

# Proposed Rules

Federal Register

Vol. 68, No. 131

Wednesday, July 9, 2003

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

[Docket No. FV03-958-01 PR]

#### Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Increased Assessment Rate and Defined Fiscal Period

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would increase the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) for the 2003-2004 and subsequent fiscal periods from \$0.08 to \$0.095 per hundredweight of onions handled, and would establish, in the regulatory text, the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year. The Committee locally administers the marketing order that 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 assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATE:** Comments must be received by July 24, 2003.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938, or E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov). 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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:**

Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Ave, suite 385, Portland, OR 97204; Phone: (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](mailto: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 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 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 proposed herein would be applicable to all assessable onions beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule would 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 proposed rule would increase the assessment rate established for the Committee for the 2003-2004 and subsequent fiscal periods from \$0.08 to \$0.095 per hundredweight of onions handled, and would establish, in the regulatory text, the Committee's fiscal period. The fiscal period begins July 1 of each year and ends June 30 of the following year.

The order provides authority for the Committee, with the approval of USDA, to establish a fiscal period. The Committee has operated under a fiscal period of July 1 through June 30 since its inception in the late 1950's, but this period has never been specified in the regulatory text. This rule would add to the order's rules and regulations a definition of the Committee's fiscal period. The fiscal period would be defined to be the 12 month period beginning July 1 and ending June 30 of the following year, both dates inclusive.

The order also 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 Committee consists of six producer members, four handler members and one public member. 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 2000–2001 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 3, 2003, and in a vote of seven in favor, one against, and one abstention, recommended an assessment rate of \$0.095 per hundredweight of onions handled. The assessment rate of \$0.095 is \$0.015 higher than the rate currently in effect. The order authorizes the Committee to establish an operating reserve of up to one fiscal period's operational expense. However, the Committee has maintained the operating reserve at a level of approximately one-half of one fiscal period's operational expenses. The Committee, over the last four fiscal periods, has reduced its operating reserve to this level. The Committee recommended the \$0.015 increase so the total of assessment income (\$870,200), contributions (\$79,800), interest income (\$6,000), and other income (\$1,000) would equal the recommended expenses for 2003–2004 of \$957,000. With these revenue sources, the Committee would not need to access its operating reserve and would maintain the reserve at the current level.

The Committee met on June 12, 2003 and unanimously recommended 2003–2004 expenditures of \$957,000. In comparison, last year's budgeted expenditures were \$1,044,824. The major expenditures for the 2003–2004 fiscal period include \$10,000 for committee expenses, \$148,353 for salary expenses, \$72,610 for travel/office expenses, \$59,170 for research expenses, \$27,250 for export expenses, \$589,617 for promotion expenses, and \$50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2002–2003 were \$10,000, \$143,814, \$77,460, \$59,550, \$54,000, \$675,000, and \$25,000, respectively.

The Committee estimates that onion shipments for the 2003–2004 fiscal period will be approximately 9,160,000 hundredweight, which should provide \$870,200 in assessment income. Income derived from handler assessments, along with contributions (\$79,800), interest income (\$6,000), and other income (\$1,000) would equal expenses. The Committee estimates that its operating reserve will be approximately \$434,303 at the beginning of the 2003–2004 fiscal period. Funds in the reserve would be kept within the maximum permitted by

the order of approximately one fiscal year's operational expenses (\$ 958.44).

The proposed assessment rate would 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 would be in effect for an indefinite period, the Committee would 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 would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

#### Initial 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 initial 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 37 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 250 onion producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those whose annual receipts are less than \$5,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

The Committee estimates that 32 of the 37 handlers of Idaho-Eastern Oregon onions ship under \$5,000,000 worth of onions on an annual basis. According to the *Vegetables 2002 Summary* reported

by the National Agricultural Statistics Service, the total farm gate value of onions in the regulated production area for 2002 was \$93,807,000. Therefore, the 2002 average gross revenue for an onion producer in the regulated production area was \$375,228. Based on this information, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule would specify in the regulatory text the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year, and increase the assessment rate established for the Committee for the 2003–2004 and subsequent fiscal periods from \$0.08 to \$0.095 per hundredweight of onions handled, and would establish, in the regulatory text, the Committee's fiscal period beginning July 1 of each year and ending June 30 of the following year. The Committee recommended an assessment rate of \$0.095 per hundredweight, which is \$0.015 higher than the rate currently in effect. The quantity of assessable onions for the 2003–2004 fiscal period is estimated at 9,160,000 hundredweight. Thus, the \$0.095 rate should provide \$870,200 in assessment income, which along with anticipated contributions, interest income, and other income is balanced to cover budgeted expenses expected to total about \$957,000.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include \$10,000 for committee expenses, \$148,353 for salary expenses, \$72,610 for travel/office expenses, \$59,170 for research expenses, \$27,250 for export expenses, \$589,617 for promotion expenses, and \$50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2002–2003 were \$10,000, \$143,814, \$77,460, \$59,550, \$54,000, \$675,000, and \$25,000, respectively.

The Committee reviewed and unanimously recommended 2003–2004 expenditures of \$957,000. This budget will increase the budget line items for salary expenses and marketing order contingencies, and decrease the budget line items for travel and office expenses, research expenses, export expenses, and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Export, and Promotion Committees. These subcommittees discussed alternative expenditure levels, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry. The assessment rate of \$0.095 per hundredweight of

assessable onions was then determined by taking into consideration the estimated level of assessable shipments, other revenue sources, and the Committee's goal of not having to use reserve funds during 2003–2004.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 season could be about \$5.00 per hundredweight. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could be about 1.9 percent.

This proposed rule would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meetings were widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the April 3, and the June 12, 2003, meetings were open to the public and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would not impose 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.

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.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The 2003–2004 fiscal period begins on July 1, 2003, and the order requires that the

rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

#### List of Subjects in 7 CFR Part 958

Onions, Marketing agreements, 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. A new section 958.112 is added to read as follows:

##### **§ 958.112 Fiscal period.**

The fiscal period shall begin July 1 of each year and end June 30 of the following year, both dates inclusive.

3. Section 958.240 is revised to read as follows:

##### **§ 958.240 Assessment rate.**

On and after July 1, 2003, an assessment rate of \$0.095 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: July 2, 2003.

**A.J. Yates,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 03–17277 Filed 7–8–03; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

#### Animal and Plant Health Inspection Service

#### 9 CFR Part 130

[Docket No. 03–036–1]

#### Veterinary Services User Fees; Pet Food Facility Inspection and Approval Fees

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

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the user fee regulations to replace the

flat rate annual user fees currently charged for the inspection and approval of pet food manufacturing, rendering, blending, digest, and spraying and drying facilities with user fees based on hourly rates for inspections and approval. We have found that the flat rate annual user fees no longer cover the costs of our inspections and cannot be adequately formulated to cover the costs of inspections and reinspections mandated by various foreign regions to which those facilities export their pet food ingredients or products. This action would ensure that our user fees cover the cost of providing these services to pet food facilities.

**DATES:** We will consider all comments that we receive on or before September 8, 2003.

**ADDRESSES:** You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–036–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–036–1. If you use e-mail, address your comment to [regulations@aphis.usda.gov](mailto:regulations@aphis.usda.gov). Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and “Docket No. 03–036–1” on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

**FOR FURTHER INFORMATION CONTACT:** For information concerning program operations for Veterinary Services, contact Dr. Thomas W. Bursleson, Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231, (301) 734–8364.

For information concerning user fee rate development, contact Ms. Kris Caraher, Accountant, User Fees Section,