

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 955

[Docket No. FV06-955-1 IFR]

#### Vidalia Onions Grown in Georgia; Revision of Reporting and Assessment Requirements

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

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

**SUMMARY:** This rule revises the reporting and assessment requirements 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 changes the reporting requirements for handlers from filing weekly shipment reports to monthly reporting. It also changes when assessments are due and how delinquent assessments are handled. This change is expected to benefit handlers without negatively affecting program compliance.

**DATES:** Effective June 16, 2006; comments received by August 14, 2006 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, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324-3378, Fax: (863) 325-8793; or Christian Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; telephone: (863) 324-3378, Fax: (863) 325-8793.

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, 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 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 revises the reporting and assessment requirements prescribed under the order. This rule changes the reporting requirements for handlers from filing weekly shipment reports to monthly reporting. It also changes when assessments are due and how delinquent assessments are handled. This change is expected to benefit handlers without negatively affecting program compliance. The Committee unanimously recommended these changes at a meeting on January 19, 2006.

Section 955.60 of the order provides authority for the Committee to require handlers to file reports and provide other information as may be necessary for the Committee to perform its duties. Section 955.101 of the regulations provides the requisite reporting requirements. Prior to this action, handlers were required to file weekly reports that included, among other things, the name and address of the handler, the period covered in the report, the total volume of Vidalia onions received by the handler, and the handler's total fresh market shipments.

Section 955.42 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 rules and regulations outlines the procedures for applying interest charges to delinquent assessments.

This rule amends § 955.101 to require handlers to file shipping reports on a monthly basis rather than weekly. This rule also revises § 955.142 to specify when assessments are due and to adjust the way interest is applied to delinquent assessments.

Prior to this rule, § 955.101 required handlers to provide the Committee with information regarding the volume of Vidalia onions they received and

shipped during each week of the shipping season. The shipping reports were to be filed no later than 4 p.m. on the Tuesday immediately following the shipping week. The Committee provided a form to assist handlers with supplying the required shipping information. Fresh Vidalia onions are primarily shipped from April through June with some limited shipments through December with the use of Controlled Atmosphere storage.

Handler reports are used by the Committee to calculate the assessments owed by each handler. When handler reports are not received in a timely manner, it delays the receipt of assessment payments and in turn, the collection process the Committee uses to pursue late payments. Thus, timely receipt of handler reports is important.

In 2002, the Committee changed from monthly reporting and assessment collection to weekly (67 FR 58511). This change was made to address the problems the Committee staff was experiencing in receiving monthly reports and assessment payments in a timely manner. The change was made in an effort to provide an earlier indication to Committee staff of potential problems with handlers not reporting or paying their assessments so these potential problems could be addressed before the amounts involved grew to significant levels.

After several seasons of weekly reporting, the Committee has been receiving requests from the industry to return to monthly reporting. It was reported that several handlers considered weekly reporting too cumbersome and unnecessary. In discussing this issue, Committee members stated that during harvest, handlers utilize all their resources to get the onions harvested and to market. They stated that weekly reporting is very time consuming and puts an additional burden on their staff to ensure weekly reports are submitted on time to avoid penalties and interest. In addition, many handlers do not ship onions every week of the season. Nevertheless, under current reporting requirements, handlers had to file a report each week.

Committee members recognized that monthly reporting would reduce Committee expenditures. The Committee also recognized that several adjustments have been made in the compliance and assessment collection process which have helped address some of the problems relating to late reporting and assessment collection. The Committee has implemented an electronic tracking system to ensure all reports and assessment payments are

received from each handler. A data base has been created with each handler's name and the date reports are due. As reports are received from each handler, the data is entered into the computer. A detailed report listing all handlers, the date reports are due, and if all handlers have submitted reports for each due date can be generated to assist with compliance efforts. If a handler fails to file a report for a specific reporting date, the tracking report will reflect that information. The handler can then be notified a report is due.

The Committee has also hired a part-time compliance officer. The compliance officer will visit handlers on a routine basis throughout the season to ensure compliance with the order, including the timely submission of reports and payment of assessments.

Further, the Committee's compliance plan has been modified to better address late reports and assessment payments. Consequently, the Committee follows up more rapidly on late reports and assessments. These efforts will help prevent an accumulation of a large assessment debt from handlers.

The Committee believes the adjustments to its compliance and assessment collection process and the addition of a compliance officer will better address the problems with late payment and reporting that were experienced previously during monthly reporting. Therefore, the Committee voted unanimously to return to monthly reporting.

This rule also revises the rules and regulations specifying when reports and assessments are to be received by the Committee office. Prior to this change, handler reports and assessments were both due at 4 p.m. the Tuesday immediately following the week in which the shipments were made. This action changes §§ 955.101 and 955.142 to require that reports and assessments must be submitted to the Committee office by 5 p.m. on the fifth day of each month following a month of active shipping. Should the fifth day of the month fall on a weekend or holiday, payments and reports are due by the first business day prior to the fifth day of the month.

This rule also makes changes to the way delinquent assessments are handled to reflect the change to monthly reporting. Previously, § 955.142 specified that handlers must pay interest charges of 1 percent per week on any unpaid assessments and on any accrued unpaid interest beginning the day immediately after the date the weekly assessments were due, until the delinquent handler's assessments, plus applicable interest, had been paid in

full. This rule revises § 955.142 by adjusting the way interest charges are applied so interest accrues at 1 percent per month on any unpaid assessments and on any accrued unpaid interest beginning the day immediately after the date the monthly assessments are due until the delinquent handler's assessments plus applicable interest has been paid in full.

#### **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 100 producers of Vidalia onions in the production area and approximately 100 handlers of Vidalia onions who are subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms, which include handlers, are defined as those whose annual receipts are less than \$6,500,000 (13 CFR 121.201).

Based on the Georgia Agricultural Statistical Service and Committee data, the average annual grower price for fresh Vidalia onions during the 2005 season was around \$12 per 40-pound bag. Total Vidalia onion shipments for the 2005 season were around 3,571,500 40-pound bags. Using available data, more than 90 percent of Vidalia onion handlers could be considered small businesses under the SBA definition. In addition, based on acreage, production, grower prices as reported by the National Agricultural Statistics Service, and the total number of Vidalia onion growers, the average annual grower revenue is below \$750,000. Thus, the majority of handlers and producers of Vidalia onions may be classified as small entities.

This rule revises the reporting and assessment requirements prescribed under the order. This rule changes the reporting requirements for handlers

from filing weekly shipment reports to monthly reporting. It also changes when assessments are due and how delinquent assessments are handled. This change reduces the number of reports a handler must submit annually and is expected to benefit handlers without negatively affecting program compliance. This rule revises §§ 955.101 and 955.142. Authority for this action is provided for in §§ 955.42 and 955.60 of the order. This change was unanimously recommended by the Committee at a meeting held on January 19, 2006.

Requiring handlers to file shipping reports on a monthly basis rather than weekly reduces the reporting burden on both small and large handlers. Fresh Vidalia onions are primarily shipped from April through June with some limited shipments through December. Therefore, total reporting requirements per handler for weekly reporting totaled around 60 minutes per handler annually (5 minutes per response times approximately 12 responses). This resulted in a total annual industry burden of about 100 hours (60 minutes per handler times 100 handlers). Requiring handlers to report monthly, decreases the annual burden on a handler to around 15 minutes annually (5 minutes per response times approximately 3 responses), for a total annual industry burden of approximately 25 hours (15 minutes times 100 handlers). Thus, the total annual burden for handlers is decreased by around 75 hours, which is expected to benefit all handlers.

This rule is not expected to result in any additional costs for handlers. This rule reduces the number of reports and assessment payments handlers are required to submit annually, which reduces the amount of time necessary for handlers to file reports and assessments.

It also reduces the amount of time required by the Committee staff to monitor shipping reports and assessment payments by reducing the number of submissions. Thus, this rule offers the potential for cost savings. The potential reduction in Committee costs would benefit all handlers regardless of their size. Consequently, the benefits of this rule are expected to be equally available to all.

The Committee did consider the alternative of making no change in the current regulation. However, the change to monthly reporting would reduce the number of reports a handler must submit annually and the Committee believes it would benefit handlers without negatively affecting program compliance. Therefore, this alternative was rejected and the Committee

unanimously agreed to return to monthly reporting and assessment collection requirements.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178, Vegetable and Specialty Crops. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

AMS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

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

Further, 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. Like all Committee meetings, the January 19, 2006, 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 revises the provisions requiring handlers to file shipment reports from weekly reporting to monthly reporting. It also changes when assessments are due and how delinquent assessments are handled. 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) Vidalia onion handlers began shipping onions April 17; (2) this issue has been widely discussed at industry meetings, and the Committee has kept the industry well informed; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) 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. Amend § 955.101 by replacing the word "weekly" with the word "monthly" both times it appears in paragraph (a) and by revising paragraph (b) to read as follows:

#### § 955.101 Vidalia Onion Handler Report.

(a) \* \* \*

(b) Handlers shall file reports each fiscal period beginning the first month they make shipments and shall continue filing reports until they submit a final report for the season. Each such report shall be filed with the Committee not later than 5 p.m. on the fifth day of each month following the month in which any shipments were made. Should the fifth day of the month fall on a weekend or holiday, reports are due by the first business day prior to the fifth day of the month.

■ 3. Revise § 955.142 to read as follows:

#### § 955.142 Delinquent assessments.

Each handler shall submit assessments to the Vidalia Onion Committee on a monthly basis for each month during the fiscal period in which they made shipments. Each such assessment shall be paid to the Committee not later than 5 p.m. on the fifth day of each month following the month in which any shipments were

made. Should the fifth day of the month fall on a weekend or holiday, assessments are due by the first business day prior to the fifth day of the month.

Each handler shall pay interest of one percent per month on any unpaid 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, has been paid in full.

Dated: June 8, 2006.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. E6-9235 Filed 6-14-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Bureau of Immigration and Customs Enforcement

#### 8 CFR Part 274a

[BICE 2345-05; DHS-2005-0046]

RIN 1653-AA47

#### Electronic Signature and Storage of Form I-9, Employment Eligibility Verification

**AGENCY:** Bureau of Immigration and Customs Enforcement, DHS.

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

**SUMMARY:** This interim rule amends Department of Homeland Security regulations to provide that employers and recruiters or referrers for a fee who are required to complete and retain Forms I-9, Employment Eligibility Verification, may sign and retain these forms electronically. This interim rule implements statutory changes to the Form I-9 retention requirements by establishing standards for electronic signatures and the electronic retention of the Form I-9.

**DATES:** *Effective Date:* This interim rule is effective June 15, 2006.

*Comment Date:* Written comments must be submitted on or before August 14, 2006.

**ADDRESSES:** You may submit comments, identified by *docket number*, by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Jim Knapp, Associate Legal Advisor, Bureau of Immigration and Customs Enforcement, Room 6100, 425 I. St., NW., Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Jim Knapp, Associate Legal Advisor, Bureau of Immigration and Customs Enforcement, Room 6100, 425 I St., NW., Washington, DC 20536. Telephone (202) 514-8138 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION

##### I. Background

##### A. Employment Eligibility Verification Requirement

Section 274A of the Immigration and Nationality Act (Act), 8 U.S.C. 1324a, requires all United States employers, agricultural associations, agricultural employers, farm labor contractors, or persons or other entities who recruit or refer persons for employment for a fee, to verify the employment eligibility and identity of all employees hired to work in the United States after November 6, 1986. To comply with the law, an employer, or a recruiter or referrer for a fee, is responsible for the completion of an Employment Eligibility Verification form (Form I-9) for all employees, including United States citizens. 8 CFR 274a.2.

Completed Forms I-9 are not filed with the Federal Government; instead, the completed I-9 form is retained by the employer. Employers are required to retain Forms I-9 in their own files for three years after the date of hire of the employee or one year after the date that employment is terminated, whichever is later. 8 CFR 274a.2(c)(2). Recruiters or referrers for a fee are required to retain the Forms I-9 for three years after the date of hire. *Id.* at (d)(2). The failure to properly complete and retain the Forms I-9 subjects the employer to civil money penalties. Section 274A of the Act, 8 U.S.C. 1324a(e)(5).

##### B. Format of the Form I-9

Form I-9 has been made available to the public in numerous paper and electronic means since 1986. The Form I-9 is currently available online at the U.S. Citizenship and Immigration Services (USCIS) Web site at (<http://www.uscis.gov>) as a Portable Document Format (.pdf) fillable—printable form <http://uscis.gov/graphics/formsfee/forms/files/i-9.pdf>. In short, an employer or employee can retrieve the form, type the required information into it for a prospective employee, and print it. The form may then be retained in paper, microfilm, or microfiche form. In conjunction with this interim rule, the Department of Homeland Security (DHS) is upgrading the downloadable PDF version of Form I-9 to enable employers and employees to electronically sign and save the filled Form I-9. This provides employers an

additional option for convenience and savings. This PDF version of Form I-9 complies with the electronic form requirements of this rule.

However, existing DHS regulations do not permit the form to be completed and stored electronically as an original record. On October 30, 2004, Public Law 108-390, 11 Stat. 2242, authorized employers to retain Forms I-9 in electronic format, effective April 29, 2005, or the effective date of implementing regulations, whichever occurred first. The legislation also allows employers and employees to manifest attestations using electronic signature technology.

This interim rule conforms the regulations to the requirements of Public Law 108-390 and permits employers to complete, sign, and store Forms I-9 electronically, as long as certain performance standards set forth in this interim rule for the electronic filing system are met. This interim rule also permits employers to electronically scan and store existing Forms I-9, as long as standards set forth in this interim rule for the electronic storage system are met. The interim rule adopts performance standards that have been proven by other agencies in the past and provides flexibility for employers to choose a method of retention that is the most economically feasible for their specific business. Utilizing the most widely applicable standards, those adopted by the Internal Revenue Service (IRS) for tax records, provides the widest possible cost savings within the business community because of existing compliance with those standards.

##### C. Electronic Recordkeeping Standards

There is no single United States Government-wide electronic recordkeeping standard for recordkeeping by private individuals and entities. However, some United States Government agencies provide electronic recordkeeping standards for use in transactions with that agency. These standards provide a baseline for proven practices. To the extent that these standards are applicable to the electronic storage of Form I-9, DHS attempts to use the requirements and language of existing standards. At the same time, DHS recognizes that systems for electronic recordkeeping develop rapidly with the creation of new storage mechanisms, mediums, and methods. Accordingly, the standards adopted in this rule are “product neutral” and will guide the application of new products to meet minimum performance standards, rather than establishing specific requirements.