

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

**PART 985—SPEARMINT OIL
PRODUCED IN THE FAR WEST**

Accordingly, the interim final rule amending 7 CFR part 985 which was published at 59 FR 44028 on August 26, 1994, and amended by an interim final rule published at 59 FR 54376 on October 31, 1994, is adopted as a final rule without change.

Dated: January 27, 1995.

Sharon Bomer Lauritsen,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 95-2582 Filed 2-1-95; 8:45 am]

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7 CFR Part 997

[Docket No. FV94-997-1FIR]

Assessment Obligations for Non-signatory Handlers; Peanut Handlers Not Subject to Peanut Marketing Agreement No. 146

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with modifications, the provisions of an interim final rule implementing administrative assessments on handlers who are not signatory (non-signatory handlers) to Peanut Marketing Agreement No. 146 (Agreement). The interim final rule provided notice that the Department would begin assessing non-signatory handlers during the 1994-95 crop year. However, because of an unforeseen delay in installing an assessment collection database, the Department will not begin assessing non-signatory handlers until the 1995-96 crop year. The postponement will allow the installation to be completed and all affected handlers to be notified prior to the beginning of the 1995-96 crop year will be established by the Department in the spring of 1995.

EFFECTIVE DATE: March 6, 1995.

FOR FURTHER INFORMATION CONTACT:

Richard Lower or Mark Slupek, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2020, FAX (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued pursuant to the requirements of the Agricultural

Marketing Agreement Act of 1937 (Act), as amended [7 U.S.C. 601-674], and as further amended December 12, 1989, Public Law 101-220, section 4 (1), (2), 103 Stat. 1878, and August 10, 1993, Public Law 103-66, section 8b(b)(1), 107 Stat. 312.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. The Department will establish a 1995-96 crop year assessment rate applicable to non-signatory handlers effective July 1, 1995-June 30, 1996. Segregation 1 farmers stock peanuts received or acquired by non-signatory handlers during that crop year will be subject to the assessment. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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.

There are approximately 45 handlers of peanuts who have not signed the Agreement and, thus, will be subject to the regulations specified herein. The Small Business Administration defines small agricultural service firms [13 CFR 121.601] as those having annual receipts of less than \$5,000,000 and small agricultural producers as those whose annual receipts are less than \$500,000. A majority of non-signatory handlers and peanut producers may be classified as small entities.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement was established in 1965 and plays a very important role in the industry's quality control efforts. The Peanut Administrative Committee (Committee) was established by the Agreement and works with the Department in administering the marketing agreement program. Approximately 95 percent of the area peanut crop is marketed by handlers who are signatory to the Agreement. Requirements established pursuant to the Agreement provide that farmers stock peanuts with visible

Aspergillus flavus mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts and certain cleaned inshell peanuts destined for edible channels must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Committee.

Public Law 101-220, enacted December 12, 1989, amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Approximately 5 percent of the U.S. peanut crop is marketed by non-signer handlers.

Under the non-signer provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Pub. L. 101-220 were made effective on December 4, 1990 [55 FR 49980], and amended several times thereafter, and are published in 7 CFR part 997. All such amendments were made to ensure that the non-signer handling requirements remain consistent with modifications to the handling requirements applied to signatory handlers under the Agreement. The most recent amendment was published on August 30, 1994 [59 FR 44610].

Public Law 103-66 [107 Stat. 312], enacted August 10, 1993, provides for mandatory assessment of farmer's stock peanuts acquired by non-signatory peanut handlers. Under this law, paragraph (b) of section 1001, of the Agricultural Reconciliation Act of 1993, specifies that: (1) Any assessment (except indemnification assessments) imposed under the Agreement on signatory handlers also shall apply to non-signatory handlers, and (2) such assessment shall be paid to the Secretary.

This rule will add new permanent § 997.51 Assessments to part 997—Provisions Regulating the Quality of Domestically Produced Peanuts Handled by Persons Not Subject to the Peanut Marketing Agreement. Notice of the actual assessment rate established for each crop year will be issued as a new section as an Implementing Regulation beginning with § 997.100 Assessment rate, and be sequentially numbered each succeeding year. Because of the Department's decision to postpone the imposition of assessments on non-signatory handlers until the 1995-96 crop year, an assessment rate

will not be established until the spring of 1995.

The Committee meets in February or March each year and recommends to the Secretary a per ton, administrative assessment of Segregation 1, farmers stock peanuts received or acquired by signatory handlers for the upcoming crop year. The crop year covers the 12-month period from July 1 to June 30.

Therefore, pursuant to Public Law 103-66 and subsequent to the receipt of such a recommendation in 1995, the Department will initiate rulemaking procedures to assess non-signatory handlers. The assessment will be based on: (1) Tonnage reported on incoming inspection certificates of each handler's Segregation 1 farmers stock peanuts received or acquired for the handler's account and (2) tonnage reported on FV-117 "Weekly Report of Uninspected Farmers Stock Seed Peanuts Received for Custom Seed Shelling." If an administrative assessment rate of \$.60 per ton were established, a handler who received or acquired 50,000 tons of Segregation 1 farmers stock peanuts and 50,000 tons of uninspected farmers stock peanuts for seed would pay an assessment of \$60.

The assessment will be applied to peanuts intended for human consumption and peanuts intended for non-human consumption outlets such as seed, oilstock and animal feed. The assessment will be applied to peanuts received or acquired for a handler's account, including the handler's own production. Assessment will not be applied on Segregation 1 peanut lots received or acquired by a handler from other handlers or from the Commodity Credit Corporation (CCC) program received for non-edible use, or lots received on behalf of an area association pursuant to warehousing services [§ 997.20(a)].

The assessment will be applied, pro rata, on non-signatory handlers who perform handling functions defined in § 997.14. Handling is defined as engaging in the receiving or acquiring, cleaning and shelling, cleaning inshell, or crushing of peanuts and in the shipment (except as a common or contract carrier of peanuts owned by another) or sale of cleaned inshell or shelled peanuts or other activity causing peanuts to enter the current of commerce. Handling does not include the sale or delivery of peanuts by a producer to a handler or to an intermediary person engaged in delivering peanuts to handlers and the sale or delivery of peanuts by such intermediary to a handler.

Section 997.15 defines a non-signatory handler as any person who

handles peanuts, in a capacity other than that of a custom cleaner or dryer, and assembler, a warehouse person or other intermediary between the producer and the non-signatory handler.

Speculators, brokers, or other entities who take possession of Segregation 1 farmers stock peanuts, submit such peanuts for incoming inspection, and subsequently enter such peanuts into the channels of commerce will pay assessments on such peanuts. Entities who receive or acquire farmers stock peanuts for the purpose of custom seed shelling will be assessed on the basis of Form FV-117 "Weekly Report of Uninspected Farmers Stock Seed Peanuts Received for Custom Seed Shelling." Form FV-117 is currently required from such entities. Producer/handlers who store peanuts of their own production (farm-stored peanuts) will, at some point prior to further handling, obtain incoming inspection on such peanuts and, at that time, pay the pro-rata administrative assessment on such peanuts.

Only one administrative assessment will be applied to any lot of farmers stock peanuts. Non-signatory and signatory handlers will not pay an administrative assessment on a lot which they purchase from speculators, brokers or other such entities who have already paid an administrative assessment on the lot.

A crop year's original assessment could be increased by the Secretary based on a similar increase applied by the Secretary on signatory handlers. Such an increase will be applied on all peanuts first handled by non-signatory handlers during the crop year in which the increased assessment occurred.

Peanuts will be assessed based on the rate applicable to the crop year in which the lot is presented for incoming inspection.

Also pursuant to Pub. L. 103-66, this rule will establish that non-signatory handlers pay their administrative assessment to the Secretary. The Secretary will bill non-signatory handlers on a periodic basis determined by the Secretary. The non-signatory handler will be responsible for remitting payment by the date specified. Payment in the form of a personal check, cashier's check or money order will be remitted to the Department. Audits of each handler's account may be conducted by the Department to reconcile incoming, farmers stock volume received or acquired and assessments paid.

Violation of the non-signer regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the

support price for quota peanuts. The support price for quota peanuts is determined under 7 U.S.C. 1445c-3 for the crop year during which the violation occurs.

The interim final rule on these issues was published in the **Federal Register** on August 3, 1994 [59 FR 39419]. That rule invited interested persons to submit written comments through September 2, 1994. One comment supporting the collection of assessments from non-signer peanut handlers was received.

The establishment of an administrative assessment rate may impose some additional costs on non-signatory handlers. However, the costs will be in the form of uniform assessments on all handlers who are not signatory to the Agreement.

In accordance with the Paperwork Reduction Act of 1988 [44 U.S.C. Chapter 35], the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0163.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 997 which was published at 59 FR 39419 on August 3, 1994, is adopted as a final rule with the following change:

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: 7 U.S.C. 601-674.

§ 997.100 [Removed]

2. In part 997, § 997.100 and the center heading preceding it are removed.

Dated: January 27, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
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