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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV03-958-01 FR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate and Defined Fiscal Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) for the 2003-2004 and subsequent fiscal periods from \$0.08 to \$0.095 per hundredweight of onions handled, and establishes, in the regulatory text, the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year. The Committee locally administers the marketing order that regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: August 15, 2003.

FOR FURTHER INFORMATION CONTACT:

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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 No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, 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. Under the marketing order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions beginning on July 1, 2003, and continue until amended, suspended, or terminated. 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 increases the assessment rate established for the Committee for the 2003-2004 and subsequent fiscal periods from \$0.08 to \$0.095 per hundredweight of onions handled, and establishes, in the regulatory text, the Committee's fiscal period. The fiscal period begins July 1 of each year and ends June 30 of the following year.

The order provides authority for the Committee, with the approval of USDA, to establish a fiscal period. The Committee has operated under a fiscal period of July 1 through June 30 since its inception in the late 1950's, but this period has never been specified in the regulatory text. This rule adds to the order's rules and regulations a definition of the Committee's fiscal period. The fiscal period will be defined to be the 12-month period beginning July 1 and ending June 30 of the following year, both dates inclusive.

The order also provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members, four handler members and one public member. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000-2001 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on April 3, 2003, and in a vote of seven in favor, one against, and one abstention, recommended an assessment rate of \$0.095 per hundredweight of onions handled. The assessment rate of \$0.095 is \$0.015 higher than the rate currently