

RESCINDED

Office of Thrift Supervision
Department of the Treasury

June 13, 2001

Transmittal TR-253

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Federal Register, Vol. 66, No. 83, pp. 21288-21290

Number TR-253

In the attached notice, the Office of Thrift Supervision (OTS) proposes to amend its assessment procedures to better reflect the increased costs of supervising certain institutions.

OTS determines a savings association's assessment by adding together three components reflecting the size, condition, and complexity of the institution. Currently, the condition component equals 25 percent of the thrift's size component for 3-rated institutions, and 50 percent of the thrift's size component for 4- or 5-rated institutions. OTS data shows that the need for regulatory supervision increases significantly once an institution's rating moves to a "3" and that the need increases even more when a thrift's rating moves to a "4" or "5." The current premium for these institutions does not adequately compensate OTS for the additional demand on its resources. Accordingly, the agency proposes to raise the condition component to 50 percent for 3-rated institutions and 100 percent for 4- and 5-rated institutions.

The notice of proposed rulemaking was published in the April 30, 2001, edition of the Federal Register, Vol. 66, No. 83, pp. 21288-21290. Written comments must be received on or before May 30, 2001 and should be addressed to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, N.W., Washington, DC 20552. Comments may be mailed, hand-delivered, faxed to 202/906-6518 or e-mailed to: regs.comments@ots.treas.gov. All commenters should include their name and telephone number.


— Richard M. Riccobono
Deputy Director
Office of Thrift Supervision

Attachment

Proposed Rules

Federal Register

Vol. 66, No. 83

Monday, April 30, 2001

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. **FV01-955-2**]

Vidalia Onions Grown in Georgia; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of Vidalia onions in Georgia, to determine whether they favor continuance of the marketing order regulating the handling of Vidalia onions grown in the production area.

DATES: The referendum will be conducted from June 4 through 22, 2001. To vote in this referendum, growers must have been producing Vidalia onions within the designated production area in Georgia during the period January 1, 2000, through December 31, 2000.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agents at the Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, FL 33883-2276, or the Office of the Docket Clerk, U.S. Department of Agriculture, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone (863) 229-4770; fax (863) 299-5169; or Melissa Schmaedick, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural

Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2522-S, Washington, DC 20090-6456; telephone (202) 720-2491; fax (202) 720-5698.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Agreement and Order No. 955 (7 CFR part 955), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the growers. The referendum shall be conducted from June 4 through 22, 2001, among Vidalia onion growers in the production area. Only growers that were engaged in the production of Vidalia onions in Georgia, during the period of January 1, 2000, through December 31, 2000, may participate in the continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for determining whether growers favor continuance of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers voting in the referendum, and growers of less than two-thirds of the volume of Vidalia onions represented in the referendum, favor continuance. In evaluating the merits of continuance versus termination, the Secretary will consider the results of the referendum and other relevant information regarding operation of the order. The Secretary will evaluate the order's relative benefits and disadvantages to growers, handlers, and consumers to determine whether continuing the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0178. It has been estimated that it will take an average of 20 minutes for each of the approximately 136 growers of Vidalia onions in Georgia to cast a ballot. Participation is voluntary. Ballots postmarked after June 22, 2001, will not be included in the vote tabulation.

Christian D. Nissen and William G. Pimental of the Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, are hereby designated as the referendum agents of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR part 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents, or from their appointees.

List of Subjects in 7 CFR Part 955

7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

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

Dated: April 24, 2001.

Kenneth C. Clayton,
Acting Administrator, Agricultural Marketing Service.

[FR Doc. 01-10662 Filed 4-27-01; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. **OTS-2001-30**]

RIN 1550-AB47

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its assessments rule to more accurately reflect the increased costs of supervising 3-, 4-, and 5-rated institutions. OTS proposes to set the condition component of its assessments regulation at 50 percent of the size component for 3-rated institutions, and 100 percent of the size component for 4- and 5-rated institutions.

DATES: Comments must be received on or before May 30, 2001.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2001-30.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention Regulation Comments, Chief Counsel's Office, Docket No. 2001-30.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906-6518, Attention Docket No. 2001-30.

E-Mail: Send e-mails to "regs.comments@ots.treas.gov", Attention Docket No. 2001-30, and include your name and telephone number.

Public Inspection: Comments and the related index will also be posted on the OTS Internet Site at "www.ots.treas.gov". In addition, interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to publicinfo@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) Appointments will be scheduled on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the next business day following the date a request is received.

SUPPLEMENTARY INFORMATION:

I. Description of Proposed Rule

OTS is charged with examining, regulating, and providing for the safe and sound operation of savings associations.¹ OTS funds its operations through assessments on savings associations and through other fees. The Home Owners' Loan Act (HOLA) specifically authorizes the Director to assess such fees to fund its direct and indirect expenses, as the Director deems necessary or appropriate.²

Under 12 CFR part 502, OTS determines each institution's assessment by adding together three components reflecting the size, condition and complexity of an institution. OTS computes the size component by multiplying an institution's total assets (as reported on the Thrift Financial Report (TFR)) by the applicable assessment rate. The condition component is a percentage of the size component and is imposed on

institutions that have a 3-, 4-, or 5-composite rating under the Uniform Financial Institutions Rating System (UFIRS) (also referred to as the CAMELS rating system).³ OTS imposes a complexity component if: (1) A thrift administers more than \$1 billion in trust assets; (2) the outstanding balance of assets fully or partially covered by recourse obligations or direct credit substitutes exceeds \$1 billion; or (3) the thrift services over \$1 billion of loans for others. OTS calculates the complexity component by multiplying set rates times the amounts by which an association exceeds each particular threshold.

Today's proposed rule would revise how OTS calculates the condition component. Under the current rules, the condition component equals 25 percent of the thrift's size component for 3-rated institutions, and 50 percent of the thrift's size component for 4- or 5-rated institutions.⁴ This premium was designed to reflect the greater supervisory resources demanded by these lower-rated institutions.

OTS data shows that there is a significant increase in the supervisory demands on the regulator once an institution's rating moves to a "3," and an even greater increase when a thrift's rating moves to a "4" or a "5." OTS experience since 1998, when it last adjusted this component, has shown that the current premium for these institutions does not adequately compensate OTS for the additional demands on its resources given the substantial level of supervision required by these institutions. Accordingly, OTS proposes to raise the condition component to 50 percent for 3-rated institutions and 100 percent for 4- and 5-rated institutions.⁵

OTS plans to expeditiously publish a final rule in this proceeding. OTS anticipates that the final rule will be effective for the July 31, 2001 semi-annual assessment.

³ The UFIRS rating system was developed jointly by all of the Federal banking regulators in an effort to establish a uniform system using standard criteria and definitions for rating in six different rating areas: capital, assets, management, earnings, liquidity, and sensitivity to market risk. See 61 FR 67021 (December 19, 1996). UFIRS is an effective supervisory tool for evaluating the soundness of financial institutions on a uniform basis, and for identifying those institutions requiring special supervisory attention or concern.

⁴ OTS has assessed a 50 percent premium on 4- and 5-rated institutions since 1990. 55 FR 34519 (August 23, 1990). OTS began to impose a 25 percent premium on 3-rated institutions in 1998. 63 FR 65663 (November 30, 1998).

⁵ OCC has proposed a similar increase to its surcharge on 3-, 4- and 5-rated national banks. See 66 FR 17821 (April 4, 2001).

II. Comment Solicitation

Under the current regulation and the proposed rule, the condition component is set at a percentage of the size component, which reflects total assets reported on the TFR. Currently, OTS does not directly consider the complexity of an institution's operations in its calculation of the condition component.⁶ It is concerned that the complex off-balance sheet portfolio of an institution with a 3-, 4- or 5-rating may impose significantly greater demands on the agency's supervisory resources. Accordingly, OTS specifically seeks comment whether it should consider the complexity of an institution's operations in its calculation of the condition component. OTS also seeks comment on how it should calculate the assessment if it elects to factor complexity into the condition component. Should OTS, for example, multiply the amount of the existing complexity component by 50 or 100 percent, or use some other calculation?

OTS also seeks comment on all other aspects of this rule. In addition, section 722 of the Gramm-Leach-Bliley Act requires federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. OTS also invites your comments on how to make this proposed rule easier to understand. For example:

Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

Would a different format make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

What else could we do to make the rule easier to understand?

III. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

Under section 605(b) of the Regulatory Flexibility Act of 1980,⁷ OTS has evaluated the effects this proposed rulemaking would have on small businesses, small organizations, and small governmental jurisdictions. As required, OTS has prepared the

⁶ As noted above, however, OTS does separately consider the complexity of an institution's operations under the complexity component.

⁷ 5 U.S.C. 605(b).

¹ 12 U.S.C. 1463(a).

² 12 U.S.C. 1467(k). See also 12 U.S.C. 1462a, 1463, 1467(a), 1467a.

following initial regulatory flexibility analysis.

A. Reasons for and Objectives of the Proposed Rule; Legal Basis for the Proposed Rule

OTS funds its operations through assessments on savings associations and through other fees. The Director of OTS is authorized by the HOLA to impose assessments.⁸ OTS is specifically authorized to assess such fees to fund the direct and indirect expenses of OTS, as the Director deems necessary or appropriate. 12 U.S.C. 1467(k).

As described above, OTS has found that there is significant increase in supervisory demands on the agency when an institution's rating moves to a "3" rating, and an even greater increase when a thrift's rating moves to a "4" or a "5" rating. Accordingly, the current OTS assessments regulation imposes a premium on these institutions to reflect the increased supervision costs.

OTS experience since 1998, when it last revised its condition component, has shown that the current premium for 3-, 4-, and 5-rated institutions does not adequately compensate it for the additional demands on its resources. Therefore, OTS is attempting, through this proposed rulemaking, to more closely associate its costs and assessments.

B. Effect of the Proposed Rule on Small Savings Associations

The proposed rule could affect small savings associations. The proposal would have no effect on small businesses or small organizations other than small savings associations, and would not affect small governmental jurisdictions. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under \$100 million.⁹

As discussed above, the proposed rule would impose a premium equal to 50 percent of an association's size component for each 3-rated association, and a 100 percent of an association's size component on each 4- or 5-rated institution. OTS would assess this premium regardless of the institution's size. As of April 10, 2001, 43 savings associations were 3-rated and had assets under \$100 million. Currently, the semi-annual assessment for a 3-rated institution with \$100 million in assets is \$19,380, exclusive of any complexity component. Under the proposed rule, this institution's semi-annual assessment would be \$23,256—an increase of \$3,876. Other 3-rated small

savings associations would see their assessments increase a lesser amount depending on their asset size.

As of April 10, 2001, six institutions were 4- or 5-rated and had assets under \$100 million. Currently, the semi-annual assessment for a 4- or 5-rated institution with \$100 million in assets is \$23,256, exclusive of any complexity component. Under the proposed rule, this institution's semi-annual assessment would be \$31,008—an increase of \$7,752. Other 4- and 5-rated institutions would see their assessments increase a lesser amount depending on their asset size.

C. Alternatives

As discussed earlier, 3-, 4- and 5-rated savings associations require more supervisory attention than 1- or 2-rated associations. Therefore, OTS has three alternatives: impose extra assessments on all 3-, 4- and 5-rated associations; impose extra assessments on some sub-category of 3-, 4- and 5-rated institutions; or require 1- and 2-rated institutions to subsidize these extra supervisory costs of 3-, 4- and 5-rated institutions.

OTS believes it is most equitable to match assessments with OTS's supervisory costs as far as possible. Therefore, it proposes to increase the amount of the condition component for 3-, 4-, and 5-rated associations. OTS believes that requiring these institutions to pay for their extra supervisory costs would provide an incentive for those institutions to improve their condition and their ratings. OTS also believes that the proposed condition component best accomplishes OTS's objective of closely tailoring assessment rates to OTS's increased costs in supervising 3-, 4- and 5-rated institutions.

D. Other Matters

The proposed rule would impose no reporting, recordkeeping, or other compliance requirements. Assessments would continue to be based on Thrift Financial Reports that savings associations otherwise must file with OTS. OTS would continue to use its current collection procedures. Therefore, the proposed rule would impose no new or additional reporting, recordkeeping, or compliance requirements.

There are no federal rules that duplicate, overlap, or conflict with this proposed rule.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4 (Unfunded Mandates Act), requires an agency to prepare a

budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of \$100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend part 502, chapter V, title 12, Code of Federal Regulations as set forth below.

PART 502—ASSESSMENTS AND FEES

1. The authority citation for part 502 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

2. Section 502.20 is revised to read as follows:

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component.

If your component rating is:	Then your condition component is:
1 or 2	Zero.
3	50 percent of your size component.
4 or 5	100 percent of your size component.

Dated: April 20, 2001.

By the Office of Thrift Supervision.

Ellen Seidman,
Director.

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⁸ 12 U.S.C. 1462a, 1463, 1467, 1467a.

⁹ 13 CFR 121.201 Division H (1998).