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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 998

[Docket No. FV95-998-1FIR]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with appropriate changes, the provisions of an interim final rule that authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve under Marketing Agreement 146 (agreement) for the 1995-96 crop year. The rule also increased the administrative assessment rate for the 1994-95 crop year. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay those expenses, and settle indemnification claims during the 1994-95 crop year. Authorization of the increase in the administrative assessment rate for the 1994-95 crop year enables the Committee to collect sufficient funds to pay expenses projected for the remainder of that year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

EFFECTIVE DATE: Section 998.408 is effective July 1, 1995, through June 30, 1996. Section 998.407 was effective July 1, 1994, through June 30, 1995.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order

Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or William G. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 941-299-4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 (7 CFR part 998) regulating the quality of domestically produced peanuts. This agreement 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 is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments. This rule authorizes expenditures and establishes an assessment rate for the Committee for the crop year which began July 1, 1995, and ends June 30, 1996, and increases the administrative assessment rate for the crop year which began July 1, 1994, and ended June 30, 1995. 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 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 rule 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 47,000 producers of peanuts in the 16 States covered under the agreement, and approximately 76 handlers regulated under the agreement. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts

of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. A majority of the producers may be classified as small entities, and some of the handlers covered under the agreement are small entities.

Under the agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee for the 1995-96 crop year was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received or acquired by handlers from July 1, 1995. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expenses.

The Committee met on March 23, 1995, and unanimously recommended 1995-96 crop year administrative expenses of \$1,067,500 and an administrative assessment rate of \$0.70 per net ton of assessable farmers' stock peanuts received or acquired by handlers. In comparison, 1994-95 crop year budgeted administrative expenditures were \$1,056,000, and the administrative assessment rate was initially recommended and fixed at \$0.60 per ton.

Administrative budget items for 1995-96 which have increased compared to those budgeted for 1994-95

(in parentheses) are: Executive salaries, \$145,051 (\$140,146), clerical salaries, \$138,856 (\$132,500), field representatives salaries, \$304,344 (\$290,420), payroll taxes, \$44,000 (\$43,000), employee benefits, \$148,000 (\$145,000), insurance and bonds, \$9,500 (\$8,500), postage and mailing, \$13,200 (\$12,000), and audit fees, \$10,400 (\$9,200). Items which have decreased compared to those budgeted for 1994-95 (in parentheses) are: Office rent and parking, \$44,360 (\$50,000), furniture and equipment, \$4,000 (\$9,500), and lab data processing, \$1,000 (\$1,500). All other items are budgeted at last year's amounts. The administrative budget includes \$4,789 for contingencies (\$14,234 last year).

The Committee also unanimously recommended 1995 crop indemnification claims payments of up to \$7,000,000 and an indemnification assessment of \$1.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. For the 1994 crop, indemnification claims payments of up to \$9,000,000 and an assessment rate of \$2.00 per net ton were established. The decreases for 1995 reflect the Committee's desire to lower indemnification costs.

The costs to carry out indemnification procedures (sampling and testing of 2-AB and 3-AB Subsamples, and crushing supervision, of indemnified peanuts, pursuant to § 998.200(c)), are paid from available indemnification funds. Such costs are not expected to exceed \$2,000,000.

The total assessment rate is \$1.70 per ton of assessable peanuts (\$0.70 for administrative and \$1.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,525,000 will yield \$1,067,500 for program administration and \$1,525,000 for indemnification. The indemnification amount, when added to expected cash carry over from 1994-95 indemnification operations of \$8,700,000, will provide \$10,225,000, which should be adequate for the 1995 fund, and to maintain an adequate reserve.

The 1994-95 budget was published in the **Federal Register** as an interim final rule on May 12, 1994 (59 FR 24633), and finalized on August 3, 1994 (59 FR 39421). The administrative expenses and assessment rate for the 1994-95 crop year were based on an estimated assessable tonnage of 1,760,000. Due to handlers purchasing fewer peanuts than

originally projected, the assessable tonnage is expected to be only 1,676,000. In order to have sufficient revenue to cover budgeted expenses of \$1,056,000, the Committee unanimously recommended that the 1994-95 crop year administrative assessment be increased from \$0.60 to \$0.63 per net ton of assessable farmers' stock peanuts.

An interim final rule was published in the **Federal Register** on May 17, 1995 (60 FR 26348). That interim final rule added § 998.408 which authorized expenditures for administration and indemnification, established an assessment rate, and authorized continuation of an indemnification reserve for the Committee. That rule also amended § 998.407, paragraph (c) to increase the administrative assessment rate for the 1994-95 crop year. That rule provided that interested persons could file comments through June 16, 1995. One comment was received from the Assistant Manager of the Peanut Administrative Committee regarding an incorrect indemnification expense figure appearing two places on page 26349 in the interim final rule. The Committee pointed out that in column one in the third full paragraph and in column three in paragraph (b) *Indemnification expenses*, the \$500,000 figure should be corrected to read \$2,000,000. These two corrections have been made in this finalization of the interim final rule.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1994-95 crop year began on July 1, 1994, and the 1995-96 crop year for the program

began on July 1, 1995, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting and published in the **Federal Register** as an interim final rule.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 998 is amended as follows:

Accordingly, the interim final rule adding § 998.408 and amending § 998.407, which was published at (60 FR 26348) on May 17, 1995, is adopted as a final rule with the following change:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 continues to read as follows:

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

2. In § 998.408, paragraph (b) is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulation.

§ 998.408 Expenses, assessment rate, and indemnification reserve.

* * * * *

(b) *Indemnification expenses.* Expenses of the Committee not to exceed \$7,000,000 for indemnification claims payments and claims expenses, pursuant to the terms and conditions of indemnification applicable to the 1995 crop effective July 1, 1995, are authorized. In addition, indemnification expenses, in an undetermined amount estimated not to exceed \$2,000,000, which are incurred by the Committee for sampling and testing fees for 2-AB and 3-AB Subsamples, and fees for the supervision of the crushing of indemnified peanuts are also authorized.

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Dated: July 10, 1995.

Sharon Bomer Lauritsen,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 95-17533 Filed 7-17-95; 8:45 am]