teleconferences, to periodically host collaborative conversations with Tribal leaders and their representatives concerning ways to improve this rule in Indian country.

The policies contained in this rule would not have Tribal implications that preempt Tribal law since State welfare agencies will be the most affected to the extent that they administer the SNAP.

*Federalism Summary Impact Statement*

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. FNS has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under E.O. 13132.

*Executive Order 12988*

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. State agencies are required to apply the raised threshold in this rule to all cases reviewed as part of the FY 2012. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

*Civil Rights Impact Analysis*

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals to participate in SNAP. This regulation does not apply to the certification determinations made on the intended beneficiaries of the SNAP. Quality Control procedures are designed to evaluate the accuracy of the application of SNAP certification policy and therefore, the evaluation procedures do not impact protected classes or individuals.

*Paperwork Reduction Act*

Information collections associated with this rule have been approved under following OMB control numbers: 0584–0074, Worksheet for SNAP Quality Control Reviews (expiration date April 30, 2013), and 0584–0299 Form FNS–380–1, Quality Control Review Schedule, Form FNS–380–1 (March 31, 2013).

*E-Government Act Compliance*

FNS is committed to complying with the E-Government Act, 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

**List of Subjects in 7 CFR Part 275**

Administrative practice and procedure, Supplemental Nutrition Assistance Program, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 275 is amended as follows:

## PART 275—PERFORMANCE REPORTING SYSTEM

■ 1. The authority citation for part 275 continues to read as follows:

**Authority:** 7 U.S.C. 2011–2036.

■ 2. In § 275.12, paragraph (f)(2) is revised to read as follows:

**§ 275.12 Review of active cases.**

* * * * *

(f) * * *

(2) *Basis of issuance of errors.* If the reviewer determines that SNAP allotments were either overissued or underissued to eligible households in the sample month, the State agency shall code and report any variances that directly contributed to the error determination that were discovered and verified during the course of the review. Only variances that exceed $50.00 (the threshold) shall be included in the calculation of the underissuance error rate, overissuance error rate, and payment error. If the State agency has chosen to report information on all variances in elements of eligibility and basis of issuance, the reviewer shall code and report any other such variances that were discovered and verified during the course of the review.

* * * * *

Dated: October 25, 2011.

**Jeffrey J. Tribiano,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 2011–28230 Filed 10–31–11; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 958

**[Doc. No. AMS–FV–11–0025; FV11–958–1 FR]**

## Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Modification of Handling Regulations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the handling regulation for onions handled under the Idaho-Eastern Oregon onion marketing order. The marketing order regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon, and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule revises the marketing order's handling regulation to allow special purpose shipments of onions for experimentation. The revision will allow the Idaho-Eastern Oregon onion industry to identify and develop new market niches and is expected to benefit producers, handlers, and consumers of onions.

**DATES:** *Effective Date:* November 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 805 SW. Broadway, suite 930, Portland, OR 97205; *Telephone:* (503) 326–2724, *Fax:* (503) 326–7440, or *Email: Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, 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 *Email: Laurel.May@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This final 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 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 final rule revises the handling regulation for onions handled under the order. Specifically, this rule revises the handling regulation to allow special purpose shipments of onions for the purpose of experimentation without regard to the minimum grade, size, maturity, pack, and inspection requirements of the order. The revision will give the Idaho-Eastern Oregon onion industry the opportunity to identify and develop new markets. The changes are expected to benefit producers, handlers, and consumers of onions. This rule was unanimously recommended by the Committee at a meeting on January 20, 2011.

Sections 958.42, 958.51, 958.52, and 958.60 of the order provide authority for assessment, mandatory inspection, and establishment of grade, size, quality, maturity, and pack regulations applicable to the handling of onions. Section 958.53 of the order provides authority for the issuance of special regulations, or the modification, suspension, or termination of requirements in effect pursuant to §§ 958.42, 958.52, 958.60, or any combination thereof, in order to facilitate the handling of onions for certain specified purposes.

Section 958.328 establishes minimum requirements for onions handled subject to the order. Currently, no person shall handle any lot of onions unless such onions are inspected, are at least ''moderately cured'', and meet the grade, size, maturity, and pack requirements of paragraphs (a), (b), and (c). Paragraph (e) delineates specific types of special purpose shipments that are exempt from the requirements of the order. Paragraph (f) outlines the safeguards for such special purpose shipments.

The Committee recommended this revision to the handling regulations to respond to the industry's desire to have greater flexibility in indentifying and pursuing unique marketing opportunities for onions that do not conform to the requirements of the order. The concern from the onion industry is that onion producers and handlers within the order's production area are at a competitive disadvantage, relative to other onion producing regions, with respect to their ability to identify and develop new markets for non-standard onions. Adding authority to allow experimental onion shipments under the order provides handlers access to markets not previously available to them.

An example that demonstrates how the industry benefits from this final rule would be a scenario in which a handler wants to produce and ship a unique, irregularly shaped small onion (*e.g.* a heart or a square shape) in order to target a newly developed niche market. Since irregular shape is a physical characteristic that does not conform to the order's grade requirements, previously such onions could not have been handled under the marketing order. However, with this exemption for experimentation the Committee can now allow the shipment of those specific type onions while still maintaining the integrity of the order. If the market for such onions increases significantly, the Committee could then incorporate changes into the handling regulations to accommodate their handling without the continued need for an exemption.

The potential for marketing opportunities like the example described above motivated the Committee to recommend modifying the handling regulation to add ''experimentation'' to the already established list of special purpose shipments allowed under the order. Onion shipments for experimental purposes will thus be exempt from the grade, size, maturity, pack, and inspection requirements of the handling regulation. Shipments made under the experimental exemption continue to be subject to the assessment requirement of the order, however. With this special purpose shipment provision for experimentation, handlers have greater flexibility in pursuing various types of unique marketing opportunities that were previously not available under the handling regulation.

The Committee will require handlers to request pre-approval for such experimental exemptions. Through the approval process, the Committee will be able to regulate the quantity and timing of such shipments. It is the goal of the Committee that any experimental shipments of onions will be temporary in nature. At the point that emerging experimental markets reach a sufficient volume or continue for such a length of time as to be deemed sustainable by the Committee, the Committee could then recommend changes to the handling regulation requirements to accommodate the marketing of such onions on a permanent basis.

**Final Regulatory Flexibility Analysis**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 250 onion producers in the regulated area. Small agricultural service firms, which include onion handlers and receivers, are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

The National Agricultural Statistics Service (NASS) reported in the ''Vegetables 2010 Summary'', published in January 2011, that the total F.O.B. value of onions in the regulated production area for 2010 was $133,041,000. Based on an industry

estimate of 35 handlers, the average value of onions handled per handler is $3,801,000, well below the SBA threshold for defining small agricultural service firms. In addition, based on an industry estimate of 250 producers, the average F.O.B. value of onions produced in the industry is $532,164 per producer. Since the F.O.B. value is usually significantly higher than the farm gate value that the producers actually receive, most onion producers within the order's production area could be considered small agricultural producers under the SBA definition. Therefore, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities as defined by the SBA.

This final rule revises § 958.328(e) of the order's handling regulation to allow special purpose shipments of onions for the purpose of experimentation without regard to the minimum grade, size, maturity, pack, and inspection requirements currently prescribed under paragraphs (a), (b), and (c) of § 958.328. The revision will allow the Idaho-Eastern Oregon onion industry to identify and develop new markets for non-standard onions that have not been previously available. The changes are expected to benefit producers, handlers, and consumers of onions.

At a meeting on January 20, 2011, the Committee discussed the impact of the recommended changes on handlers and producers in terms of increased costs. The Committee believes that, since this change exempts certain shipments of onions from regulation, this action will not add any additional requirements or costs relative to the existing regulation. Since the utilization of the special purpose shipment provision is voluntary in nature, any additional regulatory burden placed on a handler as a result of this final rule will be by their choice. The changes may, however, create opportunities for producers and handlers to develop new markets and to enhance revenues. The Committee believes that the potential benefit associated with this action outweighs any potential increase in administrative cost or regulatory burden incurred by the handler.

The Committee discussed various alternatives to adding experimental shipments to the list of special purpose shipment exemptions contained in the order's handling regulation. Some members suggested that the provision was too broad in scope and needed greater restrictions. After deliberation, the Committee concluded that it would be impossible to anticipate what might be ''experimental'' in the future and that affording the greatest latitude to the provision, while maintaining strict Committee oversight, was in the best interest of the industry. The Committee also considered taking no action with regard to adding an experimental shipment provision, citing the potential for abuse. After deliberation, the Committee agreed that the experimental shipment provision is needed to respond to changes in the industry and that there would be sufficient safeguards to protect the integrity of the order.

This final rule imposes additional reporting burdens on handlers who make special purpose shipments of experimental onions. This action requires the modification of two existing Committee forms and an increase in burden hours for three existing forms. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0241, ''Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, M.O. No. 958.'' However, as a result of this action changes in those requirements are necessary and have been submitted to OMB for review.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the onion industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 20, 2011, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on June 21, 2011 (76 FR 35997). Copies of the rule were made available to all Committee members and onion handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period ending August 22, 2011, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this 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 rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping onions from the 2011–2012 crop and handlers want to take advantage of the revision as soon as possible. Further, handlers are aware of this rule, which was unanimously recommended by the committee at a public meeting. Also, a 60-day comment period was provided for in the proposed 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. In § 958.328, revise paragraph (e) and the introductory sentence of paragraph (f) to read as follows:

**§ 958.328 Handling regulation.**

* * * * *

(e) *Special purpose shipments.* (1) The minimum grade, size, maturity, pack, assessment, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes:

(i) Planting,
(ii) Livestock feed,
(iii) Charity,
(iv) Dehydration,
(v) Canning,
(vi) Freezing,
(vii) Extraction,
(viii) Pickling, and
(ix) Disposal.

(2) Shipments of onions for the purpose of experimentation, as approved by the Committee, may be made without regard to the minimum grade, size, maturity, pack, and inspection requirements of this section. Assessment requirements shall be applicable to such shipments.

(3) The minimum grade, size, and maturity requirements set forth in paragraph (a) of this section shall not be applicable to shipments of pearl onions, but the maximum size requirement in paragraph (h) of this section and the assessment and inspection requirements shall be applicable to shipments of pearl onions.

(f) *Safeguards.* Each handler making shipments of onions outside the production area for dehydration, canning, freezing, extraction, pickling, or experimentation pursuant to paragraph (e) of this section shall:

* * * * *

Dated: October 26, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–28197 Filed 10–31–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 984

**[Doc. No. AMS–FV–11–0062; FV11–984–1 FR]**

### Walnuts Grown in California; Increased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Walnut Board (Board) for the 2011–12 and subsequent marketing years from $0.0174 to $0.0175 per kernelweight pound of assessable walnuts. The Board locally administers the marketing order which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year began September 1 and ends August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** *Effective Date:* November 2, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jeff Smutny, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (559) 487–5901, *Fax:* (559) 487–5906, or *E-mail: Jeffrey.Smutny@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, 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: Laurel.May@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, 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 final rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut 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 walnuts beginning on September 1, 2011, and continue until amended, suspended, or terminated.

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 Board for the 2011–12 and subsequent marketing years from $0.0174 to $0.0175 per kernelweight pound of assessable walnuts.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board'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 2010–11 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of $0.0174 per kernelweight pound of assessable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on June 9, 2011, and unanimously recommended 2011–12 expenditures of $7,402,450 and an assessment rate of $0.0175 per kernelweight pound of assessable walnuts. In comparison, last year's budgeted expenditures were $6,812,000. The assessment rate of $0.0175 is $0.0001 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2011–12 marketing year is estimated at 470,000 tons (inshell), which is 35,000 tons more than the 435,000 during the 2010–11 marketing year. At the recommended higher assessment rate of $0.0175 per kernelweight pound, the Board should collect approximately $7,402,500 in assessment income, which would be adequate to cover its 2011–12 budgeted expenses of $7,402,450.

The following table compares major budget expenditures recommended by the Board for the 2010–11 and 2011–12 marketing years: