

# Rules and Regulations

Federal Register

Vol. 63, No. 186

Friday, September 25, 1998

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. FV98-955-1 IFR]

#### Vidalia Onions Grown in Georgia; Decreased Assessment Rate

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

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

**SUMMARY:** This rule decreases the assessment rate from \$0.10 to \$0.07 per 50-pound bag or equivalent of Vidalia onions established for the Vidalia Onion Committee (Committee) under Marketing Order No. 955 for the 1998-99 and subsequent fiscal periods. 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 began September 16 and ends September 15. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Effective: September 28, 1998. Comments received by November 24, 1998, will be considered prior to issuance of a final rule.

**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) 205-6632; or E-mail: moabdoCKET\_clerk@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:** Doris Jamieson, Southeast Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276; telephone: (941) 299-4770, Fax: (941) 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) 205-6632.

**SUPPLEMENTARY INFORMATION:** This rule 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 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 issued herein will be applicable to all assessable Vidalia onions beginning September 16, 1998, 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 decreases the assessment rate established for the Committee for the 1998-99 and subsequent fiscal periods from \$0.10 to \$0.07 per 50-pound bag or equivalent of Vidalia onions.

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 1996-97 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 July 28, 1998, and unanimously recommended 1998-99 expenditures of \$373,577 and an assessment rate of \$0.07 per 50-pound bag or equivalent of Vidalia onions. In comparison, last year's budgeted expenditures were \$429,800. The assessment rate of \$0.07 is \$0.03 lower than the rate currently in effect. For the past two seasons, the Committee has elected to refund excess funds to the handlers to reduce their costs. The Committee unanimously elected to reduce the assessment rate rather than

continue the practice of refunding excess funds.

The major expenditures recommended by the Committee for the 1998–99 fiscal period include \$131,600 for marketing and promotion, \$75,000 for research, \$135,127 for program administration, and \$31,850 for compliance. Budgeted expenses for these items in 1997–98 were \$158,000, \$108,300, \$137,500, and \$26,000, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Vidalia onions. Vidalia onion shipments for 1998–99 are estimated at 3,300,000 50-pound bags or equivalents for the year, 15,000 50-pound bags or equivalents of green Vidalias, 1,385,000 50-pound bags or equivalents of storage Vidalias, and 100,000 50-pound bags or equivalents of storage onions from the previous season, which should provide \$336,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$174,073) will be kept within the maximum permitted by the order (approximately three fiscal periods' budgeted expenses; § 955.44).

The assessment rate established in this rule will 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 is effective 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 the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 budget and those for subsequent fiscal periods will 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 currently approximately 136 producers of Vidalia onions in the production area and approximately 101 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.

During the 1996–97 fiscal year, as a percentage, approximately 14 percent of the handlers shipped approximately 2,771,000 50-pound bags or equivalents of Vidalia onions and approximately 86 percent of the handlers shipped approximately 1,262,940 50-pound bags or equivalents. Using an average f.o.b. price of \$12.80 per 50-pound bag or equivalent, the majority of handlers could be considered small businesses under SBA's definition. The majority of handlers and producers of Vidalia onions may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 1998–99 and subsequent fiscal periods from \$0.10 to \$0.07 per 50-pound bag or equivalent of Vidalia onions. The Committee unanimously recommended 1998–99 expenditures of \$373,577 and an assessment rate of \$0.07 per 50-pound bag or equivalent. The assessment rate of \$0.07 is \$0.03 lower than the 1997–98 rate. The quantity of assessable Vidalia onions for the 1998–99 season is estimated at 4,800,000 50-pound bags or equivalents. Thus, the \$0.07 rate should provide \$336,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve (currently \$174,073) will be kept within the maximum permitted by the order (approximately three fiscal periods' budgeted expenses; § 955.44).

The major expenditures recommended by the Committee for the 1998–99 year include \$131,600 for marketing and promotion, \$75,000 for research, \$135,127 for program administration, and \$31,850 for compliance. Budgeted expenses for these items in 1997–98 were \$158,000, \$108,300, \$137,500, and \$26,000, respectively.

For the past two seasons, the Committee has refunded excess funds to the handlers to reduce their costs. The Committee unanimously elected to reduce the assessment rate rather than continue the practice of refunding excess funds.

The Committee reviewed and unanimously recommended 1998–99 expenditures of \$373,577 which included decreases in marketing and promotion and research. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various research projects to the Vidalia onion industry. The assessment rate of \$0.07 per 50-pound bag or equivalent of assessable Vidalia onions was then determined by dividing the total recommended budget by the quantity of assessable Vidalia onions, estimated at 4,800,000 50-pound bags or equivalents for the 1998–99 season. This is approximately \$37,577 below the anticipated expenses, which the Committee determined to be acceptable. The difference between assessment income and budgeted expenses will be covered by income from interest and the Committee's authorized reserve.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the f.o.b. price for the 1998–99 season could range between \$12.80 and \$15.25 per 50-pound bag or equivalent of Vidalia onions. Therefore, the estimated assessment revenue for the 1998–99 fiscal period as a percentage of total handler revenue could range between .46 and .55 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. 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 July 28, 1998, 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 action imposes 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.

After consideration of all relevant material presented, including the information and recommendation 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 rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 fiscal period begins on September 16, 1998, 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) this action decreases the assessment rate for assessable Vidalia onions beginning with the 1998–99 and subsequent fiscal periods; (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; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

#### 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 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 955.209 is revised to read as follows:

##### § 955.209 Assessment rate.

On and after September 16, 1998, an assessment rate of \$0.07 per 50-pound bag or equivalent is established for Vidalia onions.

Dated: September 21, 1998.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 98–25719 Filed 9–24–98; 8:45 am]

BILLING CODE 3410–02–U

#### DEPARTMENT OF JUSTICE

##### Immigration and Naturalization Service

##### 8 CFR Part 286

[INS No. 1923–98]

RIN 1115–AF26

##### Technical Change for Submission for Immigration User Fee Requirements

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Immigration and Naturalization Service (Service) regulations by making technical changes to the addressee where periodic summary statements of user fees collected are to be sent, and revising the name of the payee to whose attention remittances shall be forwarded. These technical changes are administrative in nature and are necessary to conform to the current organizational and supervisory structure of the Service's Office of Management.

**DATES:** This final rule is effective October 26, 1998.

**FOR FURTHER INFORMATION CONTACT:** Michael Ditkoff, Fee Policy and Rate-Setting Branch, Office of Budget, Immigration and Naturalization Service (INS), 425 I St., NW, Room 6240, Washington, DC 20536, telephone number (202) 305–8620.

**SUPPLEMENTARY INFORMATION:** This final rule amends 8 CFR part 286 to reflect the change in nomenclature, whereas the summary statements due on the last business day of the following month be forwarded to the Service's Chief, Analysis and Formulation Branch, in place of Fee Setting and Analysis

Branch. In addition, this final rule amends the name of the payee to whom the remittance shall be made from the Service's Associate Commissioner Finance, to Assistant Commissioner, Office of Financial Management.

The Service's implementation of this rule is based on the "good cause" exception found at 5 U.S.C. 553(d)(3). The amendments contained herein relate to agency management in that the amendments correct nomenclature changes published in previous rules. The reason and necessity for prompt implementation is to further ensure timely receipt of the periodic summary reports, remittances, and correspondence from the public. It would be contrary to the public interest to issue the rule as proposed rule in that it would further delay executing the nomenclature changes.

##### Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will have a significant economic impact on a substantial number of small entities because of the following factors: The technical changes addressed in this final rule are administrative in nature and are necessary to conform to the current organizational and supervisory structure of the Service's Office of Management. As such, the technical changes have no significant economic impact.

##### Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

##### Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in a annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.