

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 958

[FV96-958-1PR]

#### Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon, and Imported Onions; Modification of Size Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would change the "repacker/prepacker" size designations for all varieties of onions except white or red varieties by increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for onions in this size category. Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. This proposed rule is intended to benefit producers and handlers by increasing their flexibility and efficiency in the packaging of "repacker/prepacker" size onions. As provided under section 8e of the Agricultural Marketing Agreement Act of 1937, the proposed change to the minimum size requirement would also apply to all imported onions except white or red varieties.

**DATES:** Comments must be received by June 5, 1996.

**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 2523, South Building, P.O. Box 96456, Washington, D.C. 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:

Robert J. Curry, 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 2523, South Building, P.O. Box 96456, Washington, D.C. 20090-6456; telephone: (202)690-0464; FAX: (202)720-5698.

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958 (7 CFR Part 958), both as amended, regulating the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. The marketing agreement and marketing 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.

This proposed rule, which would also affect the minimum size requirements for all varieties of imported onions, except white or red varieties, is also issued pursuant to section 8e of the Act. The provisions of section 8e and the onion import regulations are discussed later in this proposed rule.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have retroactive effect. This proposed 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 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.

There are no administrative proceedings which must be exhausted prior to any judicial challenge to the provisions import regulations issued under section 8e of the act.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (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. Import regulations issued under the act are based on those established under Federal Marketing Orders.

There are currently 34 handlers subject to regulation under the marketing order and approximately 550 onion producers in the regulated production area. In addition, at least 148 importers of onions are subject to import regulations and would be affected by this proposed rule.

Small agricultural service firms 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 handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities. The majority of importers may also be classified as small entities.

Pursuant to authority contained in section 958.51 of the marketing order, the Idaho-Eastern Oregon Onion Committee (Committee), at its November 16, 1995, meeting, unanimously recommended changing the minimum and maximum sizes set forth in section 958.328(a)(3)(ii) of the handling regulation. For this size

category, the Committee recommended increasing the minimum diameter from 1½ inches to 1¾ inches, and the maximum diameter from 2½ inches to 2¾ inches for all onions except white or red varieties produced and handled in the production area. Yellow onions are the major group produced in the regulated production area.

This proposed rule would modify a marketing order size category that is recognized by the onion industry as "repacker" or "prepacker" size onions. Onions in this size category are generally packed and shipped in 50-pound sacks for later repacking into various consumer packs.

The U.S. Standards for Grades of Onions were recently amended to include a classification for "repacker/prepacker" size onions (60 FR 46976, September 8, 1995), effective October 10, 1995. Section 51.2836 of the U.S. Standards defines such onions as those ranging from a minimum diameter of 1¾ inches to a maximum diameter of 3 inches. The U.S. Standards also specify that not more than 5 percent of the onions in a lot may be undersized and that not more than 10 percent may be oversized.

Recent trends in buyer preference reflect an increasing demand for larger size onions in the "repacker/prepacker" category. The Committee reports that the current maximum diameter of 2½ inches for this size category is too restrictive and has resulted in a high percentage of onions being packed in a different category due to oversize. This has resulted in fewer "repacker/prepacker" size onions being available for market. With an increase in the maximum allowable diameter to 2¾ inches for "repacker/prepacker" size onions, the Committee expects the quantity of such onions available for market to increase. The Committee recommended an increase to 2¾ inches rather than 3 inches, the upper limit of the size range specified in the U.S. Standards, because the smaller size is more suitable for this industry and its customers. In addition to the proposed increase in the maximum diameter for onions in this category, the Committee recommended that the minimum diameter be increased from 1½ inches to 1¾ inches to be the same as the recently amended U.S. Standards.

Any costs to handlers and producers attributable to this proposed regulation, if adopted, are expected to be offset by the benefits derived from improved returns. The proposed modification would increase the volume of onions marketed in this size category, and is expected to result in higher returns for producers and handlers.

Section 8e of the Act requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating the same commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in more direct competition with the imported commodity. Imports must then meet the requirements established for the particular area.

Grade, size, quality, and maturity regulations have been issued regularly under both Marketing Order 958 and Marketing Order 959, which regulates the handling of onions grown in South Texas. The current import regulation (7 CFR 980.117) specifies that import requirements for onions are to be based on the seasonal categories of onions grown in both marketing order areas. The import regulations specify that imported onions must meet the requirements of Marketing Order 958 during the June 16 through March 9 period each season and Marketing Order 959 through the remainder of the year. Rulemaking is now in progress that would, if approved, change the beginning date of Marketing Order 958 requirements to June 5 (61 FR 4941; February 9, 1996). Current import regulations also provide that all varieties of imported onions, except for white varieties, must be a minimum of 1½ inches in diameter. This proposal would change the import requirements for the period June 16 through March 9 each marketing year to provide that all varieties of onions except white or red varieties shall be a minimum of 1¾ inches in diameter. While no changes are required in the language of section 980.117, all imported onions other than white or red varieties would be required to meet the minimum size requirement proposed herein.

Based on available information, the Agricultural Marketing Service has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

In accordance with section 8e of the Act, the United States Trade

Representative has concurred with the issuance of this 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 proposed to be 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 paragraph (a)(3)(ii) to read as follows:

#### **§ 958.328 Handling Regulation.**

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

(ii) U.S. No. 1, 1¾ inches minimum to 2¾ maximum diameter; or

\* \* \* \* \*

Dated: April 30, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96-11154 Filed 5-3-96; 8:45 am]

BILLING CODE 3410-02-P

#### **Animal and Plant Health Inspection Service**

#### **9 CFR Part 92**

[Docket No. 95-084-2]

#### **Permanent Private Quarantine Facilities for Horses**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of public meeting; reopening and extension of comment period.

**SUMMARY:** On February 26, 1996, we published an advance notice of proposed rulemaking requesting public comment on the need for and appropriate standards for the establishment of permanent, private quarantine facilities for horses imported into the United States. To provide additional opportunity for public comment, this notice announces our intention to hold a public meeting, and to reopen and extend the comment period on the advance notice. We are also announcing the availability of a risk assessment related to the establishment of permanent, private quarantine