

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

An interim final rule concerning this was published in the **Federal Register** on August 16, 2004 (69 FR 50278). Copies of that rule were also mailed or sent via facsimile to all nectarine and peach handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the Federal Register. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on October 15, 2004, and no comments were received.

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/fv/mb.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.

After consideration of all relevant material presented, including the committees' recommendations, and other information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### List of Subjects

##### 7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

##### 7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

#### PART 916—NECTARINES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 916 which was published at 69 FR 50278, on August 16, 2004, is adopted as a final rule without change.

#### PART 917—PEACHES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 917 which was published at 69 FR 50278, on August 16, 2004 is adopted as a final rule without change.

Dated: November 19, 2004.

#### A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04-26121 Filed 11-24-04; 8:45 am]

BILLING CODE 3410-02-U

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 955

[Docket No. FV04-955-1 IFR]

#### Vidalia Onions Grown in Georgia; Change in Assessment Requirements

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

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

**SUMMARY:** This rule changes the assessment collection requirements currently prescribed under the Vidalia onion marketing order (order). The order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Vidalia Onion Committee (Committee). Currently, assessment payments received in the Committee office later than 4 p.m. on the Tuesday following the week in which shipments are made are subject to late payment penalties. This action allows handlers to mail their assessment payments to the Committee office without incurring late payment penalties as long as the payment is postmarked on or before the due date. **DATES:** November 27, 2004; comments received by January 25, 2005 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail: [moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

**FOR FURTHER INFORMATION CONTACT:** Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324-3375, Fax: (863) 325-8793; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: [Jay.Guerber@usda.gov](mailto: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, 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 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 rule changes the assessment collection requirements currently prescribed under the order. This action allows handlers to mail their assessment payments to the Committee office without incurring late payment penalties as long as the payment is postmarked on or before the due date. Assessment payments are due not later than 4 p.m. on the Tuesday following the week in which the shipments were

made. This change was unanimously recommended by the Committee at a meeting held on August 12, 2004.

Section 955.42 of the order provides the authority for the formulation of an annual budget of expenses and the collection of assessments from handlers to administer the order. Section 955.42(f) provides the authority to impose a late payment charge or an interest charge or both, on any handler who fails to pay assessments in a timely manner and the authority to establish the time and rate of such charges. Section 955.142 of the order's rules and regulations outlines the procedures for applying interest charges to delinquent assessments. Both handler reports and assessment payments are to be submitted for each week during the fiscal period in which onions are shipped. Currently, handler reports and assessment payments are due at the Committee office not later than 4 p.m. on the Tuesday immediately following the week in which shipments were made.

This rule modifies the requirements under § 955.142 to provide that as long as assessment payments received by mail are postmarked on or before the due date, the payments will be considered to be timely regardless of when they arrive at the Committee office. This change allows handlers the opportunity to mail their assessment payments without risking late payment penalties. This rule makes no change to the date and time handler reports and assessments are due.

Many handlers have been submitting their weekly reports to the Committee via fax in order to have their reports in on time. Assessment checks are usually prepared at the same time and are hand carried to the Committee office or mailed. Checks mailed to the Committee office are often received several days after the date due. This has subjected handlers to an interest charge of one percent per week, beginning the day immediately after the date the assessments were due.

The production area covered under the order encompasses all or parts of twenty counties in Georgia. It is not always cost effective to drive the distance to the Committee office to hand deliver the assessment check to ensure it makes it there on time. Depending on their location in the production area, handlers can be more than 100 miles from the Committee office. Even if the handler is within 20 miles of the Committee office, considering the costs involved, using the mail still represents the most effective method of delivering assessment payments.

In its discussion of this issue, the Committee agreed that handlers should have the option to pay their assessments on time by the use of mail. If a check is postmarked by the required date, the Committee believes that handler should be viewed as paying their assessments in a timely manner.

Therefore, the Committee unanimously voted to change the assessment collection requirements so that assessments received that are postmarked on or before the date they are due will be considered as meeting the deadline and will not be subject to late payment charges.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), 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 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 145 producers of Vidalia onions in the production area and approximately 110 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than \$5,000,000.

Based on information from the Georgia Agricultural Statistical Service and Committee data, around 90 percent of Vidalia onion handlers ship under \$5,000,000 worth of onions on an annual basis. In addition, based on acreage, production, grower prices reported by the National Agricultural Statistics Service, and the total number of Vidalia onion growers, the average annual grower revenue is approximately \$489,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Vidalia onions may be classified as small entities.

This rule changes the assessment collection requirements currently prescribed under the order. This action

allows handlers to mail their assessment payments to the Committee office without incurring late payment charges as long as the payment is postmarked on or before the due date. Assessment payments are due in the Committee office or are to be postmarked by the Tuesday following the week in which the shipments were made. This rule revises the provisions of § 955.142 of the rules and regulations outlining the procedures for applying interest charges to delinquent assessments. Authority for this action is provided for in § 955.42 of the order. This change was unanimously recommended by the Committee at a meeting held on August 12, 2004.

This rule will not result in any additional costs for the handler or the grower. The purpose of this rule is to make it easier for the handler to submit their assessment payments using the mail without having to risk incurring additional costs and interest charges. For many handlers living a long distance from the Committee office, this will save them the time and costs associated with driving into the Committee office in order to pay their assessments on a timely basis. Having better access to the mail for their payment method will provide many handlers with a more cost-effective option. Thus, it is expected that this option will result in an overall cost savings. The savings will be available to all handlers, regardless of size. Also, as the vast majority of handlers are also growers, this action will have a like benefit for both large and small growers.

The Committee did consider the option of making no change in the current regulation. However, Committee members believe that handlers also should be able to mail their assessments in a timely manner. Therefore, this option was rejected.

This rule will 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. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the August 12, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Finally, interested persons are invited to submit information on 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/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.

This rule invites comments on a change to the assessment collection requirements currently prescribed under the Vidalia onion marketing order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final 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) This action represents a relaxation in the regulations currently in effect; (2) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

#### List of Subjects in 7 CFR Part 955

Onions, Marketing agreements, 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 955.142 is amended by revising the second sentence to read as follows:

#### § 955.142 Delinquent assessments.

\* \* \* Each such assessment shall be paid to the Committee not later than 4 p.m. on the Tuesday immediately following the week in which the

shipments were made, or if the assessment is sent by mail, it must be postmarked on or before the Tuesday immediately following the week in which the shipments were made. \* \* \*

Dated: November 19, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04-26122 Filed 11-24-04; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 979

[Docket No. FV05-979-1 IFR]

#### Melons Grown in South Texas; Temporary Suspension of Handling and Assessment Collection Regulations

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

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

**SUMMARY:** This rule suspends, for the 2004-05 fiscal period, the minimum grade, quality, maturity, container, pack, inspection, assessment collection, and other related requirements currently prescribed under the South Texas melon (cantaloupes and honeydews) marketing order (order). It also suspends reporting requirements, except for the acreage planting reports, which will continue to be required during the suspension period. The order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). This rule will reduce handler costs while the industry evaluates whether the marketing order should be continued.

**DATES:** Effective November 27, 2004. Comments received by January 25, 2005 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, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; E-mail:

[moab.docketclerk@usda.gov](mailto:moab.docketclerk@usda.gov); or Internet: <http://www.regulations.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, or can be viewed at: <http://www.ams.usda.gov/fv/moab.html>.

#### FOR FURTHER INFORMATION CONTACT:

Belinda G. Garza, Texas Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682-2833, Fax: (956) 682-5942; or George Kelhart, Technical Advisor, 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.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, 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: [Jay.Guerber@usda.gov](mailto:Jay.Guerber@usda.gov).

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, 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 rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. 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 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