

# 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

[Docket No. FV04-958-02 PR]

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

**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 2004-2005 and subsequent fiscal periods from \$0.095 to \$0.105 per hundredweight of onions handled. 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 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 21, 2004.

**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; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.gov>. All 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:**

Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Ave, Suite 385, Portland, OR 97204; 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](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, 2004, 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 2004-2005 and subsequent fiscal periods from \$0.095 to \$0.105 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 Committee consists of six producer members, four handler members and one public member. Each member 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 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 2003-2004 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 1, 2004, and unanimously recommended 2004-2005 expenditures of \$997,442. In comparison, last year's budgeted expenditures were \$957,000. At that same meeting, the Committee, in a vote of seven in favor, two opposed (desired continuation of the current rate), and

one abstention, recommended increasing the assessment rate to \$0.105 per hundredweight of onions handled. The assessment rate of \$0.105 is \$0.01 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's policy is to maintain the operating reserve at a level of approximately one-half of one fiscal period's operational expenses. The Committee, over the last five fiscal periods, has reduced its operating reserve to slightly below this level. The Committee recommended the \$0.01 increase so the total of assessment income (\$932,400), contributions (\$75,600), interest income (\$7,000), and other income (\$2,000) would sufficiently fund the recommended expenses for 2004–2005 of \$997,442. The increased assessment income would also add approximately \$19,558 to the operating reserve, increasing it to an estimated \$504,661 at the end of the 2004–2005 fiscal period.

The major expenditures recommended by the Committee for the 2004–2005 fiscal period include \$10,000 for committee expenses, \$163,482 for salary expenses, \$81,960 for travel/office expenses, \$60,000 for production research expenses, \$32,000 for export market development expenses, \$600,000 for promotion expenses, and \$50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2002–2003 were \$10,000, \$148,353, \$72,610, \$59,170, \$27,250, \$589,617, and \$50,000, respectively.

The Committee estimates that fresh market onion shipments for the 2004–2005 fiscal period will be approximately 8,880,000 hundredweight, which should provide \$932,400 in assessment income. Income derived from handler assessments, along with contributions (\$75,600), interest income (\$7,000), and other income (\$2,000) would be sufficient to cover budgeted expenses and increase the operating reserve approximately \$19,558. The Committee estimates that its operating reserve will be approximately \$485,103 at the beginning of the 2004–2005 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 2004–2005 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 2003 Summary* reported by the National Agricultural Statistics Service, the total farm gate value of onions in the regulated production area for 2003 was \$130,768,000. Therefore, the 2003 average gross revenue for an onion producer in the regulated production area was \$523,072. 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 increase the assessment rate established for the Committee for the 2004–2005 and subsequent fiscal periods from \$0.095 to \$0.105 per hundredweight of onions handled. The Committee recommended 2004–2005 expenditures of \$997,442 and an assessment rate of \$0.105 per hundredweight, which is \$0.01 higher than the rate currently in effect. The quantity of assessable onions for the 2004–2005 fiscal period is estimated at 8,880,000 hundredweight. Thus, the \$0.105 rate should provide \$932,400 in assessment income, which along with anticipated contributions, interest income, and other income should cover budgeted expenses.

The major expenditures recommended by the Committee for the 2004–2005 fiscal period include \$10,000 for committee expenses, \$163,482 for salary expenses, \$81,960 for travel/office expenses, \$60,000 for production research expenses, \$32,000 for export market development expenses, \$600,000 for promotion expenses, and \$50,000 for unforeseen marketing order contingencies. Budgeted expenses for these items in 2003–2004 were \$10,000, \$148,353, \$72,610, \$59,170, \$27,250, \$589,617, and \$50,000, respectively.

The Committee reviewed and unanimously recommended 2004–2005 expenditures of \$997,442. This budget would increase the budget line items for salary expenses, travel and office expenses, research expenses, export expenses, and promotion expenses. Committee expenses and marketing order contingency would remain the same. 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 \$0.105 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 2004–2005.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2004–2005 season could be about \$10.80 per hundredweight. Therefore, the estimated assessment revenue for the 2004–2005 fiscal period as a percentage

of total producer revenue could be about 1.1 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 1, 2004, meeting was 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 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2004–2005 fiscal period begins on July 1, 2004, 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. Section 958.240 is revised to read as follows:

#### **§ 958.240 Assessment rate.**

On and after July 1, 2004, an assessment rate of \$0.105 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: May 17, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–11514 Filed 5–20–04; 8:45 am]

**BILLING CODE 3410–02–P**

#### **DEPARTMENT OF THE TREASURY**

##### **Internal Revenue Service**

#### **26 CFR Part 1**

**[REG–167217–03]**

**RIN 1545–BD03**

#### **Electronic Filing of Duplicate Forms 5472; Hearing Cancellation**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on regulations providing that a Form 5472 that is timely filed electronically is treated as satisfying the requirement timely to file a duplicate Form 5472 with the Internal Revenue Service Center in Philadelphia, Pennsylvania.

**DATES:** The public hearing originally scheduled for May 27, 2004, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Robin R. Jones of the Publications and Regulations Branch, Legal Processing Division at (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of

public hearing that appeared in the **Federal Register** on Monday, February 9, 2004 (69 FR 5940), announced that a public hearing was scheduled for May 27, 2004, at 10 a.m., in the auditorium. The subject of the public hearing is proposed regulations under section 6038A and 6038C of the Internal Revenue Code. The public comment period for these regulations expired on May 10, 2004. The outlines of oral comments were due on May 6, 2004.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Tuesday, May 18, 2004, no one has requested to speak. Therefore, the public hearing scheduled for May 27, 2004, is cancelled.

**Cynthia E. Grigsby,**

*Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 04–11568 Filed 5–18–04; 2:07 pm]

**BILLING CODE 4830–01–P**

#### **DEPARTMENT OF HOMELAND SECURITY**

##### **Coast Guard**

#### **33 CFR Part 165**

**[CGD01–04–002]**

**RIN 2115–AA00**

#### **Security Zones; Democratic National Convention, Boston, MA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a series of temporary security zones on the Charles River in the vicinity of the FleetCenter/North Station, throughout a portion of Boston Inner Harbor in the vicinity of Logan International Airport and surrounding Very Important Person (VIP) vessels designated by the Captain of the Port (COTP) Boston, Massachusetts, to be in need of Coast Guard escort for security reasons while they are transiting the COTP Boston, Massachusetts zone. These temporary zones are needed to safeguard protectees, the public, designated VIP vessels and crews, other vessels and crews, and the infrastructure within the COTP Boston, Massachusetts, zone from terrorist or subversive acts during the Democratic National Convention: A National Special Security Event, being held from July 26, 2004 to July 29, 2004 at the