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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV95-958-1FIR]

Idaho-Eastern Oregon Onions; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the Idaho-Eastern Oregon Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: July 1, 1995, through June 30, 1996.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Robert J. Curry, Northwest Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Green-Wyatt Federal Building, room 369, 1220 Southwest Third Avenue, Portland, OR 97204, telephone 503-326-2724.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Idaho-Eastern Oregon onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995-96 fiscal period, which began July 1, 1995, and ends June 30, 1996. This final 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity 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 Administrator of 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 450 producers of Idaho-Eastern Oregon

onions under the marketing order and approximately 35 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 Idaho-Eastern Oregon onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Idaho-Eastern Oregon Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon onions. 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. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Idaho-Eastern Oregon onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met on March 21, 1995, and unanimously recommended a 1995-96 budget of \$1,111,447, \$91,408 more than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Manager's salary, \$33,472 (\$30,429), office salaries, \$66,222 (\$62,816), payroll taxes, \$9,229 (\$8,642), health and medical insurance, \$9,182 (\$8,700), workman's compensation, \$1,084 (\$929), rent, \$11,000 (\$10,000), property insurance, \$1,700 (\$1,400), miscellaneous, \$12,500 (\$9,000), promotion, \$724,076 (\$668,500), and contingency, \$75,000 (\$50,000). Items which have decreased compared to those budgeted for 1994-95 (in parentheses) are: Salary and disability insurance, \$1,072 (\$1,099), research, \$59,340 (\$60,154), and property tax (\$800) for which no funding was recommended this year.