

# Rules and Regulations

Federal Register

Vol. 60, No. 181

Tuesday, September 19, 1995

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 955

[Docket No. FV95-955-21FR]

#### Vidalia Onions Grown in Georgia; Expenses and Assessment Rate

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

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 955 for the 1995-96 fiscal period. Authorization of this budget enables the Vidalia Onion Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

**DATES:** Effective September 16, 1995, through September 15, 1996. Comments received by October 19, 1995, will be considered prior to issuance of a final rule.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. 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:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Aleck J. Jonas, Southeast

Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770.

**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. 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 interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Vidalia onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1995-96 fiscal period, which begins September 16, 1995, and ends September 15, 1996. This interim final 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 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. 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 in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

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 Georgia Vidalia onions under this marketing order, and approximately 145 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of Vidalia onion producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 fiscal period was prepared by the Vidalia Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Vidalia onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met July 20, 1995, and unanimously recommended a 1995-96 budget of \$343,000, \$11,000 more than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Dues and subscriptions, \$2,500 (\$2,000), equipment maintenance, \$1,600 (\$750), office overhead, \$6,000 (\$3,000), office supplies, \$3,500 (\$3,000), telephone, \$5,000 (\$4,000), printing, \$2,200 (\$2,000), postage and courier, \$6,000 (\$5,000), employee salaries, \$65,000

(\$60,000), miscellaneous general and administrative, \$1,700 (\$1,000), marketing, \$146,500 (\$132,000), \$6,500 for retirement, which was included in the employee benefits category last year, and \$25,400 for a newly created compliance category. Items which have decreased compared to those budgeted for 1994-95 (in parentheses) are: Equipment purchases, \$2,000 (\$3,000), FICA employer, \$3,100 (\$4,250), employee benefits (health and dental), \$7,000 (\$13,500), research, \$48,500 (\$80,000), and (\$8,000) for contract outside labor, for which no funding was recommended this year.

The Committee also unanimously recommended an assessment rate of \$0.10 per 50-pound bag or equivalent of Vidalia onions, the same as last year. This rate, when applied to anticipated shipments of 3,017,500 50-pound bags or equivalents of Vidalia onions, would yield \$301,750. The Committee also anticipates shipments of 50,000 50-pound bags of previously unassessed Vidalia onions which have been in storage, which will yield an additional \$5,000 in assessment income. This, along with \$4,250 in interest income and \$32,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve of \$167,766 are within the maximum permitted by the order of three fiscal periods' expenses.

While this rule will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this 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 action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous

basis; (2) the fiscal period begins on September 16, 1995, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

#### 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 amended as follows:

#### **PART 955—VIDALIA ONIONS GROWN IN GEORGIA**

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

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

2. A new § 955.208 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

#### **§ 955.208 Expenses and assessment rate.**

Expenses of \$343,000 by the Vidalia Onion Committee are authorized, and an assessment rate of \$0.10 per 50-pound bag or equivalent of Vidalia onions is established for the fiscal period ending September 15, 1996. Unexpended funds may be carried over as a reserve.

Dated: September 13, 1995.  
Sharon Bomer Lauritsen,  
*Deputy Director, Fruit and Vegetable Division.*  
[FR Doc. 95-23192 Filed 9-18-95; 8:45 am]  
BILLING CODE 3410-02-P

#### **Animal and Plant Health Inspection Service**

#### **9 CFR Parts 50, 51, 77, 78, and 80**

[Docket No. 95-006-2]

#### **Tuberculosis, Brucellosis, and Paratuberculosis in Cattle and Bison; Identification Requirements**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the tuberculosis, brucellosis, and paratuberculosis regulations by requiring brands for certain cattle and

bison to be placed on the hip rather than the jaw. This action will reduce distress to cattle and bison that need to be identified with a brand by moving the brand to a location that is less sensitive, but that is still clearly visible. We are also allowing certain cattle and bison to be moved interstate to slaughter without branding if they are accompanied directly to slaughter by an Animal and Plant Health Inspection Service or State representative or are moved in vehicles closed with official seals. These actions respond to increasing public concern that branding on the jaw causes unnecessary distress to cattle and bison.

**EFFECTIVE DATE:** October 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Dr. J.D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, Suite 3B08, 4700 River Road Unit 36, Riverdale, MD 20737-1231; (301) 734-6188.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

In accordance with the regulations in 9 CFR parts 50, 51, 77, and 78 (referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) administers programs designed to control and eradicate tuberculosis and brucellosis in cattle and bison. As part of these programs, hot-iron branding on the jaw and on the tailhead has been used to identify certain cattle and bison. Specifically, hot-iron branding on the jaw has been required or allowed in the following cases: (1) To identify cattle or bison that have contracted or been exposed to tuberculosis or brucellosis; (2) to identify certain cattle or bison to be moved interstate to slaughter because of tuberculosis or brucellosis; and (3) to identify adult cattle or bison that have been immunized against brucellosis.

There has been increasing public concern that hot-iron branding on the jaw may cause undue distress to cattle and bison. A number of animal rights groups and other members of the public have requested that APHIS remove hot-iron branding on the jaw from our regulatory programs.

On May 17, 1995, we published in the Federal Register (60 FR 26377-26381, Docket No. 95-006-1) a proposal to remove hot-iron branding on the jaw from the regulations in 9 CFR parts 50, 51, 77, and 78. In places where branding has been required to be on the jaw, we proposed to move the required location of the brand to high on the hip near the tailhead. In places where the regulations have offered an owner the option of branding either on the jaw or on the hip, we proposed to remove the option of