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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV99-955-1 IFR]

Vidalia Onions Grown in Georgia; Fiscal Period Change

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the fiscal period under the Vidalia onion marketing order (order) to January 1–December 31 from September 16–September 15. It also extends the current fiscal period which began September 16, 1998, through December 31, 1999. The order is administered locally by the Vidalia Onion Committee (Committee), which recommends its program expenses on a fiscal period basis. An assessment rate, levied on fresh Vidalia onion shipments, is established to pay those expenses. When the current fiscal period was established, it coincided with the Vidalia onion marketing season which ran from April through June. Due largely to the use of Controlled Atmosphere (CA) storage, Vidalia onions are now shipped through the fall. This action will make the fiscal period consistent with the current marketing season. **DATES:** Effective September 7, 1999; comments received by November 2, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; Fax: (202) 720-5698; or E-mail: moab.docketclerk@usda.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.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, PO Box 2276, Winter Haven, FL 33883-2276; telephone: (941) 299-4770, Fax: (941) 299-5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-5698.

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 marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. 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 the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not

later than 20 days after the date of the entry of the ruling.

Section 955.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. The order also provides that these expenses be paid by assessments levied on fresh shipments of Vidalia onions. The Committee prepares an annual budget of expenses on a fiscal year basis. Section 955.13 of the order defines "fiscal period" to mean September 16 through September 15 of the following year, or such other period that may be recommended by the Committee and approved by the Secretary.

This rule changes the fiscal period to January 1 through December 31, making it consistent with the current Vidalia onion marketing season. It also extends the 1998-99 fiscal period, currently September 16, 1998 through September 15, 1999, through December 31, 1999. These changes were unanimously recommended by the Committee at its November 19, 1998, meeting.

When the order was first issued in 1989, the harvesting and marketing season for Vidalia onions ran from April through June. The September 16 through September 15 fiscal period thus covered the entire marketing season and was appropriate for budget planning purposes. Over the past decade, changes in the industry have extended the marketing season. In particular, the adoption of Controlled Atmosphere (CA) storage by three-fourths of the handlers has allowed them to economically store Vidalia onions through December. While there are some added storage costs and losses due to shrinkage, these costs are more than offset by prices received for Vidalia onions during the holiday season (November and December).

The Committee's current annual budget is \$373,577, and the assessment rate is set at 7 cents per 50-pound bag. Major expenses include \$131,600 for marketing and promotion, \$75,000 for research, \$135,127 for administrative expenses, and \$31,850 for compliance. It is appropriate that the Committee plan and finance its activities consistent with the Vidalia onion marketing season.

The Committee will begin operating under the revised fiscal period on January 1, 2000. Therefore, this rule also extends the current fiscal period

through December 31, 1999. This will provide for continuous operation of the program. The Committee will revise its current budget of expenses to cover the 3½ months being added to the current fiscal period.

The fiscal period change is designed to improve the functioning and operation of the program. The majority of handlers maintain their business records on a calendar year basis. Therefore, this rule will better reflect current industry practices.

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 86 handlers of Vidalia onions who are subject to regulation under the order and approximately 133 Vidalia onion producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small agricultural producers are defined as those having annual receipts of less than \$500,000.

During the 1996–97 fiscal year, about 14 percent of the handlers shipped about 2,771,000 50-pound bags of Vidalia onions, for an average of about 197,930 bags. The remaining 86 percent of the handlers shipped about 1,262,940 bags, for an average of about 14,685 bags. Using an average f.o.b. price of \$12.80 per bag, the majority of handlers could be considered small businesses under SBA's definition. Likewise, the majority of Vidalia onion growers may be classified as small businesses.

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such other period that may be recommended by the Committee and approved by the Secretary.

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When the order was first issued in 1989, the harvesting and marketing season for Vidalia onions ran from April through June. The September 16 through September 15 fiscal period thus covered the entire marketing season and was appropriate for budget and planning purposes. Over the past decade, changes in the industry have extended the marketing season. In particular, the adoption of Controlled Atmosphere (CA) storage by three-fourths of the handlers has allowed them to economically store Vidalia onions through December. While there are some added storage costs and losses due to shrinkage, these costs are more than offset by prices received for Vidalia onions during the holiday season (November and December).

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The Committee will begin operating under the revised fiscal period on January 1, 2000. Therefore, this rule also extends the current fiscal period through December 31, 1999. This will provide for continuous operation of the program. The Committee will revise its current budget of expenses to cover the 3½ months being added to the current fiscal period.

This rule is a change to Committee operations which would not impose any new requirements on Vidalia onion handlers. It could, on the other hand, simplify handler operations by putting the program fiscal period on the same basis as handlers' internal reporting and recordkeeping procedures.

The Committee discussed the alternative of leaving the fiscal period as it presently exists, but unanimously concluded that this change would improve program operations.

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 sectors. In addition, the Department 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 November 19, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of nine members: eight producers and one public member.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail:

Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: <http://www.ams.usda.gov/fv/moab.html>.

This rule invites comments on these changes to the fiscal period currently prescribed under the 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 rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 fiscal period ends on September 15, 1999, and this action is needed to be taken as soon as possible to assure continuity in

Committee operations; (2) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (3) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new Subpart—Rules and Regulations is added preceding § 955.101 to read as follows:

Subpart—Rules and Regulations

3. A new § 955.113 is added to read as follows:

§ 955.113 Fiscal period.

Pursuant to § 955.13, *fiscal period* shall mean the period beginning January 1 and ending December 31 of each year, except that the fiscal period that began on September 16, 1998, shall end on December 31, 1999.

Dated: August 30, 1999.

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–23012 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–083–6]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Orange County, CA, from the list of quarantined areas. The quarantine was necessary to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. We have

determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

DATES: This interim rule is effective as of August 27, 1999. We invite you to comment on this docket. We will consider all comments that we receive by November 2, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–083–6, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–083–6.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at <http://www.aphis.usda.gov/ppd/rad/webrepor.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the movement of regulated articles from

quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly in a portion of San Diego County, CA, in August 1998, the quarantined areas in California have included portions of Orange, Riverside, and San Diego Counties.

In an interim rule effective August 13, 1998, and published in the **Federal Register** on August 20, 1998 (63 FR 44539–44541, Docket No. 98–083–1), we added a portion of San Diego County, CA, to the list of quarantined areas. In a second interim rule effective August 14, 1998, and published in the **Federal Register** on August 21, 1998 (63 FR 44774–44776, Docket No. 98–083–2), we added a portion of Orange County, CA, to the list of quarantined areas. In a third interim rule effective November 24, 1998, and published in the **Federal Register** on December 1, 1998 (63 FR 65999–66001, Docket No. 98–083–3), we added an area in Riverside and Orange Counties, CA, to the list of quarantined areas. In a fourth interim rule effective June 1, 1999, and published in the **Federal Register** on June 7, 1999 (64 FR 30213–30214, Docket No. 98–083–4), we removed a portion of San Diego County, CA, from the list of quarantined areas. In a fifth interim rule effective August 16, 1999, and published in the **Federal Register** on August 23, 1999 (64 FR 45859–45860, Docket No. 98–083–5), we removed a portion of Riverside and Orange Counties, CA, from the list of quarantined areas.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county inspectors, that the Medfly has been eradicated from the quarantined area in Orange County, CA. The last finding of Medfly thought to be associated with the infestation in that portion of Orange County, CA, was October 27, 1998. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of Orange County, CA, from the list of areas in § 301.78–3(c) quarantined because of the Medfly. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Medfly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The portion of Orange County, CA,