

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 958

[Docket No. FV06-958-1 IFR]

**Onions Grown in Certain Designated Counties in Idaho, and
Malheur County, Oregon; Change in Reporting Requirements**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the reporting requirements established under the Idaho-Eastern Oregon onion marketing order, which regulates the handling of onions grown in designated counties in Idaho and Oregon and is administered locally by the Idaho-Eastern Oregon Onion Committee. This rule: (1) Establishes a credit application procedure for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets; (2) changes the reporting requirements for fresh onions for peeling, chopping, or slicing, and for special purpose shipments; (3) adds "disposal" as a special purpose shipment; and (4) announces the Agricultural Marketing Service's (AMS) intention to request emergency approval by the Office of Management and Budget (OMB) of a new information collection. These changes

are intended to enhance the efficient operation of the program and improve compliance with the other provisions.

DATES: Effective [Insert date 1 day after the date of publication in the Federal Register]; comments received by [Insert date 60 days after date of publication in the Federal Register] will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act, comments on the information collection burden that would result from this proposal must be received by [Insert date 60 days after date of publication in the Federal Register.]

ADDRESSES: Interested persons are invited to submit written comments concerning this 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, Email: moabdocket.clerk@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: Susan M. Hiller, Marketing Specialist or Gary D. Olson, Regional Manager, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (503) 326-2724, Fax:(503) 326-7440, or Email: Susan.Hiller@usda.gov or GaryD.Olson@usda.gov.

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 Email: 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 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. This rule is not intended to have retroactive effect. This 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 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 rule establishes an application procedure for handlers to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within

the production area or diverted to exempt special purpose outlets; changes the reporting requirements for fresh onions for peeling, chopping, or slicing; changes the reporting requirements for special purpose shipments; adds "disposal" as a special purpose shipment; and announces the Agricultural Marketing Service's intention to request emergency approval by the Office of Management and Budget (OMB) of a new information collection. These actions were unanimously recommended by the Committee at a meeting on June 15, 2006.

Section 958.53 provides authority for the Committee, with the approval of USDA, to exempt special purpose shipments from assessment and handling regulations established under the order. Under this authority, § 958.328(e) exempts onions for planting, livestock feed, charity, dehydration, canning, freezing, extraction and pickling from the minimum grade, size, maturity, assessment and inspection requirements. Section 958.56 provides authority for the Committee, with the approval of USDA, to prescribe safeguards to prevent onions from entering channels of trade for other than the purpose authorized. Safeguards in effect are delineated in § 958.328(f). Section 958.65 provides authority for the Committee, with

the approval of USDA, to require such reports and other information as may be necessary for the Committee to perform its duties.

The Committee conducted an industry-wide meeting on January 17, 2006, to review the compliance and safeguard provisions of the order. The Committee appointed a Compliance Subcommittee, which met on May 16, 2006, to review the comments received. The three main areas of concern expressed by industry members were: (1) The need to provide a procedure for handlers to obtain credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted into exempt special purpose outlets; (2) improving the method of reporting fresh market onions for peeling, chopping, or slicing; and (3) improving and streamlining the safeguards for special purpose shipments. An overriding concern expressed was the need to decrease the reporting burden on receivers (buyers) of Idaho-Eastern Oregon onions.

The Committee met on June 15, 2006, to hear the report of the Compliance Subcommittee. The Committee thereafter unanimously recommended changing the reporting requirements established under the order to address these three areas of concern. The Committee recommended adding a new § 958.250

and a new form, "Assessment Credit Report", which establishes a procedure for those handlers who would like credit for assessments paid on onions in accordance with §§ 958.42 and 958.240 that are subsequently regraded, resorted, or repacked within the production area, or shipped into special purpose outlets. The Committee also recommended that "disposal" be added to § 958.328(e) as a special purpose to allow handlers to receive assessment credit on onions for which assessments have been paid when such onions are disposed of. Disposal means destroying the onions, generally by burying the onions in special pits.

The Committee unanimously recommended changing the reporting requirements for fresh onions for peeling, chopping, or slicing in § 958.328(d) by removing receiver reporting requirements. Previously, the name of Form No. FV-37, was the "Rehandling of Onions Report", which handlers found confusing and unrelated to the actual activity. The form has been renamed "Fresh Cut Report" (same form number) which will be submitted by handlers for multiple shipments rather than individual shipments.

The Committee agreed with industry concerns that reporting burdens should not be placed on the receivers of Idaho-Eastern Oregon onions. Receivers are able to acquire

onions from regions that do not have a marketing order in effect and avoid reporting requirements. The Committee received reports that handlers in the production area may have lost sales due to receiver reporting requirements.

This rule will also change the safeguard reporting requirements in § 958.328(f) by clarifying that the safeguard procedures are required only for onions shipped outside the Idaho-Eastern Oregon onion production area.

Under the new safeguard procedures, with newly revised forms, handlers will notify the Committee and obtain a Certificate of Privilege permit number by completing form FV-34, "Application to Make Special Purpose Shipments - Certificate of Privilege." Receivers of special purpose onions will only need to complete form FV-36, "Special Purpose Shipment Receiver Certification" indicating they will use the onions in an approved special purpose outlet. Receivers will no longer be required to submit form FV-35, "Onion Diversion Report" for every shipment. Handlers will submit additional information to the Committee on form FV-34, "Application to Make Special Purpose Shipments - Certificate of Privilege." This information would include type of sale, total hundredweight for the sale, and the type

of container for the sale. This form can be used for multiple shipments.

These changes are intended to enhance compliance of the special purpose shipment procedures established under the order and contribute to the efficient operation of the program.

And finally, this rule reorganizes the rules and regulations issued under this order by removing the heading "Subpart--Assessment Rates" and adding a new heading "Subpart--Rules and Regulations."

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 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 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 250 producers of onions in the production area, 38 handlers, and 24 receivers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000.

The National Agricultural Statistics Service (NASS) reported in the "Vegetables 2005 Summary", published in January 2006, that the total F.O.B. value of onions in the regulated production area for 2005 was \$148,685,000. Therefore, based on an industry of 250 producers, 38 handlers, and 24 receivers, it can be concluded that the majority of producers, handlers, and receivers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule would add a new § 958.250 which will establish an application procedure for handlers to receive credit for assessments paid on onions in accordance with §§ 958.42 and 958.240 and are subsequently regraded, resorted, repacked within the production area, or sent to exempt

special purpose outlets. This rule also adds "disposal" as a special purpose shipment.

The rule changes the reporting requirements for fresh onions for peeling, chopping, or slicing and for special purpose shipments by reducing receiver reporting requirements and streamlining handler reporting requirements.

Regarding the impact of these actions on affected entities, this rule will impose minimal additional costs. This rule establishes a procedure to make it easier for handlers to apply for an assessment credit. The change in the reporting requirements for fresh onions for peeling, chopping, or slicing, as well as the change to the safeguards for special purpose shipments were requested by industry members and would decrease the overall reporting burden. The benefits of this rule are not expected to be disproportionately greater or less for small handlers or producers than for larger entities.

An alternative to these actions would be to have handlers report onion shipments rather than utilizing the information from each handler's inspection certificates. However, most handlers were opposed to this alternative because it would increase their reporting burden.

This action imposes an additional reporting burden on onion handlers but eliminates reporting by receivers of onions. This action requires a new Committee form and the revision of four Committee forms, previously approved by OMB under OMB No. 0581-0178, Vegetable and Specialty Crops.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces that the AMS is requesting emergency approval from the Office of Management and Budget (OMB) for a new information collection request, under OMB No. 0581-NEW, and to revise two forms previously approved under OMB No. 0581-0178, Vegetable and Specialty Crops. The emergency request was necessary because insufficient time was available to follow normal clearance procedures. Upon approval of this new collection by OMB, it will be merged with the forms currently approved for use under OMB No. 0581-0178.

As mentioned earlier, the Committee's reporting requirement recommendations involves the revision of four previously approved forms, under OMB No. 0581-0178, and the addition of one new form, under OMB No. 0581-NEW. Two of the revised forms, FV-36, "Special Purpose Certificate for Handling Onions Which Do Not Meet Fresh Market

Requirements", which has been renamed "Special Purpose Shipment Receiver Certification", and FV-37, "Rehandling of Onions Report", which has been renamed to "Fresh Cut Report"; have been submitted to OMB and were approved on July 12, 2006. The remaining two previously approved forms which are being revised, FV-34, "Application to Make Special Purpose Shipments - Certificate of Privilege", FV-35, "Onion Diversion Report", and the new form "Assessment Credit Report", are being submitted to OMB through an emergency approval request of a new information collection. Upon approval, the new collection will be merged into OMB No. 0581-0178, Vegetable and Specialty Crops.

Title: Onions Grown in Designated Counties in Idaho, and Malheur County, Oregon

OMB Number: 0581-NEW.

Expiration Date of Approval: Emergency request.

Type of Request: New collection.

Abstract: The information collection requirements in this request are essential to provide handlers with a procedure to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area, or shipped into exempt special purpose outlets.

On June 15, 2006, the Committee unanimously recommended changing the order's reporting requirements. This rule establishes an application procedure for handlers to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets. In order to receive a credit, handlers would complete the "Assessment Credit Report" and submit it to the Committee.

This rule also changes reporting requirements for fresh onions for peeling, chopping, or slicing, by having handlers complete form FV-37, "Fresh Cut Report." Finally, this rule changes the safeguards for special purpose shipments. Handlers who desire to make a special purpose shipment must complete form FV-34, "Application to Make Special Purpose Shipments - Certificate of Privilege." This form would be completed for each volume or other sale of onions destined to be shipped outside the production area to canners, dehydrators, extractors, freezers, or picklers. The Committee will evaluate the application and issue a Certificate of Privilege permit number, if approved. The Committee may contact a receiver of a special purpose shipment to verify each application by having the receiver complete form FV-36, "Special Purpose Shipment Receiver

Certification.” Finally, the handler will submit form FV-35, “Onion Diversion Report”, for each Certificate of Privilege permit number with the frequency dependent upon the type of sale and container.

These changes are being made at the request of the industry to provide a procedure for handlers to obtain credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted into exempt special purpose outlets. These changes are also intended to improve the method of reporting fresh market onions for peeling, chopping, or slicing; improve and streamline the safeguards for special purpose shipments; and improve compliance with the order. Committee members are confident that these revisions will also improve the accuracy of the information submitted while responding to the needs of the handlers for efficiency.

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

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

"Assessment Credit Report"

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 35.

Estimated Number of Responses per Respondent: 20.

Estimated Total Annual Burden on Respondents: 91 hours.

The request for approval of the revised information collection under OMB No. 0581-0178, order is as follows:

Form FV-34, "Application to Make Special Purpose Shipments - Certificate of Privilege"

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 7.8

hours.

Form FV-35, "Onion Diversion Report"

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 8 minutes per response.

Respondents: Idaho-Eastern Oregon onion handlers.

Estimated Number of Respondents: 20.

Estimated Number of Responses per Respondent: 100.

Estimated Total Annual Burden on Respondents: 260 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-NEW and Onions Grown in Designated Counties in Idaho, and Malheur County,

Oregon, and be sent to the USDA in care of the Docket Clerk at the address above. All comments 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 also become a matter of public record. As mentioned before, because there was insufficient time for a normal clearance procedure and prompt implementation is needed, AMS is requesting emergency approval from OMB for the use of this collection of forms for the 2006 regulation period, which began in August 2006. Upon publication of the final rule, this collection will be merged with the forms currently approved for use under OMB No. 0581-0178 "Generic OMB Vegetable Crops."

As with other similar 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.

AMS is committed to complying with the E-Government Elimination 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.

Further, the Committee's meeting on June 15, 2006, 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 June 15, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed sub-committees to review certain issues and make recommendation to the Committee. The Compliance Subcommittee met on May 16, 2006, and discussed these issues in detail. All interested persons were invited to attend this meeting and participate in the industry's deliberations. Finally, interested persons are invited to submit information on 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/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.

In summary, this rule establishes an application procedure for handlers to receive credit for assessments paid on onions that are subsequently regraded, resorted, or repacked within the production area or diverted to exempt special purpose outlets; changes the reporting requirements for fresh onions for peeling, chopping, or slicing; adds "disposal" as a special purpose shipment; changes the reporting requirements for special purpose shipments; and announces the Agricultural Marketing Service's intention to request emergency approval by the Office of Management and Budget (OMB) of a new information collection. This rule removes reporting requirements for receivers and streamlines handler reporting requirements. These changes are beneficial to the compliance of the special purpose shipment procedures established under the marketing order and contribute to the efficient operation of the program. This rule invites comments on these changes. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other

information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule reduces industry reporting and recordkeeping requirements; (2) the Idaho-Eastern Oregon onion marketing season began in August and these changes should be in effect as soon as possible to achieve their intended purpose; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; (4) this rule provides a 60-day comment period on the regulation changes which is deemed appropriate, and a 60-day comment period on the reporting requirement changes, and any comments received will be considered prior to finalization of this rule.

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 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. Add new subpart heading "**Subpart--Rules and Regulations**" before "**§ 958.112 Fiscal Period.**"

3. Remove Subpart heading "**Subpart--Assessment Rates**" after § 958.160.

4. Add a new § 958.250 under subpart Rules and Regulations to read as follows:

§ 958.250 Assessment Credit Report.

Each handler may receive a credit for assessments on onions that have been levied in accordance with §§ 958.42 and 958.240 and are subsequently regraded, resorted, or repacked within the production area, or shipped in accordance with § 958.328(e) by furnishing the "Assessment Credit Report" and such other information as required to the committee.

5. Revise paragraphs (d), (e) and (f) of § 958.328 to read as follows;

§ 958.328 Handling regulation.

* * * * *

(d) Onions for peeling, chopping, or slicing. Onions that have been inspected and certified as meeting the requirements of paragraphs (a) and (b) of this section and that are subsequently peeled, chopped, or sliced for fresh market within the production area may be handled without reinspection: Provided the following:

(1) Each handler making shipments of onions for alteration or performing alteration by peeling, chopping, or slicing must furnish the committee the following information on the "Fresh Cut Report" and such other documents as required:

- (i) Business name, address, telephone number, signature, and the date the form was signed;
- (ii) The date of peeling, chopping, or slicing;
- (iii) Inspection certificate number;
- (iv) The quantity of onions; and
- (v) Such other information as may be required by the committee.

(2) Handlers who peel, chop, or slice onions produced outside the production area must provide the committee with documentation showing that the onions so prepared were produced outside the production area.

(e) Special purpose shipments. The minimum grade, size, maturity, assessment, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes: (1) planting, (2) livestock feed, (3) charity, (4) dehydration, (5) canning, (6) freezing, (7) extraction, (8) pickling, and (9) disposal. In addition, 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 pearl onions.

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

(1) Furnish "Application to Make Special Purpose Shipments - Certificate of Privilege" and such other information to the committee as required. The committee

will review and verify each "Application to Make Special Purpose Shipments - Certificate of Privilege" and notify the handler of approval or disapproval. The committee may contact the receiver or receiver's agent of the special purpose shipment for verification and request the receiver or receiver's agent to complete a "Special Purpose Shipment Receiver Certification";

(2) Bill or consign each shipment directly to the applicable receiver or receiver's agent of the special purpose shipment;

(3) Furnish "Onion Diversion Report" and such other information to the committee as required. Failure of the handler to furnish such report and information as required to the committee may be cause for cancellation of such handlers' Certificate of Privilege. Upon cancellation of any such Certificate of Privilege the handler may appeal to the committee for reconsideration. The committee may audit a receiver or receiver's agent of the special purpose shipment to verify reports and information submitted by handlers. Failure of a receiver or receiver's agent of a special purpose shipment to comply with the committee may be cause for cancellation of the receiver's or receiver agent's eligibility to receive further special purpose shipments

from the production area. Upon cancellation of any such Certificate of Privilege the receiver or the receiver's agent may appeal to the committee for reconsideration.

Dated:

Lloyd C. Day
Administrator
Agricultural Marketing Service