

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 955

[Docket No. FV00-955-1 PR]

Vidalia Onions Grown in Georgia; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would increase the assessment rate established for the Vidalia Onion Committee (Committee) for fiscal period 2000 and subsequent fiscal periods from \$0.07 to \$0.10 per 50-pound bag of Vidalia onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of Vidalia onions grown in Georgia. Authorization to assess Vidalia onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins on January 1 and ends December 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by January 12, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL

33883-2276; telephone: (863) 299-4770, Fax: (863) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 205-6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia area, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Vidalia 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 Vidalia onions beginning on January 1, 2000, and continue until amended, suspended, or terminated. 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 the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the

petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the fiscal period 2000 and subsequent fiscal periods from \$0.07 to \$0.10 per 50-pound bag of Vidalia onions handled.

The Vidalia onion marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Vidalia onions. They are 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 1998-99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on September 30, 1999, and unanimously recommended fiscal period 2000 expenditures of \$421,600 and an assessment rate of \$0.10 per 50-pound bag of Vidalia onions. In comparison, 1998-99 budgeted expenditures were \$373,577. However, during the 1998-99 fiscal period the Committee recommended and the Department approved a change in the fiscal period under the order to January 1-December 31 from September 16-September 15 to make the fiscal period consistent with the Vidalia onion marketing season (64 FR 48243, September 3, 1999). To provide for continuous operation of the order, the 1998-99 fiscal period was extended by 3 and 1/2 months (from September 16 to

December 31, 1999). As a result, actual expenditures for 1998–99 are expected to total about \$475,577. In addition, the quantity of assessable onions for 1998–99 and assessment income is much less than expected. The Committee projected the quantity of assessable onions for 1998–99 at 4,842,857 50-pound bags and assessment revenue at \$339,000. The actual quantity of assessable onions is expected to be 3,617,017 50-pound bags, and assessment revenue is expected to total \$253,191. Because of this shortfall, the Committee will have to use more of its operating reserve to cover approved expenses than it expected.

The assessment rate of \$0.10 is \$0.03 higher than the rate currently in effect. The increase is needed so the Committee can maintain its operating reserve at an acceptable level, and to cover increases in the Committee's promotion expenses for fiscal period 2000.

The major expenditures recommended by the Committee for fiscal period 2000 include \$135,127 for administrative costs, \$31,800 for compliance activities, \$175,000 for promotional activities, and \$47,000 for research projects. Budgeted expenses for these items in 1998–99 (including the 3½ month extension) are \$151,127 for administrative costs, \$37,850 for compliance activities, \$161,600 for promotional activities, and \$125,000 for research projects.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Onion shipments for fiscal period 2000 are estimated at 4,200,000 50-pound bags or equivalent which should provide \$420,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses for fiscal period 2000. Funds in the reserve (currently projected to be \$83,000 on December 31, 1999), would be kept within the maximum permitted by the order (about three fiscal period's budgeted expenses; § 955.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for

modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's fiscal period 2000 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

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 133 producers of Vidalia onions in the production area and approximately 91 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

Based on the Georgia Agricultural Statistical Service and committee data, the average price for fresh Vidalia onions during the 1998–99 season was \$15.45 per 50-pound bag or equivalent and total shipments were 3,617,017 bags. Approximately 28 percent of all handlers handled 83 percent of Vidalia onion shipments. Many Vidalia onion handlers ship other vegetable products which are not included in the committee data but would contribute further to handler receipts.

Using the average price, about 97.4 percent of the Vidalia onion handlers could be considered small businesses under the SBA definition. The majority of Vidalia Onion producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for fiscal period 2000 and subsequent fiscal periods from \$0.07 to \$0.10 per 50-pound bag or equivalent of assessable onions. The Committee unanimously recommended fiscal period 2000 expenditures of \$421,600 and an assessment rate of \$0.10 per 50-pound bag or equivalent. The proposed assessment rate of \$0.10 is \$0.03 higher than the 1998–99 rate. The quantity of assessable Vidalia onions for fiscal period 2000 is estimated at 4,200,000 50-pound bags. Thus, the \$0.10 rate should provide \$420,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, would be a dequate to cover budgeted expenses.

The major expenditures recommended by the Committee for fiscal period 2000 include \$135,127 for administrative costs, \$31,800 for compliance activities, \$175,000 for promotional activities, and \$47,000 for research projects. Budgeted expenses for these items in 1998–99 (including the 3½ month extension) were \$151,127 for administrative costs, \$37,850 for compliance activities, \$161,600 for promotional activities, and \$125,000 for research projects.

As mentioned earlier, in an effort to recover from its assessment income shortfall in 1998–99, maintain its operating reserve at an acceptable level, and expand its promotion activities, the Committee voted unanimously to increase its assessment rate to cover operating expenses during fiscal period 2000. The Committee believes that increased promotion activities are needed to help the Vidalia onion industry remain competitive in the marketplace.

The Committee reviewed and unanimously recommended fiscal period 2000 expenditures of \$421,600. Prior to arriving at this budget, the Committee considered information from various sources, such as the Budget Subcommittee, the Research Subcommittee, and the Advertising and Promotion Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various promotion and research projects to the Vidalia onion industry. The assessment rate of \$0.10 per 50-pound bag or equivalent of assessable Vidalia onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at 4,200,000 50-pound bags for fiscal period 2000. This rate will generate \$420,000, which is \$1,600

below the anticipated expenses. The Committee found this acceptable because interest income and reserve funds are available to make up the deficit.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for fiscal period 2000 could range between \$10.00 and \$15.00 per 50-pound bag of Vidalia onions. Therefore, the estimated assessment revenue for fiscal period 2000 as a percentage of total grower revenue could range between 0.7 and 1.0 percent.

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 meeting was widely publicized throughout the Vidalia onion production area and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the September 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2000 fiscal period begins on January 1, 2000, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable

Vidalia 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 unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is proposed to be amended as follows:

PART 911—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR parts 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.209 is revised to read as follows:

§ 911.209 Assessment rate.

On and after January 1, 2000, an assessment rate of \$0.10 per 50-pound bag or equivalent is established for Vidalia onions.

Dated: December 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–32233 Filed 12–10–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV–00–985–1 PR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Salable Quantities and Allotment Percentages for the 2000–2001 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would establish the quantity of spearmint oil produced in the Far West, by class, that handlers may purchase from, or handle for, producers during the 2000–2001 marketing year, which begins on June 1, 2000. This rule invites comments on the establishment of salable quantities and allotment percentages for Class 1 (Scotch) spearmint oil of 1,211,207 pounds and 65 percent, respectively,

and for Class 3 (Native) spearmint oil of 1,033,648 pounds and 50 percent, respectively. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule for the purpose of avoiding extreme fluctuations in supplies and prices, and thus help to maintain stability in the spearmint oil market.

DATES: Comments must be received by January 12, 2000.

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

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the “order.” This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the “Act.”

The Department of Agriculture (Department) is issuing this rule in