through December 31. This rule would also make conforming changes to the order's administrative rules and regulations. This change was unanimously recommended by the Committee at its December 17, 2003, meeting.

Section 956.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. Section 956.42 provides that these expenses be paid by assessments levied on fresh shipments of Walla Walla sweet onions. Further, § 956.41 provides that an annual budget of expenses be prepared by the Committee based on the defined fiscal period. Section 956.13 of the order defines "fiscal period" to mean the period beginning on June 1 and ending on May 31 of each year, or such other period as may be recommended by the Committee and approved by USDA.

Walla Walla sweet onions are traditionally harvested from about mid-June through about mid-August, although in recent years harvest has been extended into September due to an increase in spring planted onions and the use of better storage facilities. Walla Walla sweet onions have a short shelf life and are therefore generally marketed within a relatively short period of time following harvest. During the promulgation of the order in 1995, the proponent industry committee—the

organization responsible for drafting the order and presenting it during the promulgation hearing—was of the opinion that the new order's fiscal period should begin shortly before the marketing season began. Testimony during the hearing supported the position that the start of the fiscal period should be close to the beginning of the season. This was so a minimum of expenses would be incurred prior to the time assessment revenue was received by the Committee following the sweet onion harvest.

Experience gained over the last eight years has shown the Committee that the June 1 through May 31 fiscal period is not conducive to coordinating the timing of its marketing promotion, including paid advertising activities, with the short harvest and marketing season for Walla Walla sweet onions. The crop is harvested and marketed during a four-month period—mid-June into September.

Because of advance planning needed for marketing promotion projects, the Committee now develops its budget of expenditures before June 1, but delays actual expenditures until that date. This has made it more difficult for the Committee to coordinate the timing of its promotion activities with the short harvest and marketing season. The Committee believes that better timing of marketing promotion activities with the harvest and marketing of Walla Walla sweet onions would improve the distribution and consumption of sweet onions. Hence, the Committee recommended that the fiscal period begin January 1 and end December 31 each year.

As previously stated, the Committee's current fiscal period is June 1 through May 31. The Committee plans on formulating a budget for the twelve-month period beginning June 1, 2003, and submitting it to the USDA for approval prior to that date. The Committee could then begin expending funds in early June for its 2003–2004 promotion and research plans, as well as for administration costs. Any final rule issued as a consequence of this proposed rule would be made effective January 1, 2004. Thus, the Committee would meet after this proposed change is issued as a final rule, but prior to January 1, 2004, to reformulate and resubmit a new budget for USDA approval for the new fiscal period beginning January 1, 2004, and ending December 31, 2004.

As conforming changes to the proposed fiscal period change, this rule would also update language in § 956.142, Interest charges, and § 956.180, Reports by removing the

words "of each fiscal period" wherever they appear.

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 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 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 21 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 2002, 611,955 50-pound units of Walla Walla sweet onions were marketed at an average FOB price of about \$9.00 per unit. Thus the total industry value at shipping point was about \$5,507,595. Thus, a majority of handlers and producers of Walla Walla sweet onions may be classified as small entities.

This proposal would change the current fiscal period from June 1 through May 31 to January 1 through December 31. The current fiscal period has been in place since the marketing order's inception in 1995. Because of advance planning needed for marketing promotion projects, including paid advertising, the Committee now develops its budget of expenditures before June 1, but delays actual expenditures until that date. This has made it more difficult for the Committee to coordinate the timing of marketing promotion activities with the short harvest and marketing season for Walla Walla sweet onions—mid-June into September. The Committee believes that better timing of marketing promotion and marketing would result with a January 1 through December 31 fiscal period and improve the distribution and consumption of Walla Walla sweet onions.