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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV96-958-3 IFR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Relaxation of Pack and Marking Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule permits bulk shipments of U.S. Commercial and U.S. No. 2 grade onions which contain more than 30 percent U.S. No. 1 grade onions. A bulk shipment is one in which the onions are packed in containers weighing 60 pounds or more. This rule also removes the requirement that bulk containers of onions packed as U.S. Commercial grade shall have the grade marked permanently and conspicuously on the containers. These changes are intended to improve the marketing of such onions, reduce handler packing costs, and increase returns to growers. These changes were recommended by the Idaho-Eastern Oregon Onion Committee (committee), the agency responsible for the local administration of the marketing order for onions grown in certain designated counties in Idaho, and Malheur County, Oregon.

DATES: Effective August 1, 1996; comments received by August 30, 1996 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; FAX (202)

720-5698. All comments should reference the docket 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.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, 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, FAX: (503) 326-7440; or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525, South Building, P.O. Box 96456, Washington, DC 20090-6456; Telephone: (202) 690-0464, Fax: (202) 720-5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456; telephone (202) 720-2491, Fax No. (202) 720-5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958 (7 CFR part 958), as amended, 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 (Department) 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 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 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 34 handlers who are subject to regulation under the order and approximately 550 producers in the production area. Small agricultural service firms, which includes handlers of Idaho-Eastern Oregon onions, 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 Idaho-Eastern Oregon onion handlers and producers may be classified as small entities.

This interim final rule removes pack and container marking requirements for shipments of bulk containers. Bulk containers contain 60 pounds or more of onions. Currently, shipments of all varieties of onions (except red) which grade U.S. Commercial or U.S. No. 2 may not contain more than 30 percent U.S. No. 1 grade onions, regardless of container size. The intent of this requirement is to lessen the chances of market confusion by providing a clear distinction between onions packed as U.S. No. 1, the highest grade shipped from the production area, and those onions packed at the U.S. Commercial

or U.S. No. 2 grade levels. Also, containers of onions of the U.S. Commercial grade must be prominently and conspicuously marked to further achieve the distinction between the various grades packed and shipped from the production area.

Industry experience indicates that it is not important to limit the percentage of U.S. No. 1 onions in marketing bulk containers, because such onions normally go to firms that peel, slice, dice, chop, or otherwise prepare them for use in salad bars, fast food, or similar retail outlets. Shipments for the wholesale, retail, repacker, and export trade generally are made in containers weighing less than 60 pounds. Thus, the risk of confusion among buyers as to the quality of onions for traditional bulk shipment market outlets is quite low. Absent these changes, bulk shipments of onions containing more than 30 percent U.S. No. 1 grade onions would require handlers to repack the onions to meet the 30 percent tolerance and thereby incur additional expenses. This rule will especially benefit small handlers shipping bulk containers because such handlers normally operate with fewer packing lines and pack fewer onions. This makes it more difficult for small handlers to repack lots to meet the 30 percent U.S. No. 1 tolerance compared to larger handlers.

With the reduced packing costs, and greater marketing flexibility expected to result from these changes, small and large handlers in the Idaho-Eastern Oregon onion industry will be able to compete more effectively in the marketplace. Therefore, the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Section 958.52 of the order authorizes the issuance of grade, size, quality, container markings, pack, and container regulations for any variety or varieties of onions grown in the production area. Section 958.51 authorizes the modification, suspension, or termination of regulations issued under section 958.52.

This rule amends paragraphs (a)(1)(ii) and (a)(3)(i) of section 958.328 by removing, for onions packed in containers weighing 60 pounds or greater, the current requirement that all varieties of onions (except red) which grade U.S. No. 2 or U.S. Commercial may not be shipped if more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality. This rule also amends paragraph (b) of section 958.328

by removing, for onions packed in containers weighing 60 pounds or greater, the current requirement that onions packed as U.S. Commercial grade shall have the grade marked permanently and conspicuously on such containers. These requirements would continue for onions shipped in containers weighing less than 60 pounds.

The committee unanimously recommended these changes at its June 18, 1996, meeting. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Idaho-Eastern Oregon onions which have been issued on a continuing basis. 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 would tend to effectuate the declared policy of the Act.

The current requirement that all varieties of onions (except red) which grade U.S. No. 2 or U.S. Commercial may not be shipped if more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality is intended to reduce market confusion by providing a clear distinction between onions packed as U.S. No. 1 and those packed at the U.S. No. 2 and U.S. Commercial grade levels. The goal of providing a clear distinction between packs in the marketplace is further achieved by requiring that onions packed as U.S. Commercial grade shall have the grade marked permanently and conspicuously on the container. Preventing market confusion is important to the industry in maintaining orderly marketing, and maximizing industry shipments.

The committee reports that this distinction is of little value for bulk shipments of onions, which normally are used for peeling, chopping, slicing, or repacking, and that these requirements have placed an undue regulatory burden on handlers and unnecessarily increased packing costs for such shipments. The committee reports that requiring the grade marking on bulk containers of U.S. Commercial grade onions is not necessary because the chance of market confusion between handlers and buyers of bulk containers is small.

The current requirement which prohibits the bulk shipment of a lot of onions that grades U.S. No. 2 or U.S. Commercial because it is comprised of

more than 30 percent U.S. No. 1 quality grade sometimes forces handlers to resort such onions, or blend them with poorer quality onions to bring the lots into conformance with the 30 percent tolerance. Rather than incur these additional costs, handlers sometimes send such onions to lower value, secondary outlets, such as processing; e.g., canning, freezing, dehydration, or similar outlets. Removing the 30 percent commingling requirement for bulk onion shipments is expected to provide handlers with greater marketing flexibility, reduce packing costs, and increase returns to growers. Removing the U.S. Commercial grade marking requirement for bulk containers is expected to reduce handler packing costs and remove an unnecessary regulatory burden on handlers of such containers.

The 30 percent commingling and marking requirements for containers with less than 60 pounds of onions will continue in effect to maintain the distinction between the various grades shipped into non-bulk markets. As mentioned earlier, this is necessary to prevent market confusion and to maintain orderly marketing conditions.

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

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the Federal Register because: (1) This rule relaxes the current pack and container marking requirements for bulk shipments of Idaho-Eastern Oregon onions; (2) this rule was unanimously recommended at a public meeting and all interested persons had an opportunity to express their views and provide input; (3) Idaho-Eastern Oregon onion handlers are aware of this rule and need no additional time to comply with the relaxed requirements; (4) Idaho-Eastern Oregon onions are shipped throughout the year, and this rule should be in effect by August 15, the date 1996 crop shipments are expected to begin; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 958.328 is amended by revising paragraphs (a)(1)(ii), (a)(3)(i), and (b) to read as follows:

§ 958.328 Handling regulation.

* * * * *

(a) * * *

(1) * * *

(ii) U.S. No. 2 or U.S. Commercial grade, at least 1½ inches minimum diameter but not more than 30 percent of the lot shall be comprised of onions of U.S. No. 1 quality when packed in containers weighing less than 60 pounds; or

* * * * *

(3) * * *

(i) U.S. No. 2 or U.S. Commercial grade, at least 3 inches minimum diameter, but not more than 30 percent of the lot shall be comprised of onions of U.S. No. 1 quality when packed in containers weighing less than 60 pounds; or

* * * * *

(b) *Pack.* Onions packed as U.S. Commercial grade in containers weighing less than 60 pounds shall have the grade marked permanently and conspicuously on the container.

* * * * *

Dated: July 25, 1996.

Sharon Bomer Lauritsen,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 96–19375 Filed 7–30–96; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 981

[Docket No. FV96–981–2 IFR]

Almonds Grown in California; Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule establishes an assessment rate for the Almond Board of California (Board)

under Marketing Order No. 981 for the 1996–97 and subsequent crop years. The Board is responsible for local administration of the marketing order which regulates the handling of almonds grown in California.

Authorization to assess almond handlers enables the Board to incur expenses that are reasonable and necessary to administer the program.

DATES: Effective July 1, 1996. Comments received by August 30, 1996, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, FAX # (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Tershirra Yeager, Marketing Assistant, Marketing Order Administrative Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (209) 720–5127, or FAX # (202) 720–5698; or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (202) 720–1509 or FAX # (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax# (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), regulating the handling of almonds grown in California. The marketing agreement and order are 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 (Department) 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, California almonds 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 almonds beginning July 1, 1996, and continuing 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 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. Such 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 the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule 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 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 7,000 producers of California almonds under this marketing order, and approximately 115 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of California almond producers and handlers may be classified as small entities.

The California almond marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses