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## **Agricultural Marketing Service**

### **7 CFR Part 958**

**[Doc. No. AMS-SC-23-0033]**

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

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

**ACTION:** Final rule.

**SUMMARY:** This final rule implements a recommendation from the Idaho-Eastern Oregon Onion Committee (Committee) to increase the assessment rate established for the 2023-2024 and subsequent fiscal periods. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

**FOR FURTHER INFORMATION CONTACT:** Joshua Wilde, Marketing Specialist, or Barry Broadbent, Branch Chief, West Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724, or Email: [Joshua.R.Wilde@usda.gov](mailto:Joshua.R.Wilde@usda.gov) or [Barry.Broadbent@usda.gov](mailto:Barry.Broadbent@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-8085, or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). 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

counties in Idaho, and Malheur County, Oregon. Part 958 (referred to as 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 Committee locally administers the Order and is comprised of producers and handlers of onions operating within the area of production, and a public member.

The Agricultural Marketing Service (AMS) is issuing this rule in conformance with Executive Orders 12866, 13563, and 14094. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 reaffirms, supplements, and updates Executive Order 12866 and further directs agencies to solicit and consider input from a wide range of affected and interested parties through a variety of means. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires Federal agencies to consider whether their rulemaking actions would have Tribal implications. AMS has determined that this rule is unlikely to have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

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 will be applicable to all assessable Idaho-Eastern Oregon onions for the 2023-2024 fiscal period, and continue until amended, suspended, or terminated.

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 U.S. Department of Agriculture (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 rule increases the assessment rate for Idaho-Eastern Oregon onions handled under the Order from \$0.05 per hundredweight, the rate that was established for the 2015-2016 and subsequent fiscal periods, to \$0.07 per hundredweight for the 2023-2024 and subsequent fiscal periods.

The Order authorizes the Committee, with the approval of AMS, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. Committee members are familiar with the costs of goods and services in their local area and are able to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting, and all directly affected persons have an opportunity to participate and provide input.

For the 2015-2016 and subsequent fiscal periods, the Committee recommended,

and AMS approved, an assessment rate of \$0.05 per hundredweight of Idaho-Eastern Oregon onions within the production area. That rate continues in effect from fiscal period to fiscal period until modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other information available to AMS.

The Committee met on June 27, 2023, and recommended 2023-2024 fiscal period expenditures of \$1,039,785 and an assessment rate of \$0.07 per hundredweight of Idaho-Eastern Oregon onions handled for the 2023-2024 and subsequent fiscal periods with a vote of 7 in favor and none opposed. In comparison, last fiscal period's budgeted expenditures were \$819,435. The assessment rate of \$0.07 per hundredweight is \$0.02 higher than the rate currently in effect. The Committee recommended increasing the assessment rate to fund operations more fully without relying on its financial reserve funds. The Committee has drawn down its financial reserve in recent years to cover expenses as unfavorable growing conditions have caused the volume of assessable onion shipments to fall well below what the Committee had expected. Therefore, actual assessment income collected for the 2021-2022 and 2022- 2023 fiscal periods was significantly less than projected. The Committee is cautiously optimistic that conditions will improve, projecting handler shipments of 10,000,000 hundredweight of assessable Idaho-Eastern Oregon onions for the 2023-2024 fiscal period, which is the same as initially projected for the 2022-2023 fiscal period.

The major expenditures budgeted by the Committee for the 2023-2024 fiscal period include \$190,000 for research; \$175,000 for promotion; \$21,000 for export initiatives; \$118,529 in salary expenses; \$55,270 for travel/office expenses; \$15,000 for marketing order contingency; and \$6,000 for Committee expenses. By comparison, for the 2022-2023 fiscal period, budgeted expenses for research, promotion, export initiatives, salaries, travel/office, and marketing order contingency were \$263,061;

\$200,000; \$126,000; \$103,004; \$96,370; \$25,000; and \$6,000, respectively. The Committee's 2023-2024 budget also includes a separate line-item expense of \$458,986 for "grant expenses" which refers to other research and development projects funded with reimbursable Specialty Crop Block Grant Program funds. This category reflects the total grant amount awarded for approved research, promotion, and export activities. In previous budgets, these funds were allocated to the individual programs where those funds would be utilized (e.g., research, promotion, and export). However, the Committee felt that holding these expenditures as a separate expense category for the 2023-2024 fiscal period helped differentiate activities funded exclusively through assessment income from those funded through reimbursable grants. The Committee submits each project under the Specialty Crop Block Grant to the State of Idaho for evaluation and approval prior to reimbursement.

The expected 10,000,000 hundredweight of Idaho-Eastern Oregon onions from the 2023-2024 crop will generate \$700,000 in assessment revenue at the increased assessment rate (10,000,000 hundredweight of onions multiplied by \$0.07 assessment rate). The 2023-2024 fiscal period assessment rate increase should ensure the Committee has sufficient revenue, along with an anticipated \$458,986 in funds awarded through the Specialty Crop Block Grant Program and \$23,850 in other income, to fully fund its recommended 2023-2024 fiscal period budgeted expenditures and begin replenishing the Committee's reserve funds to a level that the Committee believes is appropriate.

The Committee derived the recommended assessment rate by considering anticipated fiscal period expenses and the estimated 2023 crop volume of 10,000,000 hundredweight of assessable Idaho-Eastern Oregon onions. Income derived from handler assessments (\$700,000), Specialty Crop Block Grants (\$458,986), and other sources including interest income and voluntary contributions (\$23,850), should be more than adequate to cover budgeted expenses (\$1,039,785). The Committee projects a positive

net difference between 2023-2024 fiscal period income and expenses of \$143,051. This amount will help replenish the Committee's reserve fund from an estimated \$230,351 on July 1, 2023, to an estimated \$373,402 on July 1, 2024, a figure much more closely aligned with the Committee's preferred reserve balance of approximately half of one year's operational expenses.

This new assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by AMS upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will 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 AMS. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS 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 2023-2024 fiscal period budget, and those for subsequent fiscal periods, will be reviewed and, as appropriate, approved by AMS.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses 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.

There are approximately 190 producers of Idaho-Eastern Oregon onions in the production area and 30 handlers subject to regulation under the Order. Small agricultural producers of onions are defined by the Small Business Administration (SBA) as those having annual receipts of equal to or less than \$3,750,000 (Other Vegetable (except Potato) and Melon Farming, North American Industry Classification System (NAICS) code 111219), and small agricultural service firms are defined as those whose annual receipts are equal to or less than \$34,000,000 (Postharvest Crop Activities, NAICS code 115114)(13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS), the average annual producer price received for dry fresh market onions in Idaho, in 2021, the most recent year for which there is NASS data, was \$21.10 per hundredweight. NASS did not provide fresh onion producer prices specific to Malheur County, Oregon, for 2021. Total production of Idaho-Eastern Oregon onions for the 2021 season was reported by the Committee to be 9,281,912 hundredweight. Using the average Idaho producer price from 2021, and applying it to the entire production area, the total 2021-2022 crop value of Idaho-Eastern Oregon onions could therefore be estimated to be \$195,848,343 (9,281,912 hundredweight times \$21.10 per hundredweight). Dividing the crop value by the estimated number of producers (190) yields an estimated average receipt per producer of \$1,030,780, which is well below the SBA threshold for small producers.

In addition, according to AMS Market News data, the reported average free on board (FOB) price for onions from Idaho-Eastern Oregon over the 2021-2022 fiscal period was between \$15.00 and \$20.00 per 50-pound carton, depending upon variety, size and grade, and shipping date. Assuming an average of \$17.50 for the fiscal period and multiplying this figure by 2 (to adjust to hundredweight) yields an average FOB price of \$35.00 per hundredweight for the 2021-2022 fiscal period. Multiplying the 2021-2022

Idaho-Eastern Oregon onion production of 9,281,912 hundredweight by the estimated average price per hundredweight of \$35.00 equals \$324,866,920. Dividing this figure by the 30 regulated handlers yields estimated average annual handler receipts of \$10,828,897 (\$324,866,920 divided by 30 handlers), which is below the SBA threshold for small agricultural service firms. Therefore, using the above data and assuming a normal distribution, most of the producers and handlers of Idaho-Eastern Oregon onions may be classified as small entities.

This rule will increase the assessment rate collected from handlers for the 2023-2024 and subsequent fiscal periods from \$0.05 to \$0.07 per hundredweight of Idaho-Eastern Oregon onions. The Committee unanimously recommended 2023-2024 fiscal period expenditures of \$1,039,785 and an assessment rate of \$0.07 per hundredweight of Idaho-Eastern Oregon onions. The assessment rate of \$0.07 is \$0.02 higher than the current rate. The Committee expects the industry to handle 10,000,000 hundredweight of Idaho-Eastern Oregon onions during the 2023-2024 fiscal period. Thus, the \$0.07 per hundredweight rate will provide \$700,000 in assessment income (10,000,000 multiplied by \$0.07). The Committee expects to use an anticipated \$458,986 awarded from the Specialty Crop Block Grant Program to cover remaining expenses. Income derived from handler assessments, Specialty Crop Block Grant Program funds, and other sources including interest income and voluntary contributions, will be adequate to cover budgeted expenses.

The major expenditures budgeted by the Committee for the 2023-2024 fiscal period include \$190,000 for research committee, \$175,000 for promotion committee, \$21,000 for export committee, \$118,529 in salary expenses, \$55,270 for travel/office expenses, \$15,000 for marketing order contingency, and \$6,000 in committee expenses. By comparison, for the 2022-2023 fiscal period, budgeted expenses for research, promotion, export initiatives, salaries, travel/office, and marketing order contingency

were \$263,061, \$200,000, \$126,000, \$103,004, \$96,370, \$25,000, and \$6,000, respectively.

In recent years, the Committee has utilized reserve funds to partially fund its budgeted expenditures. The Committee recommended increasing the assessment rate to fully fund 2023-2024 fiscal period budgeted expenditures and replenish funds held in its reserve. This action will add an estimated \$143,051 to the Committee's financial reserve fund. The reserve balance will be kept at a level that the Committee believes is appropriate and which is compliant with the provisions of the Order.

Prior to arriving at this budget and assessment rate, the Committee discussed various alternatives, including maintaining the current assessment rate of \$0.05 per hundredweight and increasing the assessment rate by different amounts. However, the Committee determined that the increased assessment rate would fully fund budgeted expenses and replenish reserves to appropriate levels. The assessment rate of \$0.07 per hundredweight of Idaho-Eastern Oregon onions was derived by considering anticipated expenses, the projected volume of assessable Idaho-Eastern Oregon onions, grant funds awarded, the projected monetary balance held in reserve, and additional pertinent factors.

A review of NASS information indicates that the average producer price for the 2021-2022 fiscal period was \$21.10 per hundredweight of onions in the production area. The assessment rate of \$0.07 per hundredweight is approximately three tenths of one percent of the average producer price (\$0.07 divided by \$21.10). Further, the Committee reported the quantity of assessable Idaho-Eastern Oregon onions harvested in the 2021-2022 fiscal period was 9,281,912 hundredweight, which yields estimated total producer revenue of \$195,848,343 (\$21.10 per hundredweight multiplied by 9,281,912). Therefore, utilizing the assessment rate of \$0.07 per hundredweight, assessment revenue for the 2021-2022 fiscal period, as a percentage of total producer revenue, will be approximately 0.33 percent of total producer revenue (\$0.07 multiplied by 9,281,912 per

hundredweight divided by \$195,848,343 and multiplied by 100).

This action will increase the assessment obligation imposed on Idaho-Eastern Oregon onion handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, these costs are expected to be offset by the benefits derived by the operation of the Order.

The Committee's meetings are widely publicized throughout the production area. The Idaho-Eastern Oregon onion industry and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the June 27, 2023, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit comments on this rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. No changes in those requirements will be necessary as a result of this rule. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any 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.

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.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on December 12, 2023 (88 FR 86066). Copies of the proposed rule were also mailed or sent via email to all onion handlers. A copy of the proposed rule was made available through the internet by AMS via <https://www.regulations.gov>. A 30-day comment period ending January 11, 2024, was provided for interested persons to respond to the proposal. AMS received one comment opposed to the increased assessment rate on the basis that it would raise costs for onion producers, be unlikely to benefit producers equally, and costs might be passed on to U.S. consumers. However, assessments are applied uniformly on all handlers and the assessment burden is proportional to the volume of assessable onions handled. Costs to both large and small producers are expected to be offset by benefits derived by the operation of the Order and include improved market conditions resulting from additional promotion and research focused on Idaho-Eastern Oregon onions. Because the assessment rate represents a small percentage of producer revenue (three tenths of one percent) and a very small percentage of the retail value of onions, it is highly unlikely to contribute to increased onion costs to consumers. Both small and large producers on the Committee expressed support for this proposal. Further, the increased rate is still below the \$0.10 per hundredweight assessment rate that was in effect from 2005-2015.

While it is intended for the assessment rate to be effective for an indefinite period of time, the Committee will 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. AMS would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Notice and comment rulemaking to adjust the assessment rate would be undertaken as necessary. Accordingly, AMS made no changes to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop

marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this rule tends to effectuate the declared policy of the Act.

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

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 958 as follows:

#### **PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON**

1. The authority citation for part 958 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Revise § 958.240 to read as follows:

##### **§ 958.240 Assessment rate.**

On and after July 1, 2023, an assessment rate of \$0.07 per hundredweight is established for Idaho-Eastern Oregon onions.

**Erin Morris,**

*Associate Administrator,*

*Agricultural Marketing Service.*

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