

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 container requirements for oranges and grapefruit; (2) the regulatory period begins September 1 and this action should be in effect promptly so handlers can plan accordingly; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

■ 1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 906.120 [Amended]

■ 2. In § 906.120, paragraph (c)(3)(iii), remove the words “which are packed level full,”; and in paragraph (e), remove the words “the term *level full* means that the fruit is level with the top edge of the bottom section of the carton,”.

§ 906.137 [Amended]

■ 3. In § 906.137, paragraph (b), change the number “51.685” to “51.653” and the number “51.712” to “51.714”.

■ 4. Section 906.340 is amended as follows:

■ A. Revise paragraph (a)(1) to read as set forth below;

■ B. Amend paragraph (a)(2)(i)(A) introductory text by removing the words “, when place packed in cartons or other containers,”;

■ C. Amend paragraph (a)(2)(ii)(A) introductory text by removing the words “when place packed in cartons or other containers” and “and otherwise meet the requirements of standard sizing”; and

■ D. Amend paragraph (c) by revising “51.652” to read “51.653”.

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(1) *Containers.* (i) Closed fiberboard carton with inside dimensions of 13¼ x 10½ x 7¼ inches: *Provided*, That the container has a Mullen or Cady test of at least 200 pounds;

(ii) Closed fully telescopic fiberboard carton with inside dimensions of 16½ x 10¾ x 9½ inches;

(iii) Closed fiberboard carton with inside dimensions of 20 x 13¼ inches and a depth from 9¾ to 13 inches: *Provided*, That the container has a Mullen or Cady test of at least 250 pounds: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section;

(iv) Poly or mesh bags having a capacity of four, five, eight, ten, or 18 pounds of fruit: *Provided*, That only oranges are to be packed in the four-pound bag.

(v) Rectangular or octagonal bulk fiberboard crib with approximate dimensions of 46 to 47½ inches in length, 37 to 38 inches in width, and 36 inches in height: *Provided*, That this container has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit.

(vi) Rectangular or octagonal ⅔ fiberboard crib with approximate dimensions of 46 to 47½ inches in length, 37 to 38 inches in width, and 24 inches in height: *Provided*, That the crib has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit.

(vii) Octagonal fiberboard crib with approximate dimensions of 46 to 47½ inches in width, 37 to 38 inches in depth, and 26 to 26½ inches in height: *Provided*, That the crib has a Mullen or Cady test of at least 1,300 pounds, and that it is used only once for the shipment of citrus fruit: *And Provided further*, That the crib may be used to pack any poly or mesh bags authorized in this section, or bulk fruit.

(viii) Fiberboard box holding two layers of fruit, with approximate dimensions of 23 inches in length, 15½ inches in width, and 7 inches in depth;

(ix) Fiberboard box with approximate dimensions of 15 inches in length, 11 inches in width, and 7½ inches in depth;

(x) Fiberboard box with approximate dimensions of 25¾ inches in length, 15 inches in width, and 8¾ to 10½ inches in depth;

(xi) Reusable collapsible plastic container with approximate dimensions of 23 inches in length, 15 inches in width, and 7 to 11 inches in depth;

(xii) Reusable collapsible plastic container with approximate dimensions of 14¼ x 10¾ x 6¾ inches;

(xiii) Reusable collapsible plastic bin with approximate dimensions of 36¾ x 44¾ x 27 inches;

(xiv) Octagonal bulk triple wall fiberboard crib with approximate dimensions of 37¾ inches in length, 25 inches in width, and 25 inches in height: *Provided*, That the container has a Mullen or Cady test of at least 1,100 pounds: *And Provided further*, That the container may be used to pack any poly or mesh bags authorized in this section, or bulk fruit;

(xv) Closed fiberboard carton with approximate dimensions of 16½ inches in length, 10¾ inches in width, and 6½ inches in height: *Provided*, That the container has a Mullen or Cady test of at least 200 pounds;

(xvi) Such types and sizes of containers as may be approved by the committee for testing in connection with a research project conducted by or in cooperation with the committee: *Provided*, That the handling of each lot of fruit in such test containers shall be subject to prior approval and under the supervision of the committee.

* * * * *

Dated: August 26, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05–17321 Filed 8–30–05; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV05–958–1 FIR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreased the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) for the 2005–2006 and subsequent fiscal periods from \$0.105 to

\$0.10 per hundredweight of onions handled. The Committee locally administers the marketing order which 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 fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 30, 2005.

FOR FURTHER INFORMATION CONTACT:

Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Technical Advisor, 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.

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 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."

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 July 1, 2005, 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 continues in effect the action that decreased the assessment rate established for the Committee for the 2005-2006 and subsequent fiscal periods from \$0.105 per hundredweight to \$0.10 per hundredweight of onions handled.

The Idaho-Eastern Oregon onion marketing order 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 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 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 2004-2005 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 14, 2005, and unanimously recommended 2005-2006 expenditures of \$956,001 and an assessment rate of \$0.10 per hundredweight of onions. In comparison, last year's budgeted expenditures were \$997,442. The assessment rate of \$0.10 is \$0.005 lower than the previous rate. The decreased

assessment rate recommended by the Committee reflects the reduction in anticipated expenditures.

Both producers and handlers in the regulated production area expressed a need to decrease the assessment rate to help offset the lower prices received by handlers. The National Agricultural Statistics Service (NASS) reported in the *Vegetables 2004 Summary*, published in January 2005, that the 2004 average F.O.B. price for the Idaho-Eastern Oregon onions was \$8.14 per hundredweight. That price is \$1.42 below the three year average F.O.B. price of \$9.56 per hundredweight for this production area. The Committee considered assessment rates lower than \$0.10 per hundredweight; however, it determined that the lower rates would not generate the income necessary to sustain the current level of programs desired by the industry.

The major expenditures recommended by the Committee for the 2005-2006 year include \$10,000 for committee expenses, \$104,371 for salary expenses, \$81,160 for travel/office expenses, \$62,470 for production research expenses, \$32,000 for export market development expenses, \$616,000 for promotion expenses, and \$50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2004-2005 were \$10,000, \$13,482, \$81,960, \$60,000, \$32,000, \$600,000, and \$50,000, respectively.

The Committee based its recommended assessment rate decrease on the 2005-2006 crop estimate, the 2005-2006 program expenditure needs, and the current and projected size of its monetary reserve. The Committee estimated onion shipments for 2005-2006 at 8,464,000 hundredweight which should provide \$846,400 in assessment income. Income derived from handler assessments, along with contributions (\$73,600), interest income (\$7,400), other income (\$2,000), and funds from the Committee's authorized reserve (\$26,601), should be adequate to cover budgeted expenses. The Committee estimates that its operating reserve will be approximately \$596,074 at the end of the 2005-2006 fiscal period. Funds in the reserve will be kept within the maximum permitted by the order of approximately one fiscal year's operational expenses (\$958,442).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior

to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2005–2006 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final 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 rule 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 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 233 producers of onions in the production area and approximately 37 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,000,000.

According to the NASS *Vegetables 2004 Summary*, the total F.O.B. value of onions in the regulated production area for 2004 was \$110,355,000. Therefore, based on an industry of 233 producers and 37 handlers, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2005–2006 and subsequent fiscal periods from \$0.105 to \$0.10 per hundredweight of onions. The Committee unanimously

recommended 2005–2006 expenditures of \$956,001 and an assessment rate of \$0.10 per hundredweight. The assessment rate of \$0.10 is \$0.005 lower than the rate in effect during the 2004–2005 fiscal period. The quantity of assessable onions for the 2005–2006 year is estimated at 8,464,000 hundredweight which should provide \$846,400 in assessment income. Income derived from handler assessments, along with contributions (\$73,600), interest income (\$7,400), other income (\$2,000), and funds from the Committee's authorized reserve (\$26,601), should be adequate to cover budgeted expenses. The decreased assessment rate recommended by the Committee reflects the reduction in anticipated expenditures from \$997,442 to \$956,001.

Both producers and handlers in the regulated production area expressed a need to decrease the assessment rate to help offset the lower prices received by handlers. The NASS reported in the *Vegetables 2004 Summary*, which was published in January 2005, that the 2004 average F.O.B. price for the Idaho-Eastern Oregon onions was \$8.14 per hundredweight. That price is \$1.42 below the three-year average F.O.B. price of \$9.56 per hundredweight for this production area. The Committee considered lower assessment rates; however, it determined that lower rates would not generate the income necessary to sustain the current level of programs desired by the industry.

The major expenditures recommended by the Committee for the 2005–2006 year include \$10,000 for committee expenses, \$104,371 for salary expenses, \$81,160 for travel/office expenses, \$62,470 for production research expenses, \$32,000 for export market development expenses, \$616,000 for promotion expenses, and \$50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2004–2005 were \$10,000, \$163,482, \$81,960, \$60,000, \$32,000, \$600,000, and \$50,000, respectively.

The Committee reviewed and unanimously recommended 2005–2006 expenditures of \$956,001 which includes decreases in salary expenses and travel/office expenses, as well as increases in production research expenses and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Executive, Promotion, Research, and Export subcommittees. These subcommittees discussed alternative expenditure levels, based upon the relative value of various research and promotion projects to the onion

industry. The assessment rate of \$0.10 per hundredweight of assessable onions was then determined by taking into consideration the estimated level of assessable shipments, the market situation, program expenditure needs, and the desire to sustain a monetary reserve at a viable level.

A review of historical information and preliminary information pertaining to the upcoming year indicates that the producer price for the 2005–2006 season could range between \$5.50 and \$8.00 per hundredweight of onions. Therefore, the estimated assessment revenue for the 2005–2006 year as a percentage of total producer revenue could range between 1.82 and 1.25 percent.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon 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 April 14, 2005, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large Idaho-Eastern Oregon onion handlers. 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on June 3, 2005 (70 FR 32481). Copies of that rule were made available by the Committee's staff to all producers, handlers, and interested persons. In addition, the rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on August 2, 2005. One response was received, but it was not relevant to the assessment rate decrease.

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/fv/moab.html>. Any questions about the

compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material 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.

List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, Reporting and recordkeeping requirements.

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

■ Accordingly, the interim final rule amending 7 CFR part 958 which was published at 70 FR 32481 on June 3, 2005, is adopted as a final rule without change.

Dated: August 25, 2005.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 05-17269 Filed 8-30-05; 8:45 am]

BILLING CODE 3410-02-P

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Energy Policy Act of 2005 Requirements; Treatment of Accelerator-Produced and Other Radioactive Material as Byproduct Material; Waiver

AGENCY: Nuclear Regulatory Commission.

ACTION: Time-limited waiver of Energy Policy Act of 2005 requirements.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing a time-limited waiver of the requirements enacted by section 651(e) of the Energy Policy Act of 2005, titled "Treatment of Accelerator-Produced and Other Radioactive Material as Byproduct Material", as they pertain to byproduct material as defined in paragraphs (3) and (4) of section 11 e. of the Atomic Energy Act of 1954, as added by section 651(e). The waiver will allow persons owning, using, and otherwise engaging in activities involving the material to continue with their activities and States to continue to regulate this material during the applicable waiver period.

DATES: This waiver is effective August 31, 2005. This waiver is effective through August 7, 2006, for the import and export of materials covered by the waiver, unless terminated sooner if the Commission determines that an earlier termination is warranted. For all other matters, it is effective through August 7, 2009, unless terminated sooner if the Commission determines that an earlier termination is warranted or required.

FOR FURTHER INFORMATION CONTACT:

Susan Chidakel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-1535, e-mail ssc@nrc.gov or Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-8126, e-mail, mlh1@nrc.gov.

SUPPLEMENTARY INFORMATION: The President of the United States signed the Energy Policy Act of 2005 on August 8, 2005. The provisions of the Act became effective immediately, unless another effective date was expressly provided. Since no effective date was stated for the provisions of section 651(e) of the Act, section 651(e) became effective immediately, and brought byproduct material, as defined in paragraphs (3) and (4) of section 11 e. of the Atomic Energy Act of 1954 (42 U.S.C. 2201 *et seq.*), as added by section 651(e)(1), under the immediate regulatory authority of the Nuclear Regulatory Commission.

Section 11 e.(3) of the Atomic Energy Act of 1954 now includes as byproduct material: (i) any discrete source of radium-226 that is produced, extracted, or converted after extraction (before, on, or after the date of enactment of section 651(e) of the Energy Policy Act of 2005), for use for a commercial, medical, or research activity; and (ii) any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction (before, on, or after the date of enactment of section 651(e) of the Energy Policy Act of 2005), for use for a commercial, medical, or research activity. Section 11 e.(4) expands the definition to include any discrete source of naturally occurring radioactive material, other than source material, if certain conditions are met. Section 11 e.(4) is considered to be a place-holder and NRC staff does not anticipate a need for active regulation of the latter material at this time.

Prior to enactment of the Energy Policy Act of 2005, the NRC did not have authority over the newly covered byproduct material, and it fell under the authority of the States. Therefore, the

NRC does not currently have regulations in place that would specifically apply to the material. With the enactment of the Energy Policy Act of 2005, the States may no longer assert the authority to regulate the newly covered byproduct material, except as authorized to do so by the Act.

The Energy Policy Act of 2005 allows the Commission up to 18 months after the date of enactment to issue final regulations for the newly covered byproduct material. To facilitate an orderly transition of regulatory authority with respect to the newly defined byproduct material, the Act also provides for preparation and publication of a transition plan for States that have not previously entered into an Agreement with the Commission under section 274 b of the Atomic Energy Act and for those States that have entered into such an Agreement. However, neither the regulations nor the transition plan have yet been developed. Until such time as the regulations and transition plan have been completed and are in place, persons that engage in activities involving the material will want to continue with their activities.

To ease the transition period from individualized State programs to a more uniform regulatory program developed under the Atomic Energy Act and its section 274b Agreement State Program, section 651(e) of the Energy Policy Act of 2005 authorizes the Commission to issue waivers of its authority. Waivers of the Commission's jurisdiction will permit existing State authorities to continue. Ultimate transition from NRC to State authority for those States with an existing Agreement State program is expected to proceed easily. For States without such programs currently, that want to enter into an agreement with the NRC, this waiver period will permit them to go through the processes necessary to establish and carry out an Agreement State program to regulate this material after the waiver period expires.

Section 651(e)(5) authorizes the Commission to grant a waiver to any entity of any requirement under section 651(e) with respect to a matter relating to the newly defined byproduct material, except as required by section 651(e)(5)(B)(i)(I). Thus, such a waiver can also be granted to entities that engage in activities involving the material. Without the waiver, States that seek to continue regulation of the material would be, and persons that carry on activities involving the newly defined byproduct material could be, in technical violation of the Atomic Energy Act of 1954, as amended by section 651(e) of the Energy Policy Act of 2005.