

# 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

[Doc. No. AMS-FV-11-0016; FV11-955-1 PR]

#### Vidalia Onions Grown in Georgia; Change in Late Payment and Interest Requirements on Past Due Assessments

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule invites comments on changes to the delinquent assessment requirements in effect under the marketing order for Vidalia onions grown in Georgia (order). The order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Vidalia Onion Committee (Committee). This rule would establish a late payment charge of 10 percent on unpaid assessments that are 10 days past due and would increase the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. This action would improve handler compliance with the assessment and reporting provisions of the order and would help reduce the Committee's collection expenditures.

**DATES:** Comments must be received by May 31, 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:**

Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324-3375, Fax: (863) 325-8793, or E-mail: [Jennie.Varela@ams.usda.gov](mailto:Jennie.Varela@ams.usda.gov) or [Christian.Nissen@ams.usda.gov](mailto:Christian.Nissen@ams.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](mailto:Laurel.May@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposal is issued under Marketing Agreement and Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, 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 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 proposal invites comments on changes to the delinquent assessment requirements in effect under the order. This rule would establish a late payment charge of 10 percent on unpaid assessments that are 10 days past due and would increase the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. The change was recommended unanimously by the Committee at a meeting on February 17, 2011.

Section 955.42 of the order provides authority for imposition of a late charge or interest rate or both on delinquent assessments. Section 955.142 of the order's rules and regulations prescribes the requirements for delinquent assessments. Section 955.142 currently specifies that each handler pay an interest charge of 1 percent per month on any unpaid assessments and accrued unpaid interest beginning the day after the assessments are due. This rule would modify § 955.142 to include a 10 percent late charge on delinquent assessments that are 10 days past due and increase the interest rate on delinquent assessments to 1.5 percent per month.

The order requires handlers to pay to the Committee a pro rata assessment on the volume of onions handled. The volume of onions handled is based on a monthly shipping report handlers are required to submit to the Committee. The monthly shipping report and its associated assessments are due in the Committee office by the fifth day of the month following the month in which the shipments were made, unless the fifth day falls on a weekend or holiday, and then the due date is the first prior business day.

At the Committee's January 20, 2011, meeting, Committee staff indicated that some handlers have been late in reporting shipments and paying the associated assessments, and that this has been an ongoing problem for the last few seasons. The handlers eventually comply with the order requirements, but late payments deprive the Committee of expected operating income and increase Committee costs.

Vidalia onions are typically shipped from late April through August of each year. This creates a compressed window in which the Committee collects the funds it uses throughout the year for its operating expenses. In addition, the Committee spends the majority of funds allocated to promotion during the shipping season. With promotional expenses accounting for more than 50 percent of the Committee's total budget, timely payment of assessments is necessary for the Committee to have funds available to cover expenditures. When several handlers are late in paying assessments, the Committee can lack the operating funds required. If sufficient operating funds are not available, the Committee has to borrow money, increasing operating costs.

Further, there are costs associated with trying to collect the delinquent assessments. Some handlers require numerous contacts from Committee staff by mail and telephone, with others requiring on-site visits from the Committee's compliance officer. Throughout a season, these collection activities expend time and resources.

In addition to the costs associated with unpaid assessments, the failure of handlers to report on time is also a problem for the Committee. The monthly shipping report serves several functions, including providing volume information on which handler assessments are based. Without complete shipping information, the Committee is unable to provide timely and accurate market information to the industry. Also, monthly reports play an important role in terms of order compliance.

In an effort to address this problem, the Committee staff has provided additional information to handlers on when reports and assessments are due and on the importance of timely submission. They have also increased the number of reminder calls made to handlers when submissions are late, and visits have been made to delinquent handler facilities to collect late reports and payments. However, these efforts have not been successful in resolving this concern.

In its discussion of this issue, the Committee agreed the current interest rate applied to unpaid assessments does not provide sufficient incentive for handlers to turn in monthly reports and their associated assessments on time. As it stands, the rate is low enough that some handlers view the interest rate as a cost of doing business, and only submit reports and assessments after numerous contacts from the Committee staff.

Committee members wanted to find a solution that would encourage handlers to submit their reports and payments as required. Initially, at its January meeting, the Committee favored changing the way the interest rate was compounded and calculated as a way to address the problem. However, it was determined that such a change could exceed what USDA would consider reasonable and customary under marketing order programs. At its meeting in February, the Committee reviewed different scenarios imposed by other marketing orders to address this issue. Several other marketing orders utilize late payment charges to encourage compliance, and while that authority is available under the order for Vidalia onions, it had never been utilized. As such, the Committee decided to impose a late payment charge, as well as increasing the monthly interest rate.

Committee members agreed that establishing a 10 percent late charge on late assessments would help provide some additional incentive for handlers to submit their reports and assessments on time. The Committee also discussed what would be an appropriate grace period to set before the late penalty was applied. Recognizing the importance of the timely receipt of reports and payments, the Committee did not want to set an overly long grace period. The Committee agreed that 10 days would provide a sufficient buffer for those who may mistakenly miss a due date, while still supporting timely reports and payments.

As an added incentive to report and pay on time, the Committee also believed the monthly interest charge on delinquent assessments should also be increased. Consequently, the Committee unanimously recommended imposing a late payment charge of 10 percent on any assessments paid 10 days after the date the shipping report and assessments are due and increasing the interest rate applied to unpaid assessments by .5 percent to 1.5 percent per month.

#### **Initial Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), 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 50 handlers of Vidalia onions subject to regulation under the order and around 80 producers in the designated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than \$7,000,000, and small agricultural producers are defined as those whose annual receipts are less than \$750,000 (13 CFR 121.201).

Based on National Agricultural Statistical Service and Committee data, the average annual grower price for fresh Vidalia onions during the 2010 season was around \$20 per 40-pound container, and total Vidalia onion shipments were around 4,503,000 40-pound containers. Using available data, more than 90 percent of Vidalia onion handlers have annual receipts less than \$7,000,000. However, the average receipts for Vidalia producers were around \$1,118,970 in 2010, which is higher than the SBA threshold for small producers. Assuming a normal distribution, the majority of handlers of Vidalia onions may be classified as small entities, while the majority of producers may be classified as large entities, according to the SBA definition.

This action would establish a late payment charge of 10 percent on unpaid assessments that are 10 days past due and would increase the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. This change is expected to motivate handlers to submit shipping reports and assessments on time. This change would also help lower or offset the Committee's compliance expenditures associated with delinquent reports and assessments. The authority for this action is provided in § 955.42 of the order. This change would amend § 955.142. The Committee unanimously recommended this action at its February 17, 2011, meeting.

The proposed rule would not impose any additional costs on handlers that are complying with the requirements under the order. This action would only represent additional costs for handlers who are delinquent in submitting their reports and assessments. A 10 day grace period would also be provided before the late penalty would be applied, giving delinquent handlers additional time to avoid the costs associated with the late payment charge.

In addition, the recommended late charge and interest rate were considered reasonable by industry members who participated in the discussion of this issue. Since the proposed late payment charge and interest rate are percentages of amounts due, the costs, when applicable, are proportionate and would not place an extra burden on small entities as compared to large entities. In addition, the industry overall would benefit if handler reports and assessments were collected on time and the Committee's compliance costs were reduced regardless of entity size.

The Committee discussed alternatives to this change, including not making a change to the delinquent assessment requirements. However, a number of members commented that if some handlers were not paying on time, a change was necessary. The Committee also considered increasing the interest rate accrual to daily rather than monthly, but this option could result in an interest charge that was disproportionately large and was considered to be beyond the scope of what is reasonable and customary under marketing order programs. Thus, these alternatives were rejected.

The proposed action would not impose any 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.

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.

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

In addition, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 17, 2011, 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 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 Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible as the Committee's fiscal period began in January 2011 and handlers began shipping onions in April. Further, handlers are aware of the action, which was unanimously recommended by the Committee at a public meeting on February 17, 2011. All written comments timely received will be considered before a final determination is made on this matter.

#### 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 955—VIDALIA ONIONS GROWN IN GEORGIA

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

**Authority:** 7 U.S.C. 601–674.

2. Section 955.142 is amended by designating the first paragraph as (a) and the second, (b), and revising newly designated paragraph (b) to read as follows:

#### § 955.142 Delinquent assessments.

\* \* \* \* \*

(b) Each handler shall pay interest of 1.5 percent per month on any assessments levied pursuant to § 955.42 and on any accrued unpaid interest beginning the day immediately after the date the monthly assessments were due, until the delinquent handler's assessments, plus applicable interest, have been paid in full. In addition to the interest charge, the Committee shall impose a late payment charge on any handler whose assessment payment has not been received within 10 days of the due date. The late payment charge shall be 10 percent of the late assessments.

Dated: May 9, 2011.

**Ellen King,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–11711 Filed 5–12–11; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 989

[Docket No. AMS–FV–11–0013; FV11–989–1 PR]

#### Raisins Produced From Grapes Grown in California; Increase in Desirable Carryout Used To Compute Trade Demand

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule would increase the desirable carryout used to compute the yearly trade demand for Natural (sun-dried) Seedless (NS) raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (committee). This rule would increase the amount of tonnage available early in the season when volume regulation is implemented, and is expected to help the industry meet its market needs.

**DATES:** Comments must be received by June 13, 2011.

**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, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: <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:

Terry Vawter, Senior Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: [Terry.Vawter@ams.usda.gov](mailto:Terry.Vawter@ams.usda.gov) or [Kurt.Kimmel@ams.usda.gov](mailto:Kurt.Kimmel@ams.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,