Rules and Regulations

Federal Register

Vol. 69, No. 227

Friday, November 26, 2004

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV04–916/917–4 FIR]

Nectarines and Peaches Grown in California; Decreased Assessment Rates

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 that decreased the assessment rates established for the Nectarine Administrative Committee and the Peach Commodity Committee (committees) for the 2004–05 and subsequent fiscal periods. The Nectarine Administrative Committee (NAC) decreased its assessment rate from $0.20 to $0.195 per 25-pound container or container equivalent of nectarines handled. The Peach Commodity Committee (PCC) decreased its assessment rate from $0.20 to $0.19 per 25-pound container or container equivalent of peaches handled. The committees locally administer the marketing orders that regulate the handling of nectarines and peaches grown in California. Authorization to assess nectarine and peach handlers enables the committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal periods run from March 1 through the last day of February. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective December 27, 2004.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, and/or Rose Aguayo, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721, (559) 487–5901, Fax: (559) 487–5906; 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*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement Nos. 85 and 124 and Order Nos. 916 and 917, both as amended (7 CFR parts 916 and 917), regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the ''orders.'' The marketing agreements and orders are 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. Under the marketing orders now in effect, California nectarine and peach handlers are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable nectarines and peaches beginning on March 1, 2004, 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 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. Such 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 decreased the assessment rates established for the NAC for the 2004–05 and subsequent fiscal periods from $0.20 to $0.195 per 25-pound container or container equivalent of nectarines and for the PCC for the 2004–05 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of peaches.

The nectarine and peach marketing orders provide authority for the committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively. They are familiar with the committees' needs, and with the costs for goods and services in their local area and are, thus, in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

NAC Assessment and Expenses

The NAC recommended, for the 2004–05 fiscal period, and USDA approved, an assessment rate of $0.195 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The NAC met on April 28, 2004, and unanimously recommended 2004–05 fiscal period expenditures of $5,162,866 and an assessment rate of $0.195 per 25-pound container or container equivalent of nectarines. In comparison, last year's expenditures were initially budgeted at $4,173,438. The assessment rate of

$0.195 is $0.005 lower than the rate previously in effect.

After the 2003–04 fiscal period budget was formulated and recommended to USDA in May 2003, the committee received one Federal and two State grants which affected both committee income and expenditures. The NAC also used reserve funds to conduct research on the development of a commercial nectarine beverage. The NAC subsequently unanimously recommended an amended budget for the 2003–04 fiscal period. Under this amended budget, the Federal grant of $533,921 and a State grant of $200,557 were applied to the export market development program, and a State grant of $3,667 was applied to the research program, along with $45,000 of reserve funds.

The assessment rate decrease for the 2004–05 fiscal period was recommended because excess funds from the 2003–04 fiscal period totaling $786,521 were carried into 2004–05. This was substantially higher than what the NAC deemed satisfactory. Moreover, the 2004 nectarine crop was expected to be larger than last year's crop. The lower assessment rate also addressed the needs of nectarine growers and handlers who have been affected by low commodity prices for the last few years.

Total income received for the 2004–05 fiscal period is projected to be approximately $5,800,677. Decreasing the assessment rate from $0.20 to $0.195 per 25-pound container is expected to provide about $4,199,453 in assessment revenue, and along with other income, to allow the NAC to start the 2005 season with about $499,811 in reserve funds.

The major expenditures recommended by the NAC for the 2004–05 fiscal period include $219,872 for salaries and benefits, $146,613 for general expenses and industry activities, $1,153,676 for inspection, $208,568 for research, and $3,161,852 for domestic and export market development programs.

Budgeted expenses for these items in the 2003–04 fiscal period were initially estimated to be $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $138,929 for research, and $2,263,061 for domestic and export market development programs.

The major expenditures under the amended 2003–04 fiscal period budget include $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $187,596 for research, and $2,997,539 for domestic and export market development programs.

The 2004–05 fiscal period NAC assessment rate was derived after considering the total NAC expenses of $5,162,866; the initial estimated assessable nectarines of 22,245,000 twenty-five-pound containers or container equivalents; the estimated income from other sources, such as interest and grants; and the need for an adequate financial reserve to carry the NAC into the 2005 season. The committee has determined that a carry-in of $400,000 is historically necessary to meet its obligations in the early part of each season, before handler assessments are billed and received. To meet these goals, the NAC recommended an assessment rate of $0.195 per 25-pound container or container equivalent. According to the committee, that assessment rate will result in an adequate carry-in, while maintaining reserves within the maximum permitted by the order (approximately one year's expenses; § 916.42).

PCC Assessment and Expenses

The PCC recommended, for the 2004–05 fiscal period, and USDA approved, an assessment rate of $0.19 that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The PCC also met on April 28, 2004, and recommended 2004–05 fiscal period expenditures of $5,178,002 and an assessment rate of $0.19 per 25-pound container or container equivalent of peaches. In comparison, last year's expenditures were initially budgeted at $4,086,316. The assessment rate of $0.19 is $0.01 lower than the rate previously in effect.

After the 2003–04 fiscal period budget was formulated and recommended to USDA in May 2003, the PCC received one Federal and two State grants which affected both committee income and expenditures. The committee subsequently unanimously recommended an amended budget for the 2003–04 fiscal period on June 23, 2004. Under this amended budget, the Federal grant of $488,845 and a State grant of $149,667 were applied to the export market development program, and a State grant of $3,667 was applied to the cultural research program.

The decrease for the 2004–05 fiscal period was recommended because excess funds from 2003–04 totaling $915,375 were carried into the 2004–05 fiscal period. This is substantially higher than needed by the PCC to cover early season expenses. In addition, the 2004 peach crop was expected to be higher than last year's crop. The lower assessment rate also addressed the needs of peach growers and handlers who have been affected by low commodity prices for the last few years.

Total income received for the 2004–05 fiscal period was projected to be approximately $5,883,385. Decreasing the assessment rate from $0.20 to $0.19 per 25-pound container was expected to provide about $4,153,654 assessment revenue, and along with other income, to allow the PCC to start the 2005 season with about $567,383 in reserve funds.

The major expenditures recommended by the PCC for the 2004–05 fiscal period include $219,872 for salaries and benefits, $148,598 for general expenses and industry activities, $1,240,520 for inspection, $208,570 for research, and $3,188,457 for domestic and export market development programs.

Budgeted expenditures for these items in the 2003–04 fiscal period were initially estimated to be $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,173,480 for inspection, $138,930 for research, and $2,211,346 for domestic and export market development programs.

The major expenditures under the amended budget for 2003–04 fiscal period include $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,173,480 for inspection, $142,597 for research, and $2,849,858 for domestic and export market development programs.

The 2004–05 fiscal period PCC assessment rate was derived after considering the total PCC expenses of $5,178,002; the estimated assessable peaches of 22,601,000 twenty-five-pound container or container equivalents; the estimated income from other sources, such as interest and grants; and the need for an adequate financial reserve to carry the PCC into the 2005 season. The committee has determined that a carry-in of $500,000 is historically necessary to meet its obligations in the early part of each season, before handler assessments are billed and received.

To meet these goals, the PCC recommended an assessment rate of $0.19 per 25-pound container or container equivalent. According to the committee, that assessment rate will result in an adequate carry-in, while maintaining reserves within the maximum permitted by the order (one year's expenses; § 917.38).

Continuance of Assessment Rates

The assessment rates will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committees or other available information.

Although these assessment rates are effective for an indefinite period, the committees 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 rates. The dates and times of committee meetings are available from the committees' website or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the committees' recommendations and other available information to determine whether modification of the assessment rate for each committee is needed. Further rulemaking will be undertaken as necessary. The committee's 2004–05 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

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.

Industry Information

There are approximately 250 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. The Small Business Administration [13 CFR 121.201] defines small agricultural service firms as those whose annual receipts are less than $5,000,000. The Small Business Administration also defines small agricultural producers as those having annual receipts of less than $750,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff has estimated that there are less than 20 packers in the industry who could be defined as other than small entities. In the 2003 season, the average handler price received was $7.00 per container or container equivalent of nectarines or peaches. A handler would have to ship at least 714,286 containers to have annual receipts of $5,000,000. Given data on shipments maintained by the committees' staff and the average handler price received during the 2003 season, the committees' staff estimates that small packers represent approximately 94 percent of all the packers within the industry.

The committees' staff has also estimated that less than 20 percent of the producers in the industry could be defined as other than small entities. In the 2003 season, the average producer price received was $4.00 per container or container equivalent for nectarines and peaches. A producer would have to produce at least 187,500 containers of nectarines and peaches to have annual receipts of $750,000. Given data maintained by the committees' staff and the average producer price received during the 2003 season, the committees' staff estimates that small producers represent more than 80 percent of the producers within the industry.

The nectarine and peach marketing orders provide authority for the committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the programs. The members of the NAC and PCC are producers of California nectarines and peaches, respectively.

This rule continues in effect the action that decreased the assessment rates established for the NAC for the 2004–05 and subsequent fiscal periods from $0.20 to $0.195 per 25-pound container or container equivalent of nectarines and for the PCC for the 2004–05 and subsequent fiscal periods from $0.20 to $0.19 per 25-pound container or container equivalent of peaches.

The NAC recommended 2004–05 fiscal period expenditures of $5,162,866 for nectarines and an assessment rate of $0.195 per 25-pound container or container equivalent of nectarines. The assessment rate of $0.195 is $0.005 lower than the previous rate. The PCC recommended expenditures of $5,178,002 for peaches and an assessment rate of $0.19 per 25-pound container or container equivalent of peaches. The assessment rate of $0.19 is $0.01 lower than the previous rate.

Analysis of NAC Budget

The quantity of assessable nectarines for the 2004–05 fiscal period was estimated at 22,245,000 twenty-five-pound container or container equivalents. Thus, the $0.195 rate was expected to provide $4,337,775 in assessment income. Income derived from handler assessments and other sources will be adequate to cover budgeted expenses and permit an adequate reserve.

The NAC met on April 28, 2004, and recommended 2004–05 fiscal period expenditures of $5,162,866 and an assessment rate of $0.195 per 25-pound container or container equivalent of nectarines. In comparison, last year's expenditures were initially budgeted at $4,173,438. The assessment rate of $0.195 is $0.005 lower than the rate previously in effect.

The major expenditures recommended by the NAC for the 2004–05 fiscal period include $219,872 for salaries and benefits, $146,613 for general expenses and industry activities, $1,153,676 for inspection, $208,568 for research, and $3,161,852 for domestic and export market development programs.

Budgeted expenses for these items in the 2003–04 fiscal period were initially estimated to be $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $138,929 for research, and $2,263,061 for domestic and export market development programs.

After the 2003–04 fiscal period budget was formulated and recommended to USDA in May 2003, the committee received one Federal and two State grants which affected both committee income and expenditures. The NAC also conducted research to test a commercial nectarine drink, using reserve funds. The committee subsequently unanimously recommended an amended budget for the 2003–04 fiscal period. Under this amended budget, the Federal grant of $533,921 and a State grant of $200,557 were applied to the export marketing development program, and a State grant of $3,667 was applied to the research program, along with $45,000 from the committee's reserves for the nectarine drink.

The major expenditures under the 2003–04 fiscal period amended budget include $226,121 for salaries and benefits, $142,612 for general expenses and industry activities, $1,210,220 for inspection, $187,596 for research, and $2,997,539 for domestic and export market development programs.

The lower assessment rate is possible because of the $786,521 in excess funds carried into the 2004–05 fiscal period. This will provide adequate funds at the beginning of the 2005 season before assessment collections begin. A financial reserve carry-in is desirable because major expense outlays for seasonal promotions and other activities occur before assessments are received.

The 2004–05 fiscal period assessment rate for the NAC was derived after considering the total NAC expenses of $5,162,866; the estimated assessable nectarines of 22,245,000 twenty-five-pound containers or container equivalents; the estimated income from other sources, such as interest and grants; and the need for an adequate financial reserve to carry the NAC into the 2005 season.

To meet this goal, the NAC recommended an assessment rate of $0.195 per 25-pound container or container equivalent. According to the committee, that assessment rate will result in an adequate carry-in, while carrying reserves within the maximum permitted by the order (one year's expenses; § 916.42).

Analysis of PCC Budget

The quantity of assessable peaches for the 2004–05 fiscal period is estimated at 22,601,000 twenty-five-pound containers or container equivalents. Thus, the $0.19 rate should provide $4,294,190 in assessment income. Income derived from handler assessments and other sources will be adequate to cover budgeted expenses and permit a small increase in reserves.

The PCC also met on April 28, 2004, and recommended 2004–05 fiscal period expenditures of $5,178,002 and an assessment rate of $0.19 per 25-pound container or container equivalent of peaches. In comparison, last year's expenditures were initially budgeted at $4,086,316. The assessment rate of $0.19 is $0.01 lower than the rate currently in effect.

The major expenditures recommended by the PCC for the 2004–05 fiscal period include $219,872 for salaries and benefits, $148,598 for general expenses and industry activities, $1,240,520 for inspection, $208,570 for research, and $3,188,457 for domestic and export market development programs.

The major expenditures initially recommended by the PCC for the 2003–04 fiscal period include $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,173,480 for inspection, $138,930 for research, and $2,211,346 for domestic and export market development programs.

After the 2003–04 fiscal period budget was formulated and recommended to USDA in May 2003, the committee received one Federal and two State grants which affected both committee income and expenditures. The committee subsequently unanimously recommended an amended budget for the 2003–04 fiscal period. Under this amended budget, the Federal grant of $488,845 and a State grant of $149,667 were applied to the export market development, and a State grant of $3,667 was applied to the cultural research program.

The major expenditures under the amended budget for 2003–04 fiscal period include $226,121 for salaries and benefits, $144,743 for general expenses and industry activities, $1,173,480 for inspection, $142,597 for research, and $2,849,858 for domestic and export market development programs.

The lower assessment rate is possible because of the carry-in of $915,375 in excess funds from the 2003–04 fiscal period into the 2004–05 fiscal period. This is substantially higher than the PCC needs for early season expenses before assessment collections begin. A financial reserve carry-in of approximately $500,000 is desirable because major expense outlays for seasonal promotions and other activities occur before assessments are received.

The 2004–05 fiscal period assessment rate for the PCC was derived after considering the total PCC expenses of $5,178,002; the estimated assessable peaches of 22,601,000 twenty-five-pound containers or container equivalents; the estimated income from other sources, such as interest and grants; and the need for an adequate financial reserve to carry the PCC into the 2005 season.

To meet this goal, the PCC recommended an assessment rate of $0.19 per 25-pound container or container equivalent. According to the committee, the assessment rate will result in an adequate carry-in, while keeping reserves within the maximum permitted by the order (one year's expenses; § 917.38).

Considerations in Determining Expenses and Assessment Rates

Prior to arriving at these budgets, the committees considered information and recommendations from various sources, including, but not limited to: The Executive Committee, the Research Subcommittee, the International Programs Subcommittee, the Tree Fruit Quality Subcommittee, and the Domestic Promotion Subcommittee.

Each of the committees then reviewed the proposed expenses; the total estimated assessable 25-pound containers or container equivalents; and the estimated income from other sources, such as interest income and grants, prior to recommending a final assessment rate. The NAC decided that an assessment rate of $0.195 per 25-pound container or container equivalent will allow it to meet its 2004–05 fiscal period expenses and carry over an operating reserve of about $499,811 which is in line with the committee's financial needs. The PCC decided that an assessment rate of $0.19 per 25-pound container or container equivalent will allow it to meet its 2004–05 fiscal period expenses and carry over an operating reserve of $567,383, which is in line with the committee's financial needs. The committees then unanimously recommended these rates to USDA.

A review of historical and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2004 crop year for nectarines and peaches could range between $4.00 and $6.00 per 25-pound container or container equivalent. Therefore, the estimated assessment revenue for the 2004–05 fiscal period as a percentage of total grower revenue could range between 4.9 percent and 3.2 percent for nectarines, and 4.7 percent and 3.2 percent for peaches.

This action continues in effect the action that decreased 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 rates reduces the burden on handlers, and consequently may reduce the burden on producers.

In addition, the committees' meetings were widely publicized throughout the California nectarine and peach industries and all interested persons were invited to attend the meetings and participate in the committees' deliberations on all issues. Like all committee meetings, the April 28, 2004, meetings were public meetings and entities of all sizes were able to express views on this issue. Finally, interested persons were 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 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.

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;* 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.*

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