

Proposed Rules

Federal Register

Vol. 76, No. 119

Tuesday, June 21, 2011

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

[Doc. No. AMS–FV–11–0025; FV11–958–1 PR]

Onions Grown in Certain Designated Counties in Idaho, and Malheur County, OR; Modification of Handling Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on revisions to the handling regulation for onions handled under the Idaho-Eastern Oregon onion marketing order. The marketing order regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon, and is administered locally by the Idaho-Eastern Oregon Onion Committee (Committee). This rule would revise the marketing order's handling regulation to allow special purpose shipments of onions for experimentation. The revision would allow the Idaho-Eastern Oregon onion industry to identify and develop new market niches and is expected to benefit producers, handlers, and consumers of onions. This proposal also announces the Agricultural Marketing Service's (AMS) intent to request a revision of the currently approved information collection requirements under the order.

DATES: Comments must be received by August 22, 2011.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. 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 Internet: <http://www.regulations.gov>. All comments should reference the document 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, or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT:

Barry Broadbent or Gary D. Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 805 SW., Broadway, Suite 930, Portland, OR 97205; Telephone: (503) 326–2724, Fax: (503) 326–7440, or E-mail: Barry.Broadbent@usda.gov or GaryD.Olson@usda.gov.

Small businesses may request information on complying with this regulation by contacting Laurel May, 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: Laurel.May@ams.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 proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 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. A 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 invites comments on revisions to the handling regulation for onions handled under the order. Specifically, this rule would revise the handling regulation to allow special purpose shipments of onions for the purpose of experimentation without regard to the minimum grade, size, maturity, pack, and inspection requirements of the order. The revision would give the Idaho-Eastern Oregon onion industry the opportunity to identify and develop new markets. The changes are expected to benefit producers, handlers, and consumers of onions. This rule was unanimously recommended by the Committee at its January 20, 2011, meeting.

Sections 958.42, 958.51, 958.52, and 958.60 of the order provide authority for assessment, mandatory inspection, and establishment of grade, size, quality, maturity, and pack regulations applicable to the handling of onions. Section 958.53 of the order provides authority for the issuance of special regulations, or the modification, suspension, or termination of requirements in effect pursuant to §§ 958.42, 958.52, 958.60, or any combination thereof, in order to facilitate the handling of onions for certain specified purposes.

Section 958.328 establishes minimum requirements for onions handled subject to the order. Currently, no person shall handle any lot of onions unless such onions are inspected, are at least “moderately cured”, and meet the grade, size, maturity, and pack requirements of paragraphs (a), (b), and (c). Paragraph (e) delineates specific types of special purpose shipments that are exempt from the requirements of the order. Paragraph (f) outlines the safeguards for such special purpose shipments.

The Committee recommended the proposed revision to the handling

regulations to respond to the industry's desire to have greater flexibility in identifying and pursuing unique marketing opportunities for onions that do not conform to the requirements of the order. The concern from the onion industry is that onion producers and handlers within the order's production area are at a competitive disadvantage, relative to other onion producing regions, with respect to their ability to identify and develop new markets for non-standard onions. Adding authority to allow experimental onion shipments under the order would give handlers access to markets not currently available to them.

An example of a scenario that would demonstrate the benefits of such a provision to the industry would be a handler's desire to produce and ship a unique, irregularly shaped small onion (*i.e.*, a heart or a square shape) targeted for a newly developed niche market. Since irregular shape is a physical characteristic that does not conform to the order's grade requirements, such onions would ordinarily not be allowed to be handled under the marketing order. With an exemption for experimentation, however, the Committee could allow the shipment of those specific type onions while still maintaining the integrity of the order. Should the market for such onions grow to a significant size, the Committee could then incorporate changes into the handling regulations to accommodate their handling without the continued need for an exemption.

The potential for marketing opportunities like the one described above motivated the Committee to recommend modifying the handling regulation to add "experimentation" to the already established list of special purpose shipments allowed under the order. Shipments for experimental purposes would be exempt from the grade, size, maturity, pack, and inspection requirements of the handling regulation. Shipments made under the experimental exemption would continue to be subject to the assessment requirement of the order. With a special purpose shipment provision for experimentation, handlers would have greater flexibility in pursuing various types of unique marketing opportunities that are currently not available under the handling regulation.

The Committee would require handlers to request pre-approval for such experimental exemptions. Through the approval process, the Committee would be able to regulate the quantity and timing of such shipments. It is the goal of the Committee that any experimental shipments of onions

would be temporary in nature. At the point that the emerging experimental market were to reach a sufficient volume or continue for such a length of time as to be deemed sustainable by the Committee, the Committee could then recommend changes to the handling regulation requirements to accommodate the marketing of such onions on a permanent basis.

Initial Regulatory Flexibility Analysis

Pursuant to the 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. 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 rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 35 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and about 250 onion producers in the regulated area. Small agricultural service firms, which include onion handlers and receivers, are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$7,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000.

The National Agricultural Statistics Service (NASS) reported in the "Vegetables 2010 Summary," published in January 2011, that the total F.O.B. value of onions in the regulated production area for 2010 was \$133,041,000. Based on an industry estimate of 35 handlers, the average value of onions handled per handler is \$3,801,000, well below the SBA threshold for defining small agricultural service firms. In addition, based on an industry estimate of 250 producers, the average F.O.B. value of onions produced in the industry is \$532,164 per producer. Since the F.O.B. value is usually significantly higher than the farm gate value that the producers actually receive, most onion producers within the order's production area would be considered small agricultural producers under the SBA definition. Therefore, it can be concluded that the majority of handlers and producers of Idaho-Eastern Oregon onions may be

classified as small entities as defined by the SBA.

This rule would revise § 958.328(e) of the order's handling regulation to allow special purpose shipments of onions for the purpose of experimentation without regard to the minimum grade, size, maturity, pack, and inspection requirements currently prescribed under paragraphs (a), (b), and (c) of § 958.328. The recommended revision would allow the Idaho-Eastern Oregon onion industry to identify and develop new markets for non-standard onions that are currently not open to them. The changes are expected to benefit producers, handlers, and consumers of onions.

At the January 20, 2011 meeting, the Committee discussed the impact of the recommended changes on handlers and producers in terms of increased costs. The Committee believes that, since this proposed change exempts certain shipments of onions from regulation, this action would not add any additional requirements or costs relative to the existing regulation. Since the utilization of the special purpose shipment provision is voluntary in nature, any additional regulatory burden placed on a handler as a result of this proposed rule would be by their choice. The proposed changes may, however, create opportunities for producers and handlers to develop new markets and to enhance revenues. The Committee believes that the potential benefit associated with this proposed action outweighs any potential increase in administrative cost or regulatory burden incurred by the handler.

The Committee discussed various alternatives to adding experimental shipments to the list of special purpose shipment exemptions contained in the order's handling regulation. Some members suggested that the provision was too broad in scope and needed greater restrictions. After deliberation, the Committee concluded that it would be impossible to anticipate what might be "experimental" in the future and that affording the greatest latitude to the provision, while maintaining strict Committee oversight, was in the best interest of the industry. The Committee also considered taking no action with regard to adding an experimental shipment provision, citing the potential for abuse. After deliberation, the Committee agreed that the experimental shipment provision is needed to respond to changes in the industry and that there would be sufficient safeguards to protect the integrity of the order.

This proposed rule would impose additional reporting burdens on handlers who make special purpose shipments of experimental onions. This

action would require the modification of two existing Committee forms and an increase in burden hours for three existing forms. The information collection requirements are discussed later in this document. 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

In addition, the Committee's meeting was widely publicized throughout the onion industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the January 20, 2011 meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

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/MarketingOrdersSmallBusinessGuide>. Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that AMS is requesting the Office of Management and Budget's (OMB) approval for a revision to currently approved forms used to collect information under this marketing order. Once the modified forms are approved, they will be merged with the forms contained in OMB No. 0581-0178 "Generic OMB Vegetable Crops."

Title: Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Marketing Order No. 958.

OMB Number: 0581-0178.

Type of Request: Revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the Idaho-Eastern Oregon onion marketing order.

On January 20, 2011, the Committee unanimously recommended revising the handling regulation to allow special purpose shipments of onions for experimentation. To maintain the handling regulation safeguards, the proposed action would require minor revisions to three previously approved Committee forms: FV-34, FV-35, and FV-36.

Safeguard requirements in the order's handling regulation require each handler making special purpose shipments outside the production area to furnish an *Application to Make Special Purpose Shipments—Certificate of Privilege, Form FV-34* to the Committee. The FV-34 form would be modified as a result of this proposed action by adding "Experimentation" to the list of approved purposes for special purpose onion shipments. In addition, the words "except as expressly authorized by the Committee" would be added to the end of the first sentence of the form's certification statement. The proposed modifications to the form are not expected to increase the time it takes each handler to complete the form. The FV-34 form has already been approved for 10 burden hours by OMB. However, the estimated number of respondents is expected to increase as a result of this proposed action. As such, the total burden hours would need to be increased to account for that change.

Also, after an approved handler has shipped and billed or consigned a special purpose onion shipment or shipments, the handler shall furnish to the Committee an *Onion Diversion Report, Form FV-35* to report the number of shipments and the quantity of onions shipped under the Certificate of Privilege. No modification to this form would be required as a result of the proposed action. This form has already been approved for 266 burden hours by OMB. As a result of this proposed action, however, the estimated number of respondents is expected to increase. Accordingly, the total burden hours would need to be increased to account for that change.

In addition, as authorized in the order's handling regulation safeguards, the Committee may contact the receiver or receiver's agent of special purpose onion shipments for verification and request that such receiver or receiver's agent complete a *Special Purpose Shipment Receiver Certification, Form*

FV-36. The FV-36 form would be modified as a result of this proposed action by adding "Experimentation" to the list of approved outlets for special purpose onion shipments. In addition, the words "except as expressly authorized by the Committee" would be added to the end of the first sentence of the form's certification statement. The proposed modifications to the form are not expected to increase the time it takes each handler to complete the form. This form has already been approved for 1.67 burden hours by OMB. However, the estimated number of respondents is expected to increase as a result of this proposed action. Consequently, the total burden hours would need to be increased to account for that change.

The information collected will be used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized Committee employees. Authorized Committee employees are the primary users of the information and AMS is the secondary user.

The request for approval of the modification of information collection under the order is as follows:

Application to Make Special Purpose Shipments—Certificate of Privilege.

As discussed previously, *Form FV-34, Application to Make Special Purpose Shipments—Certificate of Privilege*, is already approved under OMB No. 0581-0178, for 10 hours (25 respondents $\times$ 3 responses per respondent $\times$.133 hours per response, for a total of 10 burden hours). Because the number of respondents is expected to increase from 25 to 30, the estimated total burden is now 12 hours (30 respondents $\times$ 3 responses $\times$.133 hours). As a result of this proposed action, the burden is being increased by 2 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes. There is no change from the previous estimate.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 30.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 12 hours.

Onion Diversion Report

Also as mentioned previously, *Form FV-35, Onion Diversion Report*, is already approved under OMB No. 0581-0178, for 266 hours (20 respondents $\times$ 100 responses per respondent $\times$.133 hours per response, for a total of 266 burden hours). Because the number of respondents is expected to increase

from 20 to 25, the estimated total burden is now 333 hours (25 respondents $\times$ 100 responses $\times$.133 hours). As a result of this action, the burden is being increased by 67 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes. There is no change from the previous estimate.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 100.

Estimated Total Annual Burden on Respondents: 333 hours.

Special Purpose Shipment Receiver Certification

Additionally, as previously mentioned, *Form FV-36, Special Purpose Shipment Receiver Certification*, is already approved under OMB No. 0581-0178, for 1.67 hours (50 respondents $\times$ 1 responses per respondent $\times$.033 hours per response, for a total of 1.67 burden hours). Because the number of respondents is expected to increase from 50 to 60, the estimated total burden is now 2 hours (60 respondents $\times$ 1 responses $\times$.033 hours). As a result of this action, the burden is being increased by .33 hours.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 minutes. There is no change from the previous estimate.

Respondents: Receivers of special purpose shipments of Idaho-Eastern Oregon onions.

Estimated Number of Respondents: 60.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 2 hours.

Comments: Comments are invited on:

(1) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581-0178 and the Marketing Order for Onions Grown in Certain Counties of

Idaho, and Malheur County, Oregon, and be sent to the USDA in care of the Docket Clerk at the previously mentioned address. All comments timely received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Upon OMB approval, this collection will be merged with the forms currently approved for use under OMB No. 0581-0241 "Generic OMB Vegetable Crops." As mentioned previously, all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth above, 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. In § 958.328, revise paragraph (e) and paragraph (f) introductory text to read as follows:

§ 958.328 Handling regulation.

* * * * *

(e) *Special purpose shipments.* (1) The minimum grade, size, maturity, pack, assessment, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes:

- (i) Planting,
- (ii) Livestock feed,
- (iii) Charity,
- (iv) Dehydration,
- (v) Canning,
- (vi) Freezing,
- (vii) Extraction,
- (viii) Pickling, and
- (ix) Disposal.

(2) Shipments of onions for the purpose of experimentation, as approved by the Committee, may be made without regard to the minimum

grade, size, maturity, pack, and inspection requirements of this section. Assessment requirements shall be applicable to such shipments.

(3) The minimum grade, size, and maturity requirements set forth in paragraph (a) of this section shall not be applicable to shipments of pearl onions, but the maximum size requirement in paragraph (h) of this section and the assessment and inspection requirements shall be applicable to shipments of pearls onions.

(f) *Safeguards.* Each handler making shipments of onions outside the production area for dehydration, canning, freezing, extraction, pickling, or experimentation pursuant to paragraph (e) of this section shall:

* * * * *

Dated: June 15, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011-15445 Filed 6-20-11; 8:45 am]

BILLING CODE 3410-02-P

FEDERAL ELECTION COMMISSION

11 CFR Part 109

[Notice 2011-09]

Rulemaking Petition: Independent Expenditure Reporting

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of availability.

SUMMARY: On April 21, 2011, the Commission received a Petition for Rulemaking from Representative Chris Van Hollen. The Petition urges the Commission to revise and amend the regulations at 11 CFR 109.10(e)(1)(vi) regarding the reporting of independent expenditures by persons other than political committees. The Petition is available for inspection in the Commission's Public Records Office, on its website, <http://www.fec.gov/fosers/>, and through its Faxline service.

DATES: Statements in support of or in opposition to the Petition must be submitted on or before August 22, 2011.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via the Commission's Web site at <http://www.fec.gov/fosers/>. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 999 E