

# Proposed Rules

Federal Register

Vol. 65, No. 94

Monday, May 15, 2000

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. FV00-958-1 PR]

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

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would decrease the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) under Marketing Order No. 958 for the 2000-2001 and subsequent fiscal periods from \$0.09 to \$0.08 per hundredweight of onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess Idaho-Eastern Oregon onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by June 14, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698, or E-mail: 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.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204-2807; telephone: (503) 326-2724, Fax: (503) 326-7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, 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 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 (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the 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 proposed herein would be applicable to all assessable onions beginning on July 1, 2000, 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 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 to review the Secretary'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 would decrease the assessment rate established for the Committee for the 2000-2001 and subsequent fiscal periods from \$0.09 per hundredweight to \$0.08 per hundredweight of onions handled.

The order provides authority for the Committee, with the approval of the Department, 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, each of whom is 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 budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998-99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of \$0.09 per hundredweight that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 6, 2000, and unanimously recommended 2000-2001 expenditures of \$1,047,637 and an assessment rate of \$0.08 per hundredweight of onions handled during the 2000-2001 and subsequent fiscal periods. The Committee estimated that the 2000-2001 onion crop will approximate 9,600,000 hundredweight of onions. In comparison, the 1999-

2000 fiscal period budget was established at \$1,133,785 on an estimated assessable onion harvest of 9,200,000 hundredweight of onions. The Committee recommended the decreased assessment rate to help offset the negative effects of the currently depressed onion market.

The Committee anticipates that assessment income during the 2000–2001 fiscal period will be approximately \$768,000, which is \$60,000 less than the \$828,000 assessment income estimated for its 1999–2000 budget. The Committee now projects a total income of approximately \$944,372 and expenditures of about \$1,025,098 by June 30, 2000. At the time the 1999–2000 fiscal period budget was recommended, the Committee had estimated that it would draw up to \$260,785 from its operating reserve. However, since current assessment income is greater than anticipated and expenditures are less than budgeted, the operating reserve may actually be depleted by about \$80,726. Thus, the Committee has estimated that its operating reserve will be approximately \$859,793 on July 1, 2000, and, if it requires an estimated \$234,637 from its monetary reserve as budgeted during the 2000–2001 fiscal period, approximately \$625,156 on July 1, 2001. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate operating reserve.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include \$235,105 for marketing order administration, which includes salary, office, travel and Committee expenses, \$58,532 for production research, \$675,000 for market promotion including paid advertising, \$54,000 for export market development, and \$25,000 for marketing order contingencies. Budgeted expenses for these items in the 1999–2000 fiscal period were \$224,685, \$69,100, \$750,000, \$60,000, and \$30,000, respectively.

The Committee has based its recommended assessment rate decrease on the 2000–2001 crop estimate and fiscal period expenditures estimate, the current condition of the onion market, and the current and projected size of its monetary reserve. The decreased assessment rate should provide \$768,000 in income, which, when combined with interest income of \$45,000 and operating reserve funds of \$234,637, would be adequate to cover budgeted expenses. As noted above, the Committee estimates it will have

approximately \$859,793 in its operating reserve at the end of the 1999–2000 fiscal period, which should be adequate to cover any income shortages. This amount is within the maximum permitted by the order of approximately one fiscal period's expenditures (\$958.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary 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 the Department and are locally published. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department 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.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact this rule would have on small entities. Accordingly, the 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 34 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 270 onion producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000. The majority of Idaho-Eastern Oregon onion handlers and producers may be classified as small entities.

This rule would decrease the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from \$0.09 per hundredweight to \$0.08 per hundredweight of onions handled. Both the \$0.08 assessment rate and the 2000–2001 budget of \$1,047,637 were unanimously recommended by the Committee at its April 6, 2000, meeting. The proposed assessment rate is \$0.01 lower than the rate currently in effect. The Committee recommended a decreased assessment rate to help offset the negative effects of the currently depressed onion market. The anticipated crop of 9,600,000 hundredweight is approximately 400,000 hundredweight larger than the crop estimate used to establish the 1999–2000 budget. The \$0.08 rate should provide \$768,000 in assessment income, which, when combined with interest income of \$45,000 and \$234,637 from the operating reserve, would be adequate to meet the 2000–2001 fiscal period's budgeted expenses.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of \$1,047,637 which include increases in administrative expenses, salaries, and committee expenses, and decreases in production research, market promotion, export market development, and contingency fund expenses. Prior to recommending this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Promotion and Export Market Development Committees. Alternative expenditure levels were discussed and rejected by these subcommittees, and ultimately by the full Committee, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include \$235,105 for marketing order administration, which includes salary, office, travel and Committee expenses, \$58,532 for production research, \$675,000 for market promotion including paid advertising, \$54,000 for export market development, and \$25,000 for marketing order contingencies. Budgeted expenses for these items in the 1999–2000 fiscal period were \$224,685, \$69,100, \$750,000, \$60,000, and \$30,000, respectively.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the F.O.B. price for the 2000–2001 onion season could average \$5.50 per

hundredweight of onions. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period (\$768,000) as a percentage of the projected total F.O.B. revenue (\$52,800,000) would be 0.0145 percent. This figure indicates that the \$0.08 assessment rate recommended by the Committee would have a relatively insignificant impact on the Idaho-Eastern Oregon onion industry.

This action would decrease 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 order. 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 6, 2000, meeting was a public meeting 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 impose no additional reporting or recordkeeping requirements on either small or large 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.

The Department 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 the following web site: <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 30-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 2000–2001 fiscal period begins on July 1, 2000, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled

during such fiscal period; (3) this action decreases the assessment rate for assessable onions beginning with the 2000–2001 fiscal period; and (4) handlers are aware of this action which was unanimously 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. Section 958.240 is revised to read as follows:

##### § 958.240 Assessment rate.

On and after July 1, 2000, an assessment rate of \$0.08 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: May 9, 2000.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–12153 Filed 5–12–00; 8:45 am]

**BILLING CODE 3410–02–P**

#### DEPARTMENT OF AGRICULTURE

##### Agricultural Marketing Service

##### 7 CFR Part 1220

[No. LS–00–04]

#### Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean Board

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

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed rule would adjust the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the last time the Board was reapportioned in 1997. These adjustments are required by the Soybean Promotion and Research Order (Order). The results of the adjustments would be an additional member for Kansas and

one less member for Maryland. As a result of these changes, the total Board membership will remain at 62 members. These changes to the Board would be effective with the Secretary's 2001 appointments.

**DATES:** Written comments must be received by July 14, 2000.

**ADDRESSES:** Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2627–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251. Comments may also be sent by e-mail to [Ralph.Tapp@usda.gov](mailto:Ralph.Tapp@usda.gov) or by fax to 202/720–1125. State that your comment refers to Docket No. LS–00–04. Comments received may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115, fax 202/270–1125, or e-mail [Ralph.Tapp@usda.gov](mailto:Ralph.Tapp@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Executive Orders 12866 and 12988, and Regulatory Flexibility Act and the Paperwork Reduction Act

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

This rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary 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 requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for this purpose is filed