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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 955

[Docket No. FV04-955-1 FIR]

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

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the assessment collection requirements 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). This rule continues in effect the action that 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. Prior to this change, assessment payments received in the Committee office later than 4 p.m. on the Tuesday following the week in which shipments were made were subject to late payment penalties.

**DATES:** Effective May 23, 2005.

**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, FL 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, 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."

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 continues in effect the action that changed the assessment collection requirements 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. Prior to this change, handler reports and assessment payments were 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 continues in effect the rulemaking action that modified 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 discussions 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.

#### Final 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 final 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 \$6,000,000.

Based on information from the Georgia Agricultural Statistical Service and Committee data, around 90 percent of Vidalia onion handlers ship under \$6,000,000 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 continues in effect the action that changed the assessment collection requirements previously 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 continues in effect the action that revised 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 in to 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, as noted in the initial regulatory flexibility analysis, 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.

An interim final rule concerning this action was published in the **Federal Register** on November 26, 2004. Copies of the rule were mailed by the Committee's staff to all Committee members and Vidalia onion handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended January 25, 2005. One comment was received.

The commenter stated that the Committee should be disbanded and that the marketing order is an outdated form of agricultural marketing. The commenter also stated that assessments were not equitably collected. USDA disagrees with these assertions. The marketing order was implemented and is being administered consistent with the authority in the Agricultural Marketing Agreement Act of 1937, and favored by Vidalia onion growers in a recent continuance referendum. Under the marketing order, all handlers are required to pay their pro rata share of expenses.

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.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 68759, November 26, 2004) will tend to effectuate the declared policy of the Act.

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

Onions, Marketing agreements, Reporting and recordkeeping requirements.

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

■ Accordingly, the interim final rule amending 7 CFR part 955 which was published at 69 FR 68759 on November 26, 2004, is adopted as a final rule without change.

Dated: April 15, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05-8028 Filed 4-20-05; 8:45 am]

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**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 982**

[Docket No. FV05-982-1 FIR]

**Hazelnuts Grown in Oregon and Washington; Establishment of Final Free and Restricted Percentages for the 2004-2005 Marketing Year**

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture is adopting, as a final rule, without change, an interim final rule establishing final free and restricted percentages for domestic inshell hazelnuts for the 2004-2005 marketing year under the Federal marketing order for hazelnuts grown in Oregon and Washington. This rule continues in effect the final free and restricted percentages of 6.4921 and 93.5079 percent, respectively. The percentages allocate the quantity of domestically produced hazelnuts which may be marketed in the domestic inshell market (free) and the quantity of domestically produced hazelnuts that must be disposed of in approved outlets (restricted). Volume regulation is intended to stabilize the supply of domestic inshell hazelnuts to meet the limited domestic demand for such hazelnuts with the goal of providing producers with reasonable returns. This rule was recommended unanimously by the Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the marketing order.

**DATES:** Effective May 23, 2005.

**FOR FURTHER INFORMATION CONTACT:** Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland,

Oregon 97204-2807; Telephone: (503) 326-2724, Fax: (503) 326-7440; or George J. 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 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. 115 and Marketing Order No. 982, both as amended (7 CFR Part 982), regulating the handling of hazelnuts grown in Oregon and Washington, 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. It is intended that this action apply to all merchantable hazelnuts handled during the 2004-2005 marketing year (July 1, 2004 through June 30, 2005). 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 continues in effect marketing percentages which allocate the quantity of inshell hazelnuts that may be marketed in domestic markets. The Board is required to meet prior to September 20 of each marketing year to compute its marketing policy for that year, and compute and announce an inshell trade demand if it determines that volume regulations would tend to effectuate the declared policy of the Act. At the same time, the Board computes and announces preliminary free and restricted percentages for that marketing year.

The inshell trade demand is the amount of inshell hazelnuts that handlers may ship to the domestic market throughout the marketing season. The order specifies that the inshell trade demand be computed by averaging the preceding three "normal" years' trade acquisitions of inshell hazelnuts. The Board may increase the computed inshell trade demand by up to 25 percent, if market conditions warrant an increase. The Board may also modify the inshell trade demand to account for abnormalities due to crop or marketing conditions. The Board's authority to recommend volume regulations and the computations used to determine the percentages are specified in § 982.40 of the order.

Volume regulation under the order utilizes free and restricted percentages to allocate available hazelnuts which may be marketed in domestic inshell markets (free) and hazelnuts which must be exported, shelled, or otherwise disposed of by handlers (restricted). Prior to September 20 of each marketing year, the Board must compute and announce preliminary free and restricted percentages. The preliminary free percentage releases 80 percent of the adjusted inshell trade demand to the domestic market. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against an underestimate of crop size. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation (supply) and is based on the preliminary crop estimate.

On August 24, 2004, the National Agricultural Statistics Service (NASS) released an estimate of 2004 hazelnut production for the Oregon and Washington area at 44,000 dry orchard-run tons. On August 26, 2004, the Board met and estimated total available supply for the 2004 crop year at 44,954 tons. The Board arrived at this estimate by using the crop estimate compiled by NASS (44,000 tons) and then adjusting that estimate to account for disappearance and carry-in. The order